

FILED IN CLERK'S OFFICE
U.S. D.C. Atlanta

OCT 5 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *WJH*
Deputy Clerk

MICHAEL AMOS, DEBORAH BIRDSALL,
And MICHAEL W. ELLIOTT, individually and
upon behalf of others similarly situated,

Plaintiffs,

Civil Action No. ~~1 04-CV-2911~~

vs.

JURY TRIAL DEMANDED

ADVANCED FUNDING, INC., a Maryland
Corporation, and C & A FINANCIAL
PROGRAMS, INC., a Florida corporation,

Defendants.

CLASS ACTION COMPLAINT

Preliminary Statement

1. The Plaintiffs are Veterans of the United States Armed Forces and bring this action on behalf of themselves and others similarly situated for damages and equitable relief arising from the Defendants' deceptive scheme to provide loans with usurious interest rates to retired and disabled military veterans without providing the federally-mandated cost of credit information, and by obtaining an assignment of military retirement and disability benefits.

Specifically, the Plaintiffs bring their claims pursuant to the federal Truth-in-

Lending Act 15 U.S.C. § 1601, et seq., 37 U.S.C. 701(c) and 38 U.S.C. § 5301(a) (1) and (C) (3) (A), for injuries caused as a result of Defendants' illegal scheme and violation of the above Acts of Congress, and for a declaration of the rights of the parties pursuant to the Declaratory Judgment Act found at 28 U.S.C. § 2201, et seq.

PARTIES

2. The Plaintiffs are either disabled military veterans or retired enlisted military veterans.
3. The Plaintiff Michael Amos (hereinafter "Amos") is a retired Master Gunnery Sergeant who served in the United States Marine Corps. Amos retired in 1992 after twenty years of service with a retirement income of \$1,492 per month.
4. The Plaintiff Deborah Birdsall (hereinafter "Birdsall") is a disabled veteran of service in the U.S. Navy. Deborah Birdsall receives disability income of \$2,588 per month.
5. The Plaintiff Michael W. Elliott (hereinafter "Elliott") is a retired Guided Missile Launching Systems and Missile Maintenance Technician from his service in the U.S. Navy. Elliott retired in 1998 after twenty years of service

with a retirement income of \$900 per month.

6. The Defendant, Advanced Funding, Inc., (hereinafter “AFI”), is a Maryland corporation located at 1916 South Crain, Suite 14, Glen Burnie, Maryland 21061. AFI may be served by serving its registered agent as follows:

Christopher J. Gallant, 1916 South Crain Highway, Suite 14, Glen Burnie, Maryland 21061. AFI funds high-interest loans to disabled military veterans and to retired enlisted veterans throughout the United States.

7. C & A Financial Programs, Inc., (hereinafter “C&A”), is a Florida corporation located at 789 South Federal Highway, Suite 304, Stuart, Florida 34994. C&A may be served by serving its registered agent as follows:

Neils Peter Christenson, 789 South Federal Highway, Suite 304, Stuart, Florida 34994. C&A provides high-interest loans to disabled military veterans and to retired enlisted veterans throughout the United States.

JURISDICTION AND VENUE

8. This Court has jurisdiction to hear and decide the issues contained in this Complaint as this is an action arising under the laws of the United States specifically the Truth-in-Lending Act, 15 U.S.C. § 1601, *et seq.* (hereinafter “TILA”), and the anti assignment of enlisted military pay and retirement

provision found at 37 U.S.C. §701(c) and the anti assignment of disability payments to all military veterans regardless of rank found at 38 U.S.C. § 5301(a)(1); (3)(A) and (C). 28 U.S.C. § 1331, therefore, grants to this Court jurisdiction to hear and decide this case.

9. Amos is a resident of the Northern District of Georgia, Atlanta Division, residing at 400 Habersham Way, Ball Ground, Cherokee County, Georgia. The alleged contract which is the subject matter of this controversy was accepted, made and substantially performed in the Northern District of Georgia.
10. Venue is proper in the Northern District of Georgia, Atlanta Division pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to the claims raised in this Complaint occurred in the Northern District of Georgia.
11. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. § 1391(b) as the Defendants “reside” in the Northern District of Georgia as “resident” is defined for a corporation in 28 U.S.C. § 1391(c). As factually alleged above, the Defendants are subject to the personal jurisdiction of the State of Georgia and as such the Defendants are subject to the jurisdiction

and venue of this Court.

