

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CAROLINE TULLIE, on her own behalf,
as administrator of the estate of NELSON TULLIE,
and on behalf of all others similarly situated,

Plaintiff,

v.

T & R MARKET, INC.,

Defendant.

CLASS ACTION COMPLAINT FOR DAMAGES

Introduction

1. Defendant T & R Market, Inc. operates a substantial pawn business near Gallup, New Mexico. It makes high cost pawn loans to people living in poverty on the Navajo Nation, then sells “dead” pawn at its store, through its website and to wholesalers.
2. Pawn loans involve the extension of credit where the borrower obtains a loan at 120% interest, and the loan is secured by personal property held by the lender. Pawnbrokers are regulated due to the potential for abusive lending. N.M.S.A. 1978 § 56-12-3(E) (“[The purpose of the Pawnbrokers Act is] to protect from exploitation, abuse or its own improvidence that segment of society in this state which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of native art, handicraft or movable personal possessions.”).
3. Defendant made a series of pawn loans to Plaintiff Caroline Tullie and her late husband, Nelson Tullie. Some of the pawn loans charged unlawfully high rates of interest. The “pawn tickets” that contain the terms of the loans misrepresented the interest rates of the

loans and failed to include the information which the laws require it to disclose to the borrower. When Mrs. Tullie fell behind on payments, due to the death of her husband, Defendant misrepresented its right to sell the collateral and to keep the entire proceeds of the sale. When it sold the collateral for the loans, Defendant failed to pay any surplus to Mr. or Mrs. Tullie, as required by law.

4. Defendant has engaged in the same illegal conduct in its pawn loans to hundreds, if not thousands of other customers.
5. Defendant knew its conduct was illegal because it was sued for many of the same violations of the law two years ago, in *Merritt et al. v. T & R Market, Inc.*, No. 1:12-cv-01226-ACT-KBM (D.N.M., filed Nov. 28, 2012).
6. Defendant has violated the federal Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* ("TILA"), the New Mexico Pawnbrokers Act, N.M.S.A 1978, § 56-12-1 *et seq.* ("Pawnbrokers Act"), the New Mexico Uniform Commercial Code, N.M.S.A 1978, § 55-1-101 *et seq.* ("UCC"), and the New Mexico Unfair Practices Act, N.M.S.A 1978, § 57-12-1 *et seq.* ("UPA").

Jurisdiction

7. This Court has jurisdiction under the TILA, 15 U.S.C. §1640(e) and 28 U.S.C. §§ 1331, 1337 and 2201. The Court has supplemental jurisdiction over the claims under the Pawnbrokers Act, UCC, and UPA under 28 U.S.C. § 1367, because they arise out of the same loan agreements.
8. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(b) because Defendant is located in this district and a substantial portion of the events giving rise to this complaint occurred within the district.

Parties

9. Plaintiff Caroline Tullie (“Mrs. Tullie”) is a resident of Ganado, Arizona, on the Navajo reservation. She is a member of the Navajo Nation. She is a "consumer" as defined by the TILA, 15 U.S.C. §1602(i) and Regulation Z, 12 C.F.R. §1026.2(a)(11).
10. Nelson Tullie (“Mr. Tullie”) was the husband of Ms. Tullie and was also a Navajo Nation member and resident of Ganado, Arizona. He passed away on August 20, 2013. He was a "consumer" as defined by the TILA, 15 U.S.C. §1602(i) and Regulation Z, 12 C.F.R. §1026.2(a)(11).
11. Mrs. Tullie is the administrator of Mr. Tullie’s estate.
12. Defendant T & R Market, Inc. (“T & R”) is a New Mexico corporation which operates a pawn business, grocery store, western store, and feed and ranch supply business in Gallup, New Mexico. It is a "creditor," as defined in the TILA, 15 U.S.C. §1602(g), and Regulation Z, 12 C.F.R §1026.2(a)(17). It is a “pawnbroker” as defined in the Pawnbrokers Act, N.M.S.A. 1978, § 56-12-2(A). The transactions described herein were made in the regular course of T & R’s trade or commerce.

T & R Makes Illegal Pawn Loans to Mr. and Mrs. Tullie

13. Mr. and Mrs. Tullie had a very low income, near the poverty line.
14. From time to time, Mr. and Mrs. Tullie needed extra money to pay bills or to meet other expenses, so they went to T & R to pawn their personal property, including silver and turquoise jewelry, baskets, robes, and shawls.
15. T & R made a series of pawn loans to Mr. Tullie and to Ms. Tullie (collectively “the Pawn Loans”). All of the Pawn Loans were for personal, family, or household purposes. Each Pawn Loan was a “pawn transaction” as defined by N.M.S.A. 1978, § 56-12-2(D).

