IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARGARET NEWTON, JUDITH FOWLER, JASPER & CATHERINE SUTTON, and FRAUNCINE LORA MYERS, on behalf of themselves and all others similarly situated,	:	**CIVIL ACTION**
Plaintiffs,	:	**NO. 97-CV-5400**
v.	:	
UNITED COMPANIES FINANCIAL CORP. and UNITED COMPANIES LENDING CORP.,	:	
Defendants.	:	

SECOND AMENDED COMPLAINT - CLASS ACTION

I. PRELIMINARY STATEMENT

1. This is a consumer class action brought by five low-income homeowners on behalf of a Pennsylvania state-wide class against a lender with whom they each unknowingly entered into exorbitantly priced mortgage loans to finance home improvements. In each loan transaction, the Defendant received the credit application from a home improvement contractor, refused to provide a Pennsylvania home improvement loan to the consumer borrower, but instead offered the borrower a substantially more expensive first mortgage loan, adding fees and charges of up to 50% of the cost of the home improvements. Plaintiffs seek rescission and statutory damages under the recently enacted Home Ownership and Equity Protection Act of 1994 (hereinafter "HOEPA"), Subt. B of Title 1, §§ 151-158 (H.R. 3474) Publ. L. No. 103-325, 108 Stat. 2160 (Sept. 23, 1994), and the Truth in Lending Act, 15 U.S.C. §1640(a). Plaintiffs also seek actual

and punitive damages under the Equal Credit Opportunity Act (hereinafter "ECOA"), 15 U.S.C. § 1691 et seq., for the lender's failure to provide notification that her/his initial application for a home improvement loan had been denied and that the take-it-or-leave-it terms offered by Defendant were in fact a counteroffer. In addition, Plaintiffs seek treble damages for violations of Pennsylvania's Home Improvement Finance Act ("HIFA"), 73 P.S. § 500-101 et seq. , the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1 et seq. and the Pennsylvania Loan Interest and Protection Law, known as Act No. 6 of 1974 ("Act 6"), 41 P.S. § 101 et seq.

2. The named Plaintiffs have additional claims for statutory damages and/or rescission under federal and state law.

II. JURISDICTION AND VENUE

3. Jurisdiction of this Court exists pursuant to 15 U.S.C. § 1640(e) as to claims under HOEPA and the Truth-in-Lending Act ("TILA"); pursuant to 15 U.S.C. § 169le(f) for claims under ECOA; pursuant to 12 U.S.C. § 2614 for claims under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 et seq., and pursuant to 28 U.S.C. § 1367 regarding plaintiffs' state law claims.

4. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

5. Plaintiff Margaret Newton is a natural person who resides at 1672 Orthodox Street, Philadelphia, Pennsylvania.

6. Plaintiff Judith Fowler is a natural person who resides at 1956 Croskey Street, Philadelphia, Pennsylvania.

7. Plaintiffs Jasper and Catherine Sutton are a husband and wife who reside at 247 East Haines Street, Philadelphia, Pennsylvania.

8. Plaintiff Frauncine Lora Myers is a natural person who resides at 6600 Bouvier Street, Philadelphia, Pennsylvania.

9. Defendant United Companies Financial Corporation is a financial services holding company which conducts retail consumer loan operations in Pennsylvania through a wholly owned subsidiary, Defendant United Companies Lending Corporation. United has nine branch offices in Pennsylvania, including three in this district. The principal offices of both corporations are located at 4041 Essex Lane, Baton Rouge, Louisiana. (Both Defendants will be referred to collectively as "United.")

10. At all relevant times, United, in the ordinary course of its business, a) regularly extended or offered to extend consumer credit payable by written agreement in more than four installments or for which a finance charge is imposed and b) acted on more than 150 consumer credit applications annually.

IV. CLASS ACTION ALLEGATIONS

11. Plaintiffs bring their action individually and as a class action, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class (the "Class"): All Pennsylvania residents who, from December 13, 1991 through December 12, 1997 (the "Class Period"), entered into a first mortgage loan with United or one of its subsidiaries or affiliates, and who used or intended to use some of the loan proceeds to finance home improvements (as defined under Pennsylvania's HIFA law), and who were referred to United by a home improvement dealer, or a broker acting for a dealer.