12. Since this Court has jurisdiction and venue as to allow Amos to maintain an action against the Defendants in the Northern District, the other Plaintiffs, as representatives of others similarly situated, are proper party Plaintiffs.

GENERAL STATEMENT OF FACTS

13. Both AFI and C&A extend credit to disabled military veterans and retired enlisted veterans using standardized form contracts. AFI and C&A attempt to describe their business as the “purchase” of a Veteran’s right to receive his or her military benefits when in effect it is a loan transaction.
14. Both AFI and C&A offer this “purchase” service to Veterans in return for their promise to redirect their monthly pension and/or disability benefits directly to C&A on behalf of AFI.
15. AFI funds the loans which are later serviced by C&A.
16. AFI advertises through nationally distributed Armed Forces newspapers. By advertising in these papers AFI and C&A are attempting to give potential borrowers the impression they are endorsed by the Armed Forces.
17. Defendants’ loan documents have all of the indicia of a loan transaction such as the creditor’s review of credit prior to extending the loan, the reservation

of a security interest in property, the required guarantee of repayment over time and the requirement that the borrower obtain credit life insurance.

Based upon the foregoing, the true nature of the transaction renders it a loan in fact and in substance.

18. The following describes the typical transaction between AFI/C&A and their borrowers:

- a. Prospective borrowers contact the Defendants in response to nationally distributed advertisements to inquire about its loan product. An AFI employee obtains information concerning the prospective borrower's retirement status, rank and pay grade upon retirement. Based upon this information, AFI quotes the employee a proposed minimum and maximum loan amount. The larger the principal of the loan, the longer the loan term.
- b. The borrower is then required to send verification of the amount of his/her retirement or disability benefits, by supplying AFI with income tax returns, pay checks or stubs and evidence of other income and financial status in order to obtain the loan approval. After AFI receives verification of the prospective borrower's income and the other financial information, this information is forwarded to C&A which provides the documents to the prospective borrower.
- c. The borrower cannot select a minimum amount of money to be loaned. All of the loan terms are dictated by the Defendants. The Defendants base the required loan amount upon the military retirement or disability benefit amount and will not allow a borrower to borrow less than that required amount.

- d. The Defendants forward the loan documents to the Veteran and then process the loan check only after the documents are signed and returned.
- e. Before sending the check for the principal amount, the Defendants subtract amounts equal to an annual life insurance premium for the entire or a substantial portion of the term of the loan. The Veteran must prepay the premium, even if it has not yet become due.
- f. In their agreements, Defendants claim they have a security interest in the Veteran's military retirement or disability benefits. In essence, Defendants paradoxically claim they purchase the Veteran's benefits and also have a security interest in these benefits. Logically, the Defendants cannot purchase the benefits and also retain a security interest in something they claim to own.
- g. Defendants also require Veterans to "collaterally assign" the life insurance policy to them.
- h. After the documents are returned, the Defendants notify either the federal Department of Defense or Veteran's Administration it must start sending the Veteran's retirement or disability payments to C&A.

19. The Defendants' Receivable Purchase Agreement also contains

language:

- a. which illegally attempts to bind borrowers' heirs;
- b. which constitutes an illegal waiver of defenses clause; and

- c. which constitutes an illegal clause threatening borrowers with criminal fines and imprisonment for failure to repay the loan.

20. AFI and C&A have acted together and jointly in order to violate the provisions of federal law as described in this Complaint. As such, each of the Defendants are legally responsible for the actions of the other.

SPECIFIC ALLEGATIONS AS TO MICHAEL AMOS

21. Michael Amos is a resident of Cherokee County and the State of Georgia residing with his wife and family at 400 Habersham Way, Ball Ground, Cherokee County, Georgia.

22. Amos served for over twenty years in the United States Marine Corps attaining the rank as Master Gunnery Sergeant.

23. In 1992, Amos retired from the U.S. Marine Corps. His monthly retirement pay was \$1,492 at the time of his retirement.