Each Pawn Loan involved the creation of a security interest as defined by N.M.S.A. 1978, § 55-1-201(b)(35).

16. In some of the Pawn Loans, T & R charged interest rates above the legal rate, which is the greater of seven dollars fifty cents or ten percent of the amount loaned (120% Annual Percentage Rate or “APR”) for the first month. The lender can charge no more than four percent per month on the unpaid principal balance thereafter (48% APR). N.M.S.A. 1978, § 56-12-13(A) and (B).
17. For example, Mr. Tullie pawned one or more baskets on July 27, 2013, for which T & R loaned him \$60.00. The “pawn ticket” memorializing the terms of this transaction states that the payment of \$78.60 was due 30 days from the date of the loan. That amount results in an APR of about 377%, more than triple the legally permitted interest rate. *See* Exhibit A, pawn ticket dated July 27, 2013.
18. T & R uses the identical form pawn ticket (“Form Pawn Ticket”) in all of its pawn loans, of which Exhibit A is an example.
19. T & R’s Form Pawn Ticket purports to disclose the APR as required by the TILA. For the Pawn Loans in which T & R charged an illegal interest rate, T & R incorrectly disclosed a lower (ostensibly legal) rate of interest.
20. For example, in the Pawn Loan to Mr. Tullie for the basket on July 27, 2013, T & R stated falsely that the APR was 120%. *See* Exhibit A.
21. T & R’s Form Pawn Ticket fails to contain all the information required by the TILA, and it fails to present the information in the form required by the TILA:
 - a. The TILA disclosures are not grouped together and segregated from everything else;

- b. The mandatory disclosures, on the front of the Form Pawn Ticket, do not state that the lender was taking a security interest;
 - c. The Form Pawn Ticket does not contain the words “payment schedule,” nor does it identify the exact date on which payment is due;
 - d. The Form Pawn Ticket does not describe the various terms which the TILA requires it to describe, such as “Finance Charge” and “Annual Percentage Rate”;
 - e. The Form Pawn Ticket does not even use the term “Annual Percentage Rate”; and
 - f. The Form Pawn Ticket does not disclose the Annual Percentage Rate and the Finance Charge more conspicuously than other terms.
22. T & R’s Form Pawn Ticket fails to contain all the information which the Pawnbrokers Act requires at N.M.S.A. 1978, § 56-12-9 and -10. For example, Exhibit A:
- a. fails to describe the pawn borrower;
 - b. fails to describe the type of identification presented by the borrower;
 - c. does not adequately describe the items pawned, simply referring to “BASKET. DEEP MEDIUM BASKET”;
 - d. is not signed by the pawnbroker; and
 - e. does not contain the disclosures of credit terms required by the TILA.
23. The Form Pawn Ticket and the particular pawn loans with misstated APR violate the UPA, N.M.S.A. 1978, § 57-12-2, because they misrepresent or omit material information as to the terms of the financing.

T & R Resells the Collateral Illegally

- 24. Mr. Tullie died suddenly and unexpectedly on August 20, 2013.
- 25. Without her husband’s income, Mrs. Tullie faced great hardship meeting her basic needs.

26. When she asked T & R how much she owed on the Pawn Loans to save what little valuable property she had left, T & R lied to her and told her that she needed to pay amounts greater than what she actually owed.
27. Mrs. Tullie was unable to pay what T & R claimed that she owed.
28. T & R sent Mrs. Tullie a “Notice of Disposition” regarding each Pawn Loan that went into default. In each situation, the “Notice of Disposition” misrepresented T & R’s legal rights and obligations.
29. For example, Mrs. Tullie pawned a silver and turquoise squash blossom necklace on August 31, 2013. *See* Exhibit B, ticket dated.
30. After she missed a payment for the necklace, T & R sent her a “Notice of Disposition” (Exhibit C) postmarked December 30, 2013, which states:

Notice is hereby given that T & R Market, Inc., will SELL the collateral described on the opposite side of this card in satisfaction of your obligation. The collateral will be sold no sooner than ninety (90) days after the date you defaulted on your obligation. You may redeem your collateral any time prior to sale by tendering the amount due including any finance or late charges in one payment to T & R Market, Inc., during business hours.