12. The members of the Class are so numerous that joinder of all members is impracticable. Although Plaintiffs do not know the exact number of Class members, Plaintiffs believe that the Class will number between 1,000 and 5,000. The Class members will be readily identifiable from the mortgage loan files of the Defendant.

13. Plaintiffs' claims are typical of the claims of the members of the Class. The losses to the Plaintiffs were caused by the same courses of conduct that give rise to the claims of other members of the Class.

14. Plaintiffs will fairly and adequately protect the interest of the Class. Plaintiffs have no conflict of interest with other members of the Class. Plaintiffs have retained experienced counsel qualified in class action litigation who are competent to assert the interests of the Class.

15. Common questions of law and fact predominate over questions which may affect only individual members of the Class because Defendant has acted or refused to act on grounds generally applicable to the entire Class.

16. Among the questions of law and fact common to the members of the Class are:

a. Whether United extended home improvement loans based on the equity in the borrowers' homes rather than upon their ability to repay the loans and have thereby violated HOEPA;

b. Whether United refused to extend Pennsylvania home improvement loans to the borrowers but instead offered substantially more expensive first mortgage loans and have thereby violated ECOA;

c. Whether United imposed charges in connection with the loans that are expressly prohibited by HIFA;

d. Whether United's imposition of charges prohibited by HIFA constitutes an unfair and

deceptive trade practice under the UTPCPL;

e. Whether United's imposition of charges prohibited by HIFA subjects it to liability under Act 6;

f. Whether United's imposition of loan charges prohibited by Pennsylvania Law also constituted a violation of the Truth in Lending Act's disclosure requirements;

g. Whether United's timing and method of delivery of advance loan disclosures violated HOEPA;

h. Whether members of the Class have sustained damages by reason of United's wrongful conduct and, if so, the proper measure of damages; and

i. Whether Plaintiffs and members of the Class are entitled to injunctive or declaratory relief.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by certain members of the Class who could not afford to litigate individually such claims against a sizeable corporate Defendant. Several other consumers with home improvement loans from United (in addition to the named Plaintiffs) have sought representation from Plaintiffs' counsel, and the separate prosecution of their claims would be unnecessarily time-consuming and duplicative, particularly in proving the same pattern of conduct by the Defendants. Moreover, many of the class members are low-income, elderly victims of Defendants' practices who may be unaware of their

rights under the consumer protection laws.

18. Plaintiffs know of no difficulty to be encountered in the management of the action that would preclude maintenance as a class action.

V. FACTUAL ALLEGATIONS REGARDING REPRESENTATIVE PLAINTIFFS

A. Facts Pertaining to Plaintiff Newton

19. Plaintiff Newton is a 75-year-old homeowner who, during the summer of 1996, was solicited by a home improvement dealer who offered to install aluminum siding on her home for the price of $9,900 and to locate financing for the job.

20. The home improvement dealer contacted United and initiated a credit application on Plaintiff Newton's behalf for the $9,900 in home improvement financing. As a result of this referral, a representative from United visited Plaintiff and had her sign an application for credit.

21. On September 3, 1996, a settlement was held in Plaintiff's home. As a consequence of this settlement Plaintiff entered into a consumer credit transaction with United in which United extended consumer credit which was subject to a finance charge and which was initially payable to United.

22. As part of this consumer credit transaction, United retained a security interest in 1672 Orthodox Street, Philadelphia, which is used as the principal dwelling of the Plaintiff, namely, a mortgage.

23. The funds to pay the contractor were placed by United in an escrow fund, in accordance with United's usual practice in disbursing home improvement loans. The funds were to be disbursed

upon completion of the work.

24. In Pennsylvania, home improvement loans are regulated by HIFA. Among other things, this statute prohibits combining a home improvement loan with any other loan, 73 P.S. § 500-408, and prohibits the imposition of settlement charges such as appraisal fees, title insurance, document preparation fees, points and other charges or fees. 73 P.S. § 500-407.

