

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.

1:14-cv-00670-MV-KBM

T & R MARKET, INC.,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

1. **Parties.** The parties to this Settlement Agreement are: Plaintiff Caroline Tullie, individually and on behalf of two putative classes of persons, and Defendant T&R Market, Inc. This Agreement binds the Defendant, its assigns and successors, officers and employees, and all others acting on behalf of Defendant. This Agreement also binds Plaintiff and all members of the putative classes defined herein (hereinafter, “classes”), their successors and heirs.
2. **Nature of litigation.** On July 25, 2014, Plaintiff filed a class action in this court, Case No. 1:14-cv-00670-MV-KBM, alleging that Defendant violated the Truth in Lending Act, the New Mexico Uniform Commercial Code, the New Mexico Unfair Practices Act, and the New Mexico Pawnbrokers Act.
3. **Denial of Liability.** Defendant denies any wrongdoing. Defendant considers it desirable that the action and the claims therein be settled upon the terms and conditions set forth in this Settlement Agreement, in order to avoid further expense and burdensome, protracted litigation.
4. **Investigation.** Counsel for the classes has investigated the facts available and the

applicable law. Counsel for the classes has taken several depositions and obtained written discovery responses and documents from Defendant, including regarding Defendant's financial circumstances. Defendant warrants that, to the best of its knowledge, its testimony and records are truthful, accurate, and contain no significant omissions. Defendant acknowledges that Plaintiff and class counsel have relied on this information in agreeing to this Settlement Agreement.

5. **Compromise.** Plaintiff and the members of the classes desire to settle their claims against Defendant, having taken into account, through their counsel, the risks, delay and difficulties involved in further litigation. Based on the foregoing, and upon an analysis of the benefits which this Settlement Agreement affords the classes, Plaintiff considers it to be in the best interest of the classes to enter into this Settlement Agreement.
6. In consideration of the foregoing and other good and valuable consideration, the parties agree that the claims of the Plaintiff and the members of the classes should be and are compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

TERMS OF SETTLEMENT

1. **Effective Date.** This Settlement Agreement shall become effective ("Effective Date") upon the Court's entry of a final Order (1) approving this Settlement Agreement as fair, reasonable and adequate to the class; and (2) entering an order retaining jurisdiction to enforce the settlement, if necessary; provided, however, that the Judgment and Order has become final, meaning that the time for appeal by an objector has expired, or, if there has been an appeal, that the Judgment and Order has been upheld on appeal without material change.

2. **Class definition.** The classes are defined as follows:

- a. The Pawn Ticket Class consists of all persons who, starting two years prior to the filing of this lawsuit, took out a pawn loan from T&R Market.
- b. The Sale Class consists of all persons who borrowed money through a pawn loan that went into default and in which, starting four years prior to the filing of this lawsuit, T&R sent the borrower its form notice of intent to dispose of collateral and sold the collateral.

3. **Relief.**

a. Generally: Full settlement is in the amount of \$725,000.00 (seven hundred twenty five thousand dollars). Defendant shall pay a total of \$500,000.00 (five hundred thousand dollars) in monetary relief, and \$225,000 (two hundred twenty five thousand dollars) in the form of gift certificates to be distributed to the classes. This relief is all inclusive and reflects the entire agreement between the parties. Plaintiffs and class shall not receive any additional amounts from the Defendant for any loss or for any costs of administering this settlement. Plaintiff is responsible for calculating and determining the distributions to the class members.

b. Monetary relief: Defendant shall pay a total amount of \$500,000.00 (five hundred thousand dollars) within fifteen (15) days of the Effective Date. The money will be utilized as follows:

- i. **Payment of class attorney fees and costs.** Plaintiff will submit an attorney fee application to the Court. Defendant will not oppose Plaintiff's position that hourly billing rates of \$195 for attorney Mattison, \$325 for attorney Feferman and \$425 for attorney Delbaum are fair and

reasonable. Plaintiff's attorneys also will receive gross receipts tax and reimbursement of all taxable costs and all out-of-pocket expenses.

- ii. **Payment of costs of administration.**
 - iii. **Incentive payment for plaintiff.** In recognition of the fact that Ms. Tullie made an overnight trip to Albuquerque to attend a settlement conference, made a trip to Gallup for her deposition, and expended considerable time working with her attorneys in connection with this case, Ms. Tullie will receive \$6,000, subject to Court approval.
 - iv. **Monetary relief to the class.** After payment of the above sums, the balance remaining from the total monetary settlement amount will be distributed to members of the Sale Class (excluding any who cannot be located during the initial notification period following certification) as follows: Class members whose total pawn loan principal was greater than \$100 will receive a pro rata share of the remaining monetary settlement amount based on the ratio of their total pawn principal to the total pawn principal of all class members whose pawn loan principal was greater than \$100. The parties believe that approximately 4,623 people will receive monetary proceeds in accordance with this formula, with an average payment of approximately \$80.
- c. **Gift Certificate Relief.** Defendant shall provide plaintiff's counsel with \$225,000 (two hundred twenty five thousand dollars) in the form of gift certificates to be distributed to the classes within thirty (30) days of the Effective Date. The gift certificates shall be created as follows:

- i. **Terms of gift certificates.** The gift certificates will be usable either in regard to pawned items or to purchase items at the T&R Market, T&R Jewelry & Pawn, or T&R Feed and Rope. The gift certificates will be freely transferable, but will not be subject to redemption for cash and each must be used in full at one time, although not necessarily for one item. All gift certificates will expire six (6) months from their date of issuance, which shall be the date printed on the gift certificate. The date printed on the gift certificate shall be the date of the thirtieth day after the Effective Date.
- ii. **Amount of gift certificates.** The amount of gift certificates shall be determined after notice is provided to the class so that the number of class members who can be found is known. The amount of gift certificates will be calculated by dividing \$225,000 by all members of the Ticket Class and all members of the Sale Class whose total pawn principal amount was \$100 or less. Persons in both classes will be counted twice (i.e., such persons will receive a gift certificate as a member of the Ticket Class and as a member of the Sale Class). Plaintiff estimates that approximately 15,000-20,000 persons will receive one or two gift certificates, and each gift certificate will likely be in the amount of \$10-20 (the face value of the gift certificates will all be the same, but cannot be determined until after notice is sent out).
- d. **Distribution of relief to the class.** Defendant will cooperate fully, providing in appropriate electronic format the identities of all class members and the total

principal amount of all of such person's pawn loans that can be used by the Settlement Administrator. Within thirty (30) business days after the Effective Date, a Settlement Administrator selected by Plaintiff's counsel will distribute the money in the form of a check which will become void 180 days from the date of issue and gift certificates to such members of the class as can be located. The return address on the envelope will be that of the Settlement Administrator.

- i. The checks shall be issued on a national bank that has branch offices in the Gallup and Window Rock areas. Defendant agrees to cash any settlement checks presented at T&R Jewelry & Pawn (mall or north Highway 491 locations):
 - (1) Without payment of any fee;
 - (2) Without requiring the payee to present identification other than a valid/current state issued photo ID, or driver's license;
 - (3) Without suggesting, asking or requiring that the payee purchase any goods or services, or otherwise obligating or burdening the payee.
- ii. In the event that a class member who is entitled to a payment or gift certificate is deceased, the payment or gift certificate shall be issued to a person reasonably believed to be that person's heir or beneficiary, upon presentation of reasonable written documentation by such person to Plaintiff. Plaintiff is solely responsible for this determination.
- iii. **Unclaimed amounts.** The total cash amount of all checks written to class members who fail to cash their checks by the void date will be donated by

the class administrator to the following 501(c)(3) charitable organization which provides legal assistance to low and moderate income persons in New Mexico: Equal Access to Justice. The total cash amount of the face value of all gift certificates that are returned to the administrator by the expiration date of the gift certificates will be donated by the class administrator to Southwest Indian Foundation (also a 501(c)(3) charitable organization) in the form of a credit that may be utilized at T&R Market, T&R Jewelry & Pawn, or T&R Feed and Rope. The Settlement Administrator, through Plaintiff's counsel, shall advise Defendant's counsel of the amount of any unclaimed amounts within 210 days of the issuance of the settlement checks and within 210 days of the issuance of the gift certificates, and all unclaimed gift certificates shall be returned to the Defendant for verification and destruction.

4. **Releases.**

- a. Plaintiff and each class member, as of the Effective Date, releases and discharges Defendant, its officers, directors, successors, predecessors, executors, administrators, assigns, shareholders, affiliated companies, attorneys and employees, from Defendant's alleged violations of the Truth in Lending Act, the Uniform Commercial Code, the Unfair Practices Act, and the Pawnbrokers Act, as described in the Complaint herein.
- b. This release is conditioned upon the performance by Defendant of its obligations toward Plaintiff and the class members, as set forth in this Settlement Agreement.

5. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used as a limitation on Plaintiff's alleged damages, nor as an admission, or evidence, of liability, or class certification, by Defendant in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.
6. **Notice.** Plaintiff will take responsibility for mailing notice to class members. Defendant will cooperate fully, providing last known addresses in electronic format that can be used by the mailing and the settlement administrator. Plaintiff will arrange to mail notice of this proposed settlement, to be sent via first class mail to the class members within thirty days of entry of the Preliminary Approval Order. In connection with the submission for preliminary approval, the parties shall submit to the Court for approval a proposed mailing service for the class notice, a proposed form of notice to the class, and a proposed class administrator. If a mailing is returned with a forwarding address provided by the Postal Service, Plaintiff will re-mail it to the address provided. To the extent necessary, and to correct addresses for returned mail, the Plaintiff will process Class Member addresses through a National Change of Address ("NCOA") database, and re-mail the Notices one time. Plaintiff then shall file with the Court attestation that notice has been mailed to all class members. Plaintiff shall preserve and make available to Defendant all notices to class members which have been returned.
7. **Certification.** As soon as practicable after execution of this Settlement Agreement, the parties shall submit a notification to the Court withdrawing Defendant's opposition to class certification and requesting that the Court conditionally certify the classes and

appoint Plaintiff's counsel as class counsel as specified in Plaintiff's Motion for Class Certification [Doc. 68], with the exception that the Sale Class only includes persons who entered into pawn loans beginning four years prior to the filing of this action, not six years. The parties stipulate that the statute of limitations for Plaintiff's claims pursuant to the New Mexico Uniform Commercial Code and New Mexico Unfair Practices Act is four years.