24. In the early part of 2001, the exact date being unknown to Amos, Amos saw an advertisement by AFI in the *Navy Times* advertising a way for military personnel to obtain cash advances.

25. In March 2001, Amos contacted AFI and AFI quoted Amos an amount of cash advance that C&A would be willing to advance Amos.

26. On or about April 3, 2001, as a result of the entreaties of AFI and C&A, Amos was forwarded a Receivable Purchase and Sale Agreement to assign 96 monthly installments of his retirement. The said agreement was already executed by C&A when it was forwarded as described above.

27. On or about April 25, 2001, Amos executed the Receivable Purchase and Sale Agreement in Cherokee County, Georgia. As such the contract which is the subject matter of this Complaint was executed and made in the Northern District of Georgia. A copy of this Receivable Purchase and Sale Agreement is attached hereto and incorporated herein as Exhibit "A".

28. The gross loan proceeds from the above-described transaction was \$42,500. In order to receive the loan, Amos was required to pay from the gross proceeds \$3,000 to AFI, \$917 to Protective Life Insurance Co. in case Plaintiff would die before the loan was paid, \$458.50 to C&A, GFSO Joint Venture and a \$4.00 fee for cashier checks. A total of \$4,379.50 was deducted by the Defendants from the gross loan proceeds of \$42,500.

29. Amos received \$38,120.50 as net loan proceeds. For such loan Amos was required to assign his military pension for eight years or 96 months.

30. Over the term of the loan, Amos would repay \$143,284.80 which

would include \$105,164.30 in finance charges. The APR of such loan would be 45.68%.

31. The loan made by AFI and C&A was without risk as they enjoyed an assignment of the military pension payments of Amos and were also the loss payee under the life insurance policy of Protective Life Insurance Company.

32. The actions of AFI and C&A are illegal as further alleged in this Complaint.

SPECIFIC ALLEGATIONS AS TO DEBORAH BIRDSALL

33. Birdsall is a resident of Edgemont, South Dakota residing at 601 H Street.

34. Birdsall served in the U.S. Navy for 20 months.

35. In 1986, Birdsall was required to leave the armed services as a result of a seizure disorder disability. Her monthly disability pay was \$228.00 at the time of her retirement. The nature of the disability fluctuated up and down throughout the years but in 2002 her disability also included bi-polar disorder and her benefits were increased to a 100% permanent and total disability by the Department of Veterans Affairs. She now is entitled to receive a total of \$2,588.00 per month in disability benefits.

36. In the early part of 2001, the exact date being unknown to Birdsall, she saw an advertisement by AFI in the *Navy Times* advertising a way for military personnel to obtain cash advances.

37. In March 2001, Birdsall contacted AFI and AFI quoted her an amount of cash advance that C&A would be willing to advance.

38. On or about April 15, 2001, as a result of the entreaties of AFI and C&A, Birdsall was forwarded a Receivable Purchase and Sale Agreement to assign three years or 36 monthly installments of her disability benefits to C&A. The said agreement was already executed by C&A when it was forwarded as described above.

39. On or about April 20, 2001, Birdsall executed the Receivable Purchase and Sale Agreement in Fall River, South Dakota. A copy of this Receivable Purchase and Sale Agreement is attached hereto and incorporated herein as Exhibit "B".

40. The gross loan proceeds from the above-described transaction was \$18,100.00.

41. Birdsall received \$18,100.00 as net loan proceeds. For such loan Birdsall was required to assign her VA disability compensation for three years or 36

months.

42. Over the term of the loan, Birdsall would repay \$35,136.00 which would include \$17,036.00 in finance charges. The APR of such loan would be 49.45%.

43. The loan made by AFI and C&A was without risk as they enjoyed an assignment of her VA disability compensation benefits.

44. The actions of AFI and C&A are illegal as further alleged in this Complaint.

SPECIFIC ALLEGATIONS AS TO MICHAEL W. ELLIOTT

45. Elliott is a resident of Jefferson County and the State of Alabama residing with his wife and family at 1911 Hampton Park Dr., Hoover, Alabama 35216.