If you wish to obtain disposition by sale of the collateral according to the provisions of New Mexico Statutes Annotated Section 50A-9-504, you must object in writing to the retention by T & R Market, Inc., within thirty (30) days after receipt of this notice . . . Notice is further given that if you fail to redeem or object within thirty (30) days after receipt of this notice, T & R Market, Inc., will retain the collateral in complete satisfaction of your obligation.

31. T & R sends this identical form notice (“the Form Notice”) to the borrower whenever it believes that one of its pawn loans is in default.
32. T & R does not send any correspondence to borrowers in default, other than the Form Notice.
33. The Form Notice misstates T & R’s obligations under the Pawnbrokers Act. That law

states that if a pawnbroker sells the collateral, it must pay to the consumer any surplus remaining after the sale of the property. N.M.S.A. 1978, § 56-12-11(D).

34. The Form Notice falsely states that T & R intends to retain the collateral, when in reality T & R intends to sell it.
35. These misstatements also violated the Unfair Practices Act, N.M.S.A. 1978, § 57-12-2.
36. Furthermore, the Form Notice fails to state information the UCC requires when a secured creditor disposes of collateral, pursuant to N.M.S.A. 1978, §§ 55-9-613, -614, and -623:
 - a. The Form Notice does not state whether the disposition of the property would be through public or private sale;
 - b. The Form Notice does not state the time and place of a public disposition or the time after which any other disposition is to be made;
 - c. The Form Notice does not state that the debtor is entitled to an accounting of the unpaid indebtedness;
 - d. The Form Notice does not state a telephone number the debtor can call to learn the amount that she must pay to redeem the collateral;
 - e. The Form Notice does not sufficiently describe the collateral that is the subject of the intended disposition. For example, Exhibit C, the notice regarding the squash blossom necklace was even less specific than the pawn ticket, Exhibit B, by identifying the collateral only as “NECKLACE/S”;
 - f. The Form Notice does not provide a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available; and
 - g. The Form Notice misstates the ability of the debtor to redeem the collateral,

stating that the debtor only has thirty (30) days to redeem the collateral or to object to the retention of the collateral.

37. Upon information and belief, T & R sold all or nearly all of the collateral in private sales.
38. Upon information and belief, T & R obtained from its sales a surplus in excess of the amount of the debt, but it failed to account for the surplus or to notify Mr. and Mrs. Tullie of the surplus, as required by the Pawnbrokers Act, or to return the surplus to Mr. or Mrs. Tullie, as required by the UCC.
39. When Mrs. Tullie asked T & R what had become of the collateral for the Pawn Loans, T & R representatives lied to her, saying they did not know.
40. T & R failed to send Mr. or Mrs. Tullie an explanation of any surplus from the sale of the collateral, in violation of N.M.S.A. 1978, § 55-9-616(b). This failure is part of a pattern and practice of noncompliance with the UCC and the Pawnbrokers Act.
41. T & R's misstatements and deception in disposing of the collateral violated the UPA. N.M.S.A. 1978, § 57-12-2.
42. As a result of T & R's conduct, Mr. and Mrs. Tullie suffered actual damages, including loss of valuable collateral and the loss of much of the value of their collateral.

T & R Knew That It Was Breaking the Law

43. T & R Market was first opened in the winter of 1971. In the summer of 1972 Colin Tanner & his wife Coleen joined the business as partners. Mr. Tanner is still the president of the company.
44. The entire pawn industry, including Defendant, has known since 1980 that it is illegal for the pawnbroker to violate the UCC by pretending to "retain" collateral in satisfaction of the debt, while actually selling the collateral in the ordinary course of business and then

retaining the entire surplus. *Reeves v. Foutz and Tanner, Inc.*, 1980-NMSC-095, 94 N.M. 760, 617 P.2d 149.

45. Defendant also knew its conduct was illegal because it was sued for many of the same violations of the law two years ago, in *Merritt et al. v. T & R Market, Inc.*, No. 1:12-cv-01226-ACT-KBM (D.N.M., filed Nov. 28, 2012).
46. In the complaint in the *Merritt* case, Plaintiff pointed out that T & R's "violations of law are willful. The Truth in Lending Act has been in effect for more than 40 years. The Defendant corporation was formed in 1973. The TILA provides model forms for the creditor to use."
47. T & R's willfulness is all the more vivid and indisputable now.