25. Despite these prohibitions under HIFA, United required Plaintiff to consolidate $1,581.65 in existing real estate taxes and water bills into the loan, persuaded her to borrow an additional $525.67 in cash and imposed approximately $3,050 in additional points, fees and settlement charges. As a result, instead of borrowing $9,900 from United, Plaintiff ended up borrowing $15,500.

26. Plaintiff is retired and disabled and receives income of $600 per month in Social Security disability benefits and $211.95 in pension benefits. She has high utility bills (exceeding $400/month), regular unreimbursed medical expenses of more than $150 per month and has expensive dietary restrictions. Her total monthly payment owing to United under the loan transaction is $241.33/month (the loan amount, plus tax and insurance escrow), i.e., an amount in excess of her ability to pay. Accordingly, within the first year of her contract she had fallen behind in her payments.

B. Facts Pertaining to Plaintiff Fowler

27. Plaintiff Fowler is a homeowner who, during the summer of 1996, entered into a contract with a home improvement dealer who offered to install four doors in her home for the price of $4,000 and to locate financing for the job.

28. The home improvement dealer contacted United and initiated a credit application on

Plaintiff's behalf for the $4,000 in home improvement financing. As a result of this referral, a representative from United visited Plaintiff and had her sign an application for credit.

29. On September 26, 1996, a settlement was held in Plaintiff's home. As a consequence of this settlement, Plaintiff entered into a consumer credit transaction with United in which United extended consumer credit which was subject to a finance charge and which was initially payable to United.

30. As part of this consumer credit transaction, United retained a security interest in Plaintiff's principal dwelling, 1956 North Croskey Street, namely a mortgage.

31. The funds to pay the contractor were placed by United in an escrow fund, in accordance with United's usual practice in disbursing home improvement loans. The funds were to be disbursed upon completion of the work.

32. Despite the HIFA prohibitions described above, United required Plaintiff to consolidate and pay off more than $5,300 in existing liens and bills as part of her improvement loan; persuaded her to borrow an additional $50 in cash; and imposed approximately $5,650 in additional points, fees and settlement charges. As a result, instead of borrowing $4,000 from United, Plaintiff ended up borrowing $11,600.

33. Prior to the settlement, the representative of United stated or implied several times that Plaintiff Fowler needed to borrow all this additional money in order to receive her doors.

34. Plaintiff never did receive the doors because by the time United paid at settlement all of the items it required her to pay, there was only $2,000 left for the home improvements. Plaintiff believes and therefore avers that the said $2,000 remain to this date in a "home improvement escrow" account maintained by the company that conducted the settlement for United.

35. Among the items United required Plaintiff to pay off as part of the loan transaction were bail liens concerning which she had no monthly payment obligation and/or did not owe.

36. At the time of the transaction Plaintiff was only bringing home wages of $610 per month for her and herself minor son. The transaction left her with a $204/month obligation, an amount in excess of her pre-existing monthly obligations and an amount she could not afford with such a small income. Accordingly, within the first year of the contract she had fallen behind in her payments.

C. Facts Pertaining to Plaintiffs Sutton

37. Plaintiffs Sutton are elderly, disabled homeowners who, during the fall of 1996, entered into a contract with a home improvement dealer who offered to install doors and windows in their home for the price of about $7,000 and to locate financing for the job.

38. The home improvement dealer contacted United and initiated a credit application on the Suttons' behalf for the $7,500 in home improvement financing. As a result of this referral, a representative from United visited the Suttons and had them sign an application for credit.

39. On October 24, 1996 a settlement was held in the Suttons' home. As a consequence of this settlement the Suttons entered into a consumer credit transaction with United in which United extended consumer credit which was subject to a finance charge and which was initially payable to United.

40. As part of this consumer credit transaction, United retained a security interest in 247 East Haines Street, Philadelphia, which is used as the principal dwelling of the Suttons, namely, a mortgage.