46. Elliott served for over twenty years in the U.S. Navy attaining the rank of E6 as a Guided Missile Launching Systems and Missile Maintenance Technician.

47. In 1998, Elliott retired from the U.S. Navy. His monthly retirement pay was \$900 per month at the time of his retirement.

48. In mid-2001, the exact date being unknown to Elliott, Elliott saw an advertisement by AFI in the *Navy Times* advertising a way for military personnel

to obtain cash advances.

49. In or around July 2001, Elliott contacted AFI and AFI quoted Elliott an amount of cash advance that C&A would be willing to advance him.

50. In or around August, 2001, as a result of the entreaties of AFI and C&A, Elliott was forwarded a Receivable Purchase Agreement to assign 36 monthly installments of his retirement. The said agreement was already executed by C&A when it was forwarded to him as described above.

51. On or about August 24, 2001, Elliott executed the Receivable Purchase Agreement in Clay County, Florida. A copy of this Receivable Purchase Agreement is attached hereto and incorporated herein as Exhibit "C".

52. The gross loan proceeds from the above-described transaction were \$15,000.00. In order to receive the loan, Elliott was required to pay from the gross proceeds \$631.18 to State Farm Life Insurance Co. in case Plaintiff would die before the loan was paid, and \$1,800.00 representing the first two monthly payments (including months for which he had not received the loan) to C&A. A total of \$2,431.18 was deducted by the Defendants from the gross loan proceeds of \$15,000.00

53. Elliott received \$ 12,568.82 as net loan proceeds. For such loan Elliott

was required to assign his military pension for three years or 36 months.

54. Over the term of the loan, Elliott repaid \$32,400.00 which would include \$19,831.18 in finance charges. The APR of such loan would be over 76%.

55. The loan made by AFI and C&A was without risk as they enjoyed an assignment of the military pension payments of Elliott and were also a loss payee under the life insurance policy of State Farm Life Insurance Company.

56. The actions of AFI and C&A are illegal as further alleged in this Complaint.

CLASS ACTION ALLEGATIONS

57. This action is brought as a class action pursuant to Federal Rule of Procedure 23 for certification pursuant to 23(b)(2) involving equitable remedies and 23(b)(3) for damages and other legal relief.

58. On information and belief, the Class numbers in the hundreds and the joinder of all Class members is impracticable.

59. There are genuine questions of law and fact common to the Class, including:

- a. Whether the failure by Defendants to provide accurate, material disclosures in their standardized and uniform consumer loan

transaction violated TILA;

b. Whether Defendants failed to properly disclose the “finance charge” assessed in the transaction, using that term and a brief description such as “the dollar amount the credit will cost you” as required by 12 C.F.R. § 226.18(d);

c. Whether Defendants failed to properly disclose the “annual percentage rate” using that term and a brief description such as “the cost of your credit as a yearly rate” as required by 12 C.F.R. § 226.18(e);

d. Whether Defendants failed to properly disclose the “amount financed” using that term and a brief description such as “the amount of credit provided to you or on your behalf” as required by 12 C.F.R. § 226.18(b);

e. Whether Defendants’ failure to make the required disclosures clearly and conspicuously and failure to group the disclosures together, segregated from everything else were violations of 12 C.F.R. § 226.17(a) (1);

f. Whether Defendants’ failure to provide an itemization of the

“amount financed” and failure to separate this itemization from the other material disclosures were violations of 12 C.F.R. §§ 226.17(a)(1) and 18(c);

g. Whether Defendants’ failure to disclose the “finance charge” and the “annual percentage rate” more conspicuously than the other disclosures were violations of 12 C.F.R. § 226.17(a) (2);

h. Whether Defendants’ most conspicuous disclosures were disclosures which were not in conformity with TILA;

i. Whether Defendants’ failure to properly disclose the “total of payments” using that term and a descriptive explanation such as “the amount you will have paid when you have made all scheduled payments” was a violation of 12 C.F.R. § 266.18(h);

j. Whether Defendants failed to accurately disclose the finance charge in accordance with 12 C.F.R. §§ 226.4 and 226.18 because they failed to include the mandatory insurance premium in the finance charge;

k. Whether Defendants failed to accurately disclose the finance charge in accordance with 12 C.F.R. §§ 226.4 and 226.18 by failing to

include the pre-paid interest in the finance charge.

