

consumer has no meaningful opportunity to decide whether to engage a broker and pay him a separate fee.

b. A "bait and switch" lending scheme whereby homeowners are induced to apply for home improvement financing, but EquiCredit arranges and offers only a first mortgage refinancing loan, dictating the amounts to be included in the mortgage loans without regard to the amount sought by the borrower, so that EquiCredit and its brokers can make a more expensive loan and obtain a first position lien on borrower's homes.

c. EquiCredit's high-cost loans are frequently made to borrowers who lack the reasonable ability to repay the loans, and therefore put the borrowers at high risk of losing their homes.

2. Plaintiffs bring this case under the following federal and state consumer protection laws: the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA"), the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602 et seq. ("HOEPA"), the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA"), the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq. ("ECOA"), the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. ("CPL" or "UDAP"), the Pennsylvania Credit Services Act, 73 P.S. §§2181-2192 ("CSA"), the Pennsylvania Home Improvement Finance Act, 73 P.S. § 500-101 et seq. ("HIFA"), the Pennsylvania Loan Interest and Protection Law, known as Act No. 6 of 1974, 41 P.S. § 101 et seq. ("Act 6") and under other Pennsylvania statutory and common law.

3. Plaintiff seeks equitable relief in the form of rescission of their mortgages, plus statutory damages, actual damages, treble damages, punitive damages, attorneys fees and costs.

II. JURISDICTION AND VENUE

1. Jurisdiction over this matter is conferred upon this Court by 28 U.S.C. §§ 1331, 1337.

Supplemental jurisdiction over Plaintiff's state law claims is granted by 28 U.S.C. § 1367.

4. Venue lies in this judicial district in that the events which gave rise to this claim occurred here and the property which is the subject of the action is situated within this district.

III. PARTIES

2. Plaintiff Mildred E. Samuel is a natural person residing at 3332 N. Bouvier Street, Philadelphia, Pennsylvania 19140.

3. Defendant EquiCredit Corporation (EquiCredit") is a corporation engaged in the business of consumer lending in Pennsylvania and elsewhere with places of business located at One Neshaminy Interplex, Suite 206, Trevoese, Pennsylvania, 19053-6933 and 525 Plymouth Road, Plymouth Meeting, Pennsylvania 19462. EquiCredit's headquarters is located at 10401 Deerwood Park Boulevard, Jacksonville, Florida 32256. At all times relevant hereto, EquiCredit, in the ordinary course of its business, acted on more than 150 consumer credit applications annually and was a creditor within the meaning of ECOA, 15 U.S.C. § 1691a(e), and TILA, 15 U.S.C. § 1602.

4. Defendant U.S. Bank National Association, f/k/a First Bank National Association Trustee under various pooling and servicing agreements ("US Bank"), is trustee for several pools of mortgage backed securities that are the assignee of Plaintiff's loans. It has its principal place of business at U.S. Bank Place, 601 Second Avenue, South Minneapolis, Minnesota, 55402. US Bank, in its capacity as trustee for various trusts, is the current holder of the Plaintiff's and class member's loans.

IV. FACTUAL ALLEGATIONS

A. EquiCredit

5. EquiCredit markets itself as a "pioneer" in the so-called subprime lending industry,

with more than forty years of "tradition." See www.EquiCredit.com.

6. As a subprime lender, EquiCredit specializes in making loans to consumers with below average credit histories. As an industry, subprime lending has experienced tremendous growth in recent years. From 1993 to 1998, subprime refinancing lending increased 890 percent, while refinancing by prime lenders grew by only 2.5 percent. R. Scheessele, 1998 HMDA Highlights, U.S