41. Despite the HIFA prohibitions described above, United required the Suttons to consolidate and pay more than $5,100 in existing liens and bills as part of the home improvement

loan; persuaded them to borrow an additional $112 in cash; and imposed approximately $3,766 in additional points, fees and settlement charges. As a result, instead of borrowing $7,500 from United, the Suttons ended up borrowing $17,000.

42. Among the settlement charges imposed by United was a $700 broker fee paid to a mortgage broker who the Suttons never met.

43. After the settlement, the Suttons grew suspicious of what had happened and, among other things, attempted to cancel the home improvement contract and returned the check for $111.97 that they had received at the settlement. The $7,488 in settlement proceeds earmarked for the windows and doors are either still sitting unused in a home improvement escrow or were returned to United.

44. The Suttons are living on Social Security benefits and a small pension. They would have had great difficulty affording the $271.60 payment imposed by United, while maintaining their other monthly bills and obligations.

45. After canceling with the contractor the Suttons learned that they were eligible for a home repair grant program for low-income senior citizens. They ended up getting the doors and windows they needed through this program and did not have to pay anything for them.

46. In July 1997, United instituted a foreclosure action against the Suttons in the Philadelphia Court of Common Pleas.

D. Facts Pertaining to Plaintiff Myers

47. Plaintiff Frauncine Myers is a homeowner who, in March, 1995 entered into a contract with a home improvement dealer who offered to remodel her basement for the price of $15,000 and

to locate financing for the job.

48. The home improvement dealer contacted United and initiated a credit application on Plaintiff's behalf for the $15,000 in home improvement financing. As a result of this referral, a representative from United telephoned Plaintiff Myers and accepted her application for credit.

49. On March 23, 1995 a settlement was held in Plaintiff Myers' home. As a consequence of this settlement, Plaintiff entered into a consumer credit transaction with United in which United extended consumer credit which was subject to a finance charge and which was initially payable to United.

50. As part of this consumer credit transaction, United retained a security interest in 6600 N. Bouvier Street, Philadelphia, which is used as the principal dwelling of the Plaintiff, namely, a mortgage.

51. The funds to pay the contractor were placed by United in an escrow fund, in accordance with United's usual practice in disbursing home improvement loans. The funds were to be disbursed upon completion of the work.

52. Despite the HIFA prohibitions described above, United required Plaintiff to consolidate and pay off more than $15,000 in existing liens and bills as part of her improvement loan; persuaded her to borrow an additional $86 in cash; and imposed approximately $10,000 in additional points, fees, insurance premiums and settlement charges. As a result, instead of borrowing $15,000 from United, Plaintiff ended up borrowing $40,000.

53. Prior to the settlement, the representative of United stated or implied several times that Plaintiff Myers needed to borrow all this additional money in order to receive her home improvements.

54. Among the items United required Plaintiff to pay off as part of the loan transaction were her City water and real estate tax bills, for which she already had acceptable payment arrangements. United overpaid the water bill, resulting in a credit of more than $2,800 on Plaintiff Myers' bill, without her knowledge or agreement.

55. At the time of the transaction Plaintiff was only bringing home wages of about $1,000 per month from her job as a cook. The transaction left her with a $640/month obligation, an amount in excess of her pre-existing monthly obligations and an amount she could not afford with such a small income. Accordingly, she has now fallen behind in her payments.

56. Plaintiff Myers was charged $1,742.73 for a broker's fee, apparently paid to John McIntyre.

57. Plaintiff Myers has no recollection of engaging a loan broker, or entering into any agreement to have a broker represent her.

58. On February 21, 1997, Plaintiff's counsel sent a written demand for rescission of the loan, based on violations of the Truth in Lending Act, to United. United has refused to recognize Ms. Myers' rescission, and has not taken any steps to rescind the loan or mortgage on her home in accordance with its obligations under TILA.

VI. CAUSES OF ACTION

COUNT I - HOEPA

(Plaintiffs Newton, Fowler and Sutton and the Class v. United)

59. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

60. Each of the above-mentioned consumer credit transactions was a high rate mortgage within the meaning of HOEPA, 15 U.S.C. § 1602(aa)(1)(B), in that the total "points and fees" United

charged Plaintiffs in addition to interest exceeded 8 percent of the total loan amount.