l. Whether Defendants' loans which are secured by an assignment of the Plaintiffs' right to receive military pension or disability benefits are illegal and void *ab initio*.

m. Whether Defendants have structured their loans as assignments the Plaintiffs' right to receive their military retirement and pension benefits;

n. Whether these assignments are prohibited and illegal under federal laws and regulations;

o. Whether Plaintiffs and others similarly situated have been charged criminally usurious interest rates in loans disguised as assignments or sales of their rights to their future pension benefits;

p. Whether Plaintiffs were misled as to the true costs and terms of these loans prior to executing their loan documents in violation of federal law; and

q. Whether Plaintiffs and those similarly situated are being denied and deprived by Defendants of their pension and disability benefits and are being illegally charged criminally usurious interest rates for

loans secured by their pension and disability benefits for which they did not receive the required cost of credit information prior to signing these loans.

r. Whether the Defendants fraudulently concealed the nature of the loan transactions so as to toll the statute of limitations for actions pursuant to TILA.

s. Whether Plaintiffs are entitled to an award of attorney fees under the facts and circumstances of this case.

t. Whether Plaintiffs are entitled to disgorgement of any funds received by Defendants.

u. Whether Plaintiffs are entitled to restitution of any funds received by Defendants.

60. The claims of Plaintiffs are typical of the claims of the Class. Each class member was subjected to the same practices and procedures, was harmed in the same way and has claims for relief under the same legal theories.

61. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have common interests with all members of the Class and will vigorously protect the interest of the Class through qualified counsel experienced in handling

class action and consumer protection cases. Neither the named Plaintiffs nor Class counsel have any interests which would conflict with the interests of the Class.

62. This case is properly maintainable as a class action pursuant to all other applicable law.

63. A class action is a superior method for the fair and efficient adjudication of this controversy. Most of the Class members were and still may be unaware of the wrongs perpetrated against them or of their right to legal redress for those wrongs. The practices complained of are directed against financially vulnerable persons unable to protect their rights. Individual litigation of their relatively small claims is not economically feasible—considering the costs of legal representation, such claims have a negative economic value. However, Defendants derive large aggregate profits from their unlawful conduct, making a class action appropriate.

64. Pursuant to the Federal Rules of Civil Procedure, this class action is appropriate since the prosecution of separate actions by individual members of the Class would create a risk of:

- a) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for persons opposing the Class; and
- b) adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of other individuals

not parties to this adjudication and could substantially impair their ability to protect their interests.

65. Pursuant to F.R.Civ.P. 23(b)(3), the questions of law and fact enumerated above, which are common to all of the members of the Class, predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The claims in this case present no serious manageability problems.

66. After determinations of the legality of Defendants' conduct, the Court can utilize a simple method of accounting to resolve all damage claims of Plaintiffs and the Class on a formulaic basis.

Plaintiff Class Definition

67. Plaintiffs bring this action on behalf of themselves and, pursuant to F.R.Civ.P. 23(b)(2) and (b)(3), as representatives of a Nationwide Class (the Class), defined as:

All veterans who are either:

(a) retired enlisted military personnel; or

(b) disabled military personnel of any rank;

who were extended a loan by AFI and C&A in return for the veteran's promise to redirect their monthly pension or disability benefits directly to C&A on behalf of AFI.

68. This class definition does not include persons who have previously obtained a judgment or settled any claims against Defendants concerning the types of claims asserted herein or have previously executed releases precluding any such claims against Defendants.

69. Plaintiffs reserve the right to create one or more subclasses in order to more efficiently administer the Class.

COUNT ONE
TRUTH-IN-LENDING

70. Plaintiffs re-allege and incorporate by reference the above-enumerated paragraphs of the Complaint as though fully restated herein.

71. Plaintiffs on behalf of themselves and others similarly situated bring these claims against the Defendants seeking statutory damages for its failure to provide accurate, material disclosures required by TILA, and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226 in their standardized and uniform consumer loan transaction.