Ms. Tullie Brings this Case as a Class Action

48. Plaintiff Caroline Tullie is the representative of a class of persons who took out one or more pawn loans from T & R Market starting six years from the date of filing of this lawsuit. She represents each of four subclasses described below. Members of the class are members of one or more subclasses.
 - a. The TILA Subclass consists of all persons who, starting one year prior to the filing of this lawsuit, took out a pawn loan where the pawn ticket (loan agreement) had one or more of the following characteristics:
 - i. The pawn ticket did not describe the various terms which the TILA requires it to describe, such as "Finance Charge" and "Annual Percentage Rate," as per Regulation Z, 12 C.F.R. 1026.18(b), (d), (e) and (h);
 - ii. The pawn ticket did not use the term "Annual Percentage Rate," as per Regulation Z, 12 C.F.R. 1026.18(e);

- iii. The pawn ticket did not disclose the Annual Percentage Rate and the Finance Charge more conspicuously than other terms, as per Regulation Z, 12 C.F.R. 1026.17(a)(2);
 - iv. The APR was disclosed inaccurately and too low, by more than 1/8 of 1% and at times by as much as 250%.
 - v. The mandatory TILA disclosures are not grouped together and segregated from everything else, as per Regulation Z, 12 C.F.R. 1026.17(a)(1);
 - vi. The mandatory TILA disclosures on the front of the pawn ticket fail to state that the lender was taking a security interest, as per Regulation Z, 12 C.F.R. 1026.18(m);
 - vii. The pawn ticket did not contain the words “payment schedule,” nor did it state the number of payments, the amount of payments and timing of payments, as per Regulation Z, 12 C.F.R. 1026.18(g); OR
 - viii. The mandatory TILA disclosures on the front of the pawn ticket fail to state whether the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full, as per Regulation Z, 12 C.F.R. 1026.18(k).
- b. The Pawnbrokers Subclass consists of all persons who, starting two years prior to the filing of this lawsuit, took out a pawn loan where the pawn ticket (loan agreement) or pawn transaction had one or more of the following characteristics:
- i. The pawn loan charged more than \$7.50 or 10% of the amount of the loan, whichever is greater, for the first 30 day period of the pawn transaction, contrary to N.M.S.A. 1978, §56-12-13A;
 - ii. The pawn loan charged more than 4% of the loan amount per month for

the remaining period of the pawn transaction, contrary to N.M.S.A. 1978, §56-12-13B;

- iii. The pawn ticket failed to describe the pawn borrower, contrary to N.M.S.A. 1978, §56-12-10A and -9A(6);
 - iv. The pawn ticket failed to describe the type of identification presented by the borrower, contrary to N.M.S.A. 1978, §56-12-10A and -9A(7);
 - v. The pawn ticket did not adequately describe the items pawned, contrary to N.M.S.A. 1978, §56-12-10A and -9A(2) and (3);
 - vi. The pawn ticket is not signed by the pawnbroker, contrary to N.M.S.A. 1978, §56-12-10A;
 - vii. The pawn ticket does not contain all the disclosures of credit terms required by the TILA, contrary to N.M.S.A. 1978, §56-12-10C; OR
 - viii. T & R failed to notify the pawn borrower of the surplus from the sale of the collateral and failed to refund to the borrower the surplus from the sale.
- c. The UCC Subclass consists of all persons who were borrowers in a pawn loan that went into default and in which T & R engaged in one of the following practices within the six years prior to the filing of this complaint.
- i. The notice it sent to the borrower before disposition of collateral was contrary to the UCC, N.M.S.A. 1978, §§ 55-9-613 and -614, because it:
 - (1) did not describe the method of disposition of the collateral, such as whether the disposition of the property would be through public or private sale;
 - (2) did not state that the debtor is entitled to an accounting of the

unpaid indebtedness;

- (3) did not state the time and place of a public disposition or the time after which any other disposition is to be made;
- (4) did not state a telephone number the debtor can call to learn the amount that must be paid to redeem the collateral;
- (5) did not provide a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available;
- (6) did not adequately describe the collateral that is the subject of the intended disposition; OR
- (7) failed to allow the debtor the right to redeem the collateral, by stating that the debtor only has thirty (30) days to redeem the collateral or to object to the retention of the collateral, contrary to the UCC, N.M.S.A. 1978, §§ 55-9-623.

- ii. T & R failed to pay a surplus to the borrower, contrary to the UCC, N.M.S.A. 1978, §§ 55-9-615; OR
- iii. T & R failed to provide an explanation of any surplus from the sale of the collateral, contrary to the UCC, N.M.S.A. 1978, §§ 55-9-616.

d. The UPA Subclass consists of all persons who took out a pawn loan that had one or more of the following characteristics:

- i. For any loan taken out within the four years preceding the filing of this Complaint, T & R charged a pawn service charge in excess of the usury limit or T & R understated the annual percentage rate on the pawn ticket;

- ii. For any loan that went into default, T & R kept the surplus from the sale of collateral, within four years preceding the filing of this Complaint.