61. United has engaged in a pattern or practice of extending credit to consumers under high rate mortgages, as defined by 15 U.S.C. § 1602(aa), based on the consumer's collateral without regard to the consumers' repayment ability, including their current and expected income, current obligations and employment in violation of 15 U.S.C. § 1639(h).

62. Plaintiffs believe and therefore aver that United required or induced them to borrow substantially more money than they were seeking, based primarily on United's evaluation of the amount of Plaintiffs' equity in their homes.

63. Because the transactions described herein met the HOEPA definition of a high rate mortgage, the transactions were subject to additional disclosure requirements that must be provided three days in advance of the consummation of the transaction. 15 U.S.C. § 1639(b).

64. United did not furnish HOEPA disclosures to Plaintiffs three days prior to their respective settlements.

65. As a result of United's conduct, United is liable to each named Plaintiff pursuant to 15 U.S.C. § 1640(a)(2)(A) for

(1) Actual damages,

(2) Statutory damages of $2,000, plus an amount equal to the sum of all finance charges and fees paid by Plaintiffs;

(3) Rescission; and

(4) Reasonable attorney's fees and costs.

66. As a result of United's conduct, the Class is entitled to rescission and statutory damages pursuant to 15 U.S.C. § 1640(a)(2)(B).

COUNT II - ECOA

(All Plaintiffs and the Class v. United)

67. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

68. United's offer of credit to Plaintiffs was essentially a counteroffer to Plaintiffs' initial request for a Pennsylvania home improvement loan.

69. United was required, yet failed, to provide Plaintiffs with a written ECOA notice of adverse action under 15 U.S.C. § 1691(d) when it refused to grant their initial request, communicated through their respective home improvement dealers, for a Pennsylvania home improvement loan.

70. As a result of United's failure to provide written notice that its offer of credit was actually a counteroffer, United is liable to each named Plaintiff under 15 U.S.C. § 169le(b) for:

a. Actual damages;

b. Punitive damages of $10,000; and

c. Reasonable attorney fees and costs.

71. As a result of United's violation of ECOA, United is liable to the Class pursuant to 15 U.S.C. § 1691e(b).

COUNT III - ACT 6

(Plaintiffs and Members of Class v. United)

72. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

73. The transactions at issue in this case were "home improvement installment contracts" within the meaning of HIFA.

74. The transactions were structured in violation of an express prohibition in HIFA against

charging consumers fees, costs, commissions or other charges not authorized by HIFA, 73 P.S. § 500-407, and the prohibition against combining cash loans with home improvement loans, 73 Pa. Stat. §500-408.

75. Under Act 6 Plaintiffs and members of the Class are entitled to recover damages of three times the amount of these excess charges, plus reasonable attorney's fees and costs. 41 P.S. §§ 502, 503.

COUNT IV- UTPCPL

(Plaintiffs and Members of Class v. United)

76. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

77. United utilized artifice and deception to take advantage of Plaintiffs' confusion and lack of sophistication. More specifically, United knew or should have known that Plaintiffs had little idea how much they were borrowing or why; were unaware of the various charges imposed on them in the transactions and the fact that some of those charges were illegal under Pennsylvania law; and were unaware of the disadvantages and risks of refinancing and consolidating their pre-existing debt, particularly paying off unsecured debt. United also knew or should have known that Plaintiffs would have difficulty repaying the loan and were, therefore, subjecting themselves to the real likelihood of foreclosure. United nonetheless omitted information and explanations concerning these matters.

78. While representing to Plaintiffs that consolidating their existing debt and prior mortgages would be advantageous, United omitted the material fact that it would charge substantially higher points and fees for first mortgages than for junior mortgages. In other words, United failed to disclose that, by refinancing loans into first lien position, United could charge much higher finance charges than had it offered a junior mortgage, for just the amount requested for home improvements.