72. In connection with the loan transactions of Plaintiffs and those similarly situated, all are required to sign a standardized, form Receivable Purchase Agreement, copies of which are attached hereto as "Exhibit A," Exhibit "B" and Exhibit "C".

73. Plaintiffs and others similarly situated are “persons” and “consumers” as these terms are defined by TILA. Defendants are also “creditors” as this term is defined by TILA.

74. In its transactions with Plaintiffs and those similarly situated, Defendants are required to prepare and provide cost of credit disclosures as required by TILA and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226.

75. TILA was enacted for the purpose of assuring a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and to avoid the uninformed use of credit. 15 U.S.C § 1601(a). To achieve its remedial purpose, TILA must be liberally construed in favor of the consumer. Ford Motor Credit v. Milhollin, 444 U.S. 555, 559 (1980).

76. In its standardized, form, high-interest loan contracts, Defendants failed to provide clear and accurate TILA disclosures notifying Plaintiffs and those similarly situated of the material terms of their loan transactions including, but not limited to, the amounts financed, interest rates, total of payments, payment schedule, and finance charges. In fact, Defendants did not provide any of the required TILA disclosures.

77. As a result, Plaintiffs and those similarly situated have been deceived and provided inaccurate and unclear information concerning the material terms of these high-interest loans secured by their military retirement and disability benefits.

78. In its standardized, form, loan contracts, Defendants failed to comply with the strict liability requirements of TILA by committing numerous violations.

These violations include:

- a. failing to properly disclose the “finance charge” assessed in the transaction, using that term and a brief description such as “the dollar amount the credit will cost you” as required by 12 C.F.R. § 226.18(d);
- b. failing to properly disclose the “annual percentage rate” using that term and a brief description such as “the cost of your credit as a yearly rate” as required by 12 C.F.R. § 226.18(e);
- c. failing to properly disclose the “amount financed” using that term and a brief description such as “the amount of credit provided to you or on your behalf” as required by 12 C.F.R. § 226.18(b);
- d. failing to make the required disclosures clearly and conspicuously and failing to group the disclosures together, segregated from everything else in violation of 12 C.F.R. § 226.17(a) (1);
- e. failing to provide an itemization of the “amount financed” and failing to separate this itemization from the

other material disclosures in violation of 12 C.F.R. §§ 226.17(a)(1) and 18(c);

f. failing to disclose the “finance charge” and the “annual percentage rate” more conspicuously than the other disclosures as required by 12 C.F.R. § 226.17(a) (2) and, in fact, the most conspicuous disclosures were disclosures which were not in conformity with TILA;

g. failing to properly disclose the “total of payments” using that term and a descriptive explanation such as “the amount you will have paid when you have made all scheduled payments” in violation of 12 C.F.R. § 266.18(h);

h. failing to accurately disclose the finance charge in accordance with 12 C.F.R. §§ 226.4 and 226.18 by failing to include the mandatory insurance premium in the finance charge; and

i. failing to accurately disclose the finance charge in accordance with 12 C.F.R. §§ 226.4 and 226.18 by failing to include the pre-paid interest in the finance charge.

79. As a direct result of Defendants' violations of TILA, as described above, Plaintiffs and those similarly situated have been damaged because they have entered into loans with usurious interest rates, secured by their right to receive their military retirement or disability benefits, without the uniform cost of credit disclosures required in consumer finance transactions. Plaintiffs and those similarly situated have made payments toward this loan and have had their benefits

intercepted as a result of this loan, thereby, losing the use of these valuable benefits.

80. It has been necessary for Plaintiffs to retain counsel to prosecute this action. Their counsel has incurred and will incur costs and other related expenses in prosecuting this action and are entitled to reimbursement of its costs and attorneys fee's pursuant to 15 U.S.C. §1640(a)(3).

81. The Defendants fraudulently concealed the true nature of the form Receivable Purchase Agreement and claimed and represented such was not a loan transaction. As such, the Plaintiffs are not bound by the one year limitation period because of such fraudulent concealment.

COUNT TWO
FEDERAL DECLARATORY JUDGMENT ACT

82. Plaintiffs re-allege and incorporate by reference the above-enumerated paragraphs of the Complaint as though fully restated herein.

83. Plaintiffs on behalf of themselves and others similarly situated bring this action against Defendants requesting injunctive and declaratory relief pursuant to 28 U.S.C. § 2201, et seq.

84. The loans which are secured by an assignment of the Plaintiffs' right to receive military pension or disability benefits are illegal and void *ab initio*.

85. Defendants have structured their loans as assignments of the Plaintiffs' right to receive their military retirement and pension benefits. These assignments are prohibited and illegal as provided by the following federal laws and regulations:

- a. 37 U.S.C. § 701(c) prohibits the assignment of the pay of an enlisted member of the Army, Navy, Air Force, or Marine Corps, and if he/she does so, the assignment is void. Retired pay is included in the definition of "pay" in 37 U.S.C. 101.
- b. 38 U.S.C. § 5301(a) (1) prohibits the assignment of payments of benefits due or to become due under any law administered by the Secretary of Veteran's Affairs. These benefits are also exempt from taxation, the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.
- c. 38 U.S.C. § 5301(a) (3) (A) clarifies in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, such agreement shall be deemed to be an assignment and is prohibited. Any agreement or arrangement for collateral as security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void

from its inception. 38 U.S.C. § 5301(3) (C).

- d. Lastly, 16.C.F.R. § 444.2 (a)(3) prohibits assignment of wages or other earning unless: (a) the assignment by its terms is revocable at the will of the debtor, or (b) the assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or (3) the assignment applies only to wages or other earnings already earned by the time of the assignment.

86. Plaintiffs and others similarly situated have been charged usurious interest rates in loans disguised as assignments or sales of their rights to their future pension and disability benefits. They were also misled as to the true costs and terms of these loans prior to executing their loan documents in violation of federal law.

87. Plaintiffs are entitled to have all assignments of military benefits rescinded and declared illegal pursuant to 38 U.S.C. § 5301(a) (3) (C), 37 U.S.C. § 701(c), 15 U.S.C. §§ 1601, et seq. and 16.C.F.R. § 444.2(a) (3) because of Defendants' attempts to circumvent federal military pension, disability and consumer protection laws and regulations.

88. Plaintiffs and those similarly situated are being denied and deprived by Defendants of their pension and disability benefits and are being illegally charged

usurious interest rates for loans secured by their pension and disability benefits and for which they did not receive the required cost of credit information prior to signing these loans.

89. The Defendants contend that the transactions which are described above are not a loan at all, but a purchase of a stream of retirement benefits. The Plaintiffs and those similarly situated disagree with such position. There is an actual, real controversy between the parties that is ripe for decision by this Court.

EQUITABLE REMEDIES

90. As a proximate result of Defendants' unlawful actions, Plaintiffs and others similarly situated have suffered and continue to suffer the irreparable harm described above for which monetary compensation is inadequate.

91. There is a substantial likelihood that Plaintiffs will prevail on the merits of their claims.

92. In addition to the damages allowed pursuant to TILA, this Court should fashion and model an equitable remedy to allow full justice for the Plaintiffs and the Class they represent.

93. The balancing of the equities favor the Plaintiffs and the Class.

94. The Defendants as wrongdoers are not entitled to the benefit of equity.

DISGORGEMENT

95. Defendants have wrongfully obtained funds and have been wrongfully enriched from the funds obtained from Plaintiffs and those similarly situated.

96. As a result of illegally and wrongfully obtaining such funds, as described above, good conscience and equity requires that all funds obtained from Plaintiffs and those similarly situated by Defendants be disgorged.

97. The disgorged funds should be paid into a common fund with a Trustee to safeguard such funds. The funds should then be disbursed according to an equitable distribution directed by the Court.

RESTITUTION

98. The funds received by Defendants from the Plaintiffs and those similarly situated are from disparate and separate accounts and all such accounting is done for individual borrowers.

99. As a result of the facts alleged in this Complaint, the Defendants should be required by the Court to reimburse and make whole the Plaintiffs and those similarly situated from the disparate and separate accounts of Plaintiffs and those similarly situated.

100. The Plaintiffs and those similarly situated are not required to tender any funds to the Defendants, as such tender would be futile. Further, no tender is required as the Defendants are indebted to the Plaintiffs and those similarly situated in an amount greater than that which is owed to Defendants.