- 49. The class is so numerous that joinder of all members is impracticable. Plaintiff believes the number of members of the class exceeds 1,000 persons.
- 50. This action is predicated on standard practices of Defendant, who makes a substantial number of pawn loans.
- 51. The issues involve questions of law or fact common to the class, which plaintiff has recited in detail throughout this Complaint. These questions predominate over any questions affecting only individual class members. The common questions include:
 - a. Whether Defendant's standard pawn ticket disclosures violated the TILA;
 - b. Whether Defendant's standard pawn tickets applied usurious interest rates and were deficient in their written terms, in violation of the Pawnbrokers Act;
 - c. Whether Defendant's standard procedure for disposition of collateral violated the Pawnbrokers Act;
 - d. Whether Defendant's standard notices concerning disposition of the collateral violated the UCC; and
 - e. Whether Defendant's misrepresentations and deceptive conduct violated the UPA.
- 52. Plaintiff's claims are typical of those of the class members. All claims are based on the same factual and legal theories. All claims arise from the same form documents and uniform business practices.
- 53. Plaintiff will fairly and adequately represent the class. Plaintiff is committed to litigating this matter. She has retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither Plaintiff nor counsel have any interests

which might cause them not to pursue this claim vigorously.

54. A class action is superior for the fair and efficient adjudication of the class members'

claims. Class members are unaware of the fact that their rights have been violated.

Defendant's customers cannot generally afford counsel to engage in individual litigation against Defendant. A failure of justice will result in the absence of a class action.

First Claim for Relief: Violations of the TILA

55. Each Pawn Loan made by Defendant to Mr. or Mrs. Tullie, and every other pawn loan to class members within the one year statute of limitations, violates the TILA in one or more of the ways set forth above.

56. Plaintiff and the class are entitled to statutory damages plus costs and reasonable attorney fees, as provided in 15 U.S.C. § 1640.

Second Claim for Relief: Violations of the Pawnbrokers Act

57. Each Pawn Loan made by Defendant to Mr. or Mrs. Tullie, and every other pawn loan to class members within the two year statute of limitations, violates the Pawnbrokers Act in one or more of the ways set forth above.

58. Plaintiff and each member of the class are entitled to recover the entire amount of the pawn service charge contracted for or allowable under each transaction, under N.M.S.A. 1978, § 56-12-16.

59. In the usurious pawn transactions, where pawn service charges exceeded the legally permitted amount, Plaintiff and each member of the class are entitled to triple the amount of the pawn service charge paid, under N.M.S.A. 1978, § 56-12-16.

Third Claim for Relief: Violations of the UCC

60. Each Pawn Loan made by Defendant to Mr. or Mrs. Tullie that went into default, and

every other defaulted pawn loan to class members within the statute of limitations, violates the UCC in one or more of the ways set forth above.

61. Plaintiff and each member of the class are entitled to the greater of actual or statutory damages for each transaction in which T & R provided faulty notification before disposition of collateral or failed to pay over a surplus. N.M.S.A. 1978, § 55-9-625(c)(2).
62. Plaintiff and each member of the class are entitled to statutory damages for Defendant's failure to provide an explanation of any surplus from the sale of the collateral. N.M.S.A. 1978, § 55-9-625(e)(5).

Fourth Claim for Relief: Violations of the Unfair Practices Act

63. Each Pawn Loan made by Defendant to Mr. or Mrs. Tullie, and every other pawn loan to class members within the statute of limitations, violates the UPA in one or more of the ways set forth above.
64. T & R willfully engaged in the illegal conduct alleged.
65. Actual damages include:
 - a. The amount of pawn service charge collected, in excess of the usury limit;
 - b. The difference between the APR stated and the actual APR; and
 - c. The amount of the surplus from sale of the collateral.
66. Plaintiff and each member of the class are entitled to actual damages, trebled, for each loan, plus costs and attorney fees. N.M.S.A. 1978, § 57-12-10.

Prayer for Relief

WHEREFORE, Ms. Tullie prays that this Court:

- A. Certify this case as a class action and appoint counsel below to represent the class;
- B. Award statutory damages for violations of the TILA;

- C. Award damages for violation of the Pawnbrokers Act;
- D. Award damages for violation of the UCC;
- E. Award damages, trebled, for violations of the UPA;
- F. Award reasonable attorney fees and costs, and;
- G. Grant such further relief that is just and reasonable under the circumstances.

Respectfully submitted,

/s/Nicholas Mattison

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