79. These omissions by United were material to the transaction.

80. United acted intentionally so as to induce Plaintiffs to enter into the transactions.

81. Plaintiffs would not have entered into the transaction had United explained all material information.

82. United's conduct constituted an "unfair or deceptive practice" within the meaning of the UTPCPL in that, among other reasons,

a) United imposed credit costs and charges expressly prohibited by Pennsylvania law (HIFA), a per se unfair or deceptive practice;

b) United failed to include in its Promissory Notes the Notice of Preservation of Claims and Defenses required by the Federal Trade Commission Regulation, 16 C.F.R. §433.2,, a per se unfair or deceptive practice;

c) United represented to Plaintiffs that the consolidation and refinancing of their pre-existing debt had benefits that it did not have, 73 P.S. § 201-2(v);

d) United engaged in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(xxi).

83. Plaintiffs suffered damages from United's conduct, including excessive loan fees and costs and emotional distress concerning possible loss of their homes.

84. United is liable to each named Plaintiff for actual and punitive damages under Pennsylvania common law, as well as treble damages, attorney fees and other appropriate relief, pursuant to 73 P.S. § 201-9.2.

85. United is liable to the members of the Class for actual and treble damages, attorney's fees, and other appropriate relief.

COUNT V - TILA for Plaintiff Newton v. United

86. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

87. Although Plaintiff Newton contracted to pay $9,900 to the home improvement dealer, United paid the dealer an extra $100 out of the proceeds of the loan. This extra $100 should have been classified as "finance charge" for purposes of TILA.

88. Among the settlement documents provided to Plaintiff by United was a Truth-in-Lending disclosure statement that purported to disclose to Plaintiff the amount financed, finance charge, and annual percentage rate as required by TILA and the regulation promulgated pursuant thereto, 12 C.F.R. § 226.1 et seq. ("Regulation Z").

89. United overstated the amount financed and understated the finance charge by approximately $110, including the above mentioned $100 error, resulting also in an understated annual percentage rate.

90. As a result of these disclosure violations, United is liable to Plaintiff Newton under 15 U.S.C. § 1640(a) for:

a. Actual damages;

b. Statutory damages of $2,000; and

c. Reasonable costs and attorney's fees.

COUNT VI - Rescission (Plaintiffs Fowler, Sutton and Myers v. United)

91. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

92. The consumer credit transaction between Plaintiffs United was subject to the right of rescission as described by 15 U.S.C. § 1635 of TILA and Section 226.23 of Regulation Z, 12 C.F.R. § 226.23.

93. Defendant failed to deliver all material disclosures required by TILA and Regulation Z. The disclosure violations include, but are not limited to:

a) Failing to properly and accurately disclose the "amount financed," using that term in violation of Regulation Z S 226.18(b) and 15 U.S.C. S 1638(a)(2)(A);

b) Failing to clearly and accurately disclose the "finance charge," using that term, in violation of Regulation Z §§ 226.4 and 226.18(d) and 15 U.S.C. § 1638(a)(3); and

c) Failing to clearly and accurately disclose the "annual percentage rate," using that term in violation of Regulation Z § 226.18(e) and 15 U.S.C. § 1638(a)(4).

94. The Plaintiffs have a continuing right to rescind the transaction until receipt of all "material" disclosures described above, pursuant to 15 U.S.C. § 1635(a) and Regulation Z, § 226.23(a)(3).

95. Plaintiffs rescinded the transaction by sending to the Defendant, by U.S. Mail, a notice of rescission.

96. More than twenty days have passed since Plaintiffs rescinded the transaction and Defendant has failed to take any action necessary or appropriate to reflect the termination of any security interest created under the transaction, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2). In addition, the Defendant has failed to return to the Plaintiff any money or property given by the Plaintiff to anyone, including the Defendant, as required by 15 U.S.C. § 1635(b) and Regulation Z, § 226.23(d)(2).