INJUNCTION

101. Because the Plaintiffs and those who are similarly situated are being deprived of their pension and disability benefits and are being illegally charged usurious interest rates for loans secured by their pensions, the Plaintiffs are suffering an irreparable injury for which monetary compensation is inadequate.

102. There is a substantial likelihood Plaintiff will prevail on the merits.

103. The Plaintiffs and those similarly situated are entitled to a Permanent Injunction enjoining the practices alleged in this Complaint.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated request and pray that this Court enter a judgment against Defendants as follows:

- (a) Certifying this case as a Class Action;
- (b) Awarding Plaintiffs and those similarly situated statutory damages as provided by 15 U.S.C. §1640;

- (c) Awarding attorney's fees and costs; and
- (d) Declaring the assignment of Plaintiffs and those similarly situated of their military pensions void and illegal;
- (e) Ordering the Defendants to disgorge all funds received from Plaintiffs and the Class and the creation of a common fund supervised by a Trustee appointed by the Court;
- (f) Rescinding all agreements between Plaintiffs and Defendants;
- (g) Ordering the Defendants to repay in the form of Restitution all funds received from Plaintiff and the Class;
- (h) Temporarily and permanently enjoining the Defendants from making loans without the disclosures required by TILA;
- (i) Temporarily and permanently enjoining the Defendants from taking any assignment of the disability payments of any Veteran and the pension benefits of any enlisted Veteran;
- (j) A trial by jury on all questions of fact raised in this Complaint;
- (k) Granting such other and further relief as may be deemed just and proper in the premises.

This 5th day of October, 2004.

THE BARNES LAW GROUP, LLC

BY: 

ROY E. BARNES

Georgia Bar No. 039000

JOHN F. SALTER

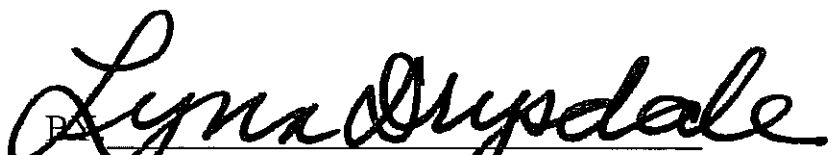

Georgia Bar No. 623325

JENNIFER AUER JORDAN

Georgia Bar No. 027857


P.O. Box 489
Marietta, GA 30061
(770) 419-8505
(770) 590-8958 (fax)

JACKSONVILLE AREA LEGAL
AID, INC.

BY: 
LYNN DRYSDALE signed with express
permission by Roy E. Barnes
Florida Bar No. 508489 

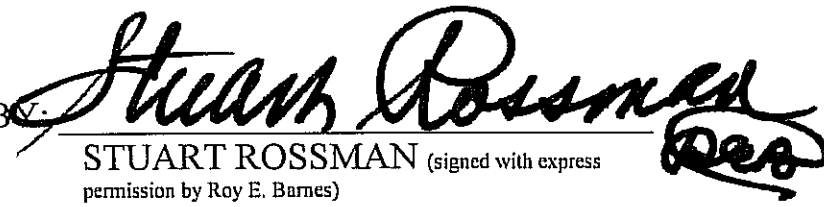
126 West Adams Street
Jacksonville, FL 32202
(904) 356-8371, Ext. 306
(904) 224-7050 (fax)

BARRETT AND ASSOCIATES

BY: 
M. SCOTT BARRETT (signed with express
permission by Roy E. Barnes)
Indiana Bar No. 10496-53

P.O. Box 5233 (47407-5233)
520 North Walnut Street
Bloomington, Indiana 47407
812-334-2600
812-337-8850 (fax)

THE NATIONAL CONSUMER
LAW CENTER

BY: 
STUART ROSSMAN (signed with express
permission by Roy E. Barnes)
Massachusetts Bar No. 430640

77 Summer Street
10th Floor
Boston, Massachusetts 02110
(617) 542-8010
(617) 542-8028 (fax)

K:\Amos, Michael (v. AFI, C&A)\Class Action Complaint.doc