8. **Preliminary Approval.** As soon as practicable after execution of this Settlement Agreement and the certification of the class, the parties shall apply to the Court for an Order which:
 - a. Preliminarily approves this Settlement Agreement.
 - b. Schedules a "fairness hearing" for final approval of this Settlement Agreement by the Court.
 - c. Sets deadlines for exclusions and objections to the Agreement.
 - d. Approves the form of notice to the class, to be directed to the last known address of each class member as shown on Defendant's records.
 - e. Finds that mailing of such class notice is the only notice required and that such notice satisfies the requirements of due process and FRCP 23.
9. **Final Approval.** At the conclusion of the Fairness Hearing, the Court will determine whether to enter a Final Order approving the terms of this Settlement Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the class members satisfies the requirements of due process and FRCP 23, directing the entry of the Final Order, and retaining jurisdiction to enforce the provisions of this Settlement Agreement. Upon final disposition of any

unclaimed amounts as described in Paragraph 3(c)(iii), the Court will enter a final Order dismissing this matter, with prejudice.

10. **Court Required Changes to Settlement Agreement.** In the event that the Court conditions its preliminary or final approval of this Agreement on any changes to the Agreement, the Parties shall in good faith consider such changes and consent to them if they do not substantively alter the obligation of the party. Changes that shall be deemed to substantively change the obligation of a party include, but are not limited to, changes that affect (a) the monetary payments required hereunder; (b) the scope of the release to be granted; (c) the definition of the Class or class members; or (d) a provision expressly noted as material in this Agreement. Changes that merely alter wording or that reasonably modify timing of any event do not substantively change the obligations hereunder.
11. **Exhibits.** The Plaintiff will file a Notice of Withdrawal of Defendant's Opposition to Class Certification (Exhibit A); a Proposed Order Certifying Class (Exhibit B); a Motion to Approve Settlement (Exhibit C), along with supporting brief (Exhibit D) and supporting declaration (Exhibit E, attaching as exhibits this Class Action Settlement Agreement, the proposed Preliminary Approval Order (Exhibit G), a proposed consolidated class notification (Exhibit F), and the proposed form of Final Order (Exhibit H). The fact that the Court may require minor changes in the notices or either Order does not invalidate this Settlement Agreement. Neither party may send or distribute to class members (other than Ms. Tullie) any form of notice or information pertaining to the settlement, directly or indirectly, without the prior written approval of opposing counsel.

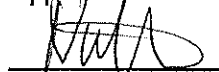
12. **Objections.** Any notices of objections to the settlement or class shall be sent, via first class mail, to Nicholas Mattison, 300 Central Avenue, SW, Suite 2000 West, Albuquerque, NM 87102. Mr. Mattison shall provide copies via electronic mail to counsel for defendant within seven days of receipt.
13. **Right of Exclusion.** Any Class member may seek to be excluded from this Agreement and from the Class in the manner provided by the Court. Any Class member so excluded shall not be bound by the terms of this Agreement nor entitled to any of its benefits.
14. **Other matters.** The parties and their attorneys agree to cooperate fully with one another in seeking court approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein as soon as is reasonably possible.
15. The foregoing constitutes the entire Agreement between the parties with regard to the subject matter hereof and may not be modified or amended except in writing, signed by both parties hereto, and approved by the Court.
16. This Settlement Agreement may be executed in counterparts, in which case the various counterparts shall be said to constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.
17. Each and every term of this Settlement Agreement shall be binding upon Plaintiff, the class members, their successors and personal representatives, and Defendant and its successors, assigns and affiliates. All of these persons and entities are intended to be beneficiaries of this Settlement Agreement.

18. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so agreed. This agreement may be executed in counterparts.


Caroline Tullie, Plaintiff

Approved:



Nicholas H. Mattison
Richard N. Feferman
Feferman & Warren, attorneys for Plaintiff and the class
300 Central Ave., SW, Suite 2000 West
Albuquerque, NM 87102
(505) 243-7773

Charles M. Delbaum
National Consumer Law Center, Inc., attorneys for plaintiff and the class
7 Winthrop Square, 4th floor
Boston, MA 02110
617-542-8010

///

///

///

///

///

///

///

///



Shannon Tanner, President, Defendant T&R Market, Inc.

Approved:



Patrick Mason
Mason & Isaacson, P.A., attorneys for defendant
P.O. Box 1772
Gallup, NM 87305
(505) 722-4463