97. As a result of the aforesaid violations of TILA and Regulation Z, pursuant to 15 U.S.C. § 1635(a) and 1640(a), Defendant is liable to Plaintiffs Fowler, Suttons and Myers for

a) Rescission of the transaction, including a declaration that each Plaintiff is not

liable for any finance charges or other charges imposed by Defendant;

b) Termination of any security interest in each of Plaintiffs' property created under the transactions;

c) Return of any money or property given by the Plaintiffs to anyone, including the Defendant, in connection with the transactions;

d) Statutory damages of $4,000 for each plaintiff (consisting of $2,000 for the disclosure violation and $2,000 for the failure to rescind);

e) Forfeiture of return of loan proceeds;

f) Actual damages in an amount to be determined at trial; and

g) An award of reasonable attorney's fee and costs.

COUNT VII - TILA and RESPA (Plaintiffs Sutton and Myers v. United)

98. Plaintiffs repeat and reallege all paragraphs above as if fully set forth herein.

99. Among the charges United imposed in the Sutton transaction was a $700 payment to "First Clearfield Fund," a charge United designated on the disclosure statement as a "broker fee."

100. Among the charges United imposed in the Myers transaction was a $1,742.73 payment to John McIntyre, a charge United designated on the disclosure statement as a "broker fee."

101. Plaintiffs Sutton do not know what a mortgage broker is, are not aware of having had any dealings with a business named First Clearfield Fund ("Clearfield") and did not knowingly hire a broker.

102. Plaintiff Myers does not know what a mortgage broker is, is not aware of having had any dealings with a person named John McIntyre and did not knowingly hire a broker.

103. Plaintiffs believe that United obtained their signature on a purported broker agreement

during one of United's contacts with them in their home, and possibly not until the settlement.

104. Plaintiffs believe and therefore aver that Clearfield and United, as well as McIntyre and United, have an ongoing business relationship, one that was certainly never explained to them.

105. Any purported broker agreement would be void under Pennsylvania law because it failed to include a notice of Plaintiffs' right to cancel such contract pursuant to 73 P.S. § 201-7, and b) it failed to satisfy the minimal requirements of a broker agreement under 63 P.S. § 456.08(a)(6) (requiring agreements to specify rate, term and overall cost of loan broker offers to seek).

106. United did not include the "broker fee" within the "finance charge" it disclosed to Plaintiffs. On the contrary, United included this charge within the "amount financed" it disclosed to Plaintiffs.

107. United makes or invests in residential real estate loans aggregating more than $1 million per year. The transaction at issue in this case was, therefore, a "federally related mortgage loan" within the meaning of Sections 3 and 8 of the RESPA, 12 U.S.C. §§ 2602, 2607.

108. In the course of these transaction United gave Clearfield and McIntyre a fee, commission, kickback or thing of value pursuant to an understanding that Clearfield and McIntyre would refer business to United in violation of 12 U.S.C. § 2607(a). Alternatively, United gave Clearfield and McIntyre a portion, split or percentage of the settlement charges collected from Plaintiffs, other than for services actually performed by Clearfield and McIntyre in violation of 12 U.S.C. S 2607(b).

109. As the result of United's violation of TILA, United is liable to Plaintiffs Sutton and Myers pursuant to 15 U.S.C. § 1640(a) in the amount of $2,000, plus attorney's fees and costs.

110. As the result of the violations of RESPA, United is liable to Plaintiffs Sutton and Myers, pursuant to 12 U.S.C. § 2607(d), for a) statutory damages in the amount of three times the charges imposed on Plaintiffs for settlement services and b) attorney's fees and costs.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, request the following relief:

a) An order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel to represent the Class;

b) An order enjoining United from continuing to engage in the unfair and deceptive practices described above;

c) Actual and statutory damages, attorneys' fees and costs under ECOA;

d) Treble damages, attorneys' fees and costs under Act 6;

e) Treble damages, attorneys' fees and costs under the UTPCPL;

f) Actual and statutory damages, attorneys' fees and costs under TILA;

g) An order entering declaratory relief of rescission , voiding any liens obtained by United against the property of the Plaintiffs, plus attorneys' fees and costs under TILA;

h) Statutory damages, attorneys' fees and costs for Plaintiffs Sutton and Myers under RESPA; and

i) Such other relief at law or equity as this Court may deem just and proper.

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Dated: December 11, 1997

Attorneys for Plaintiffs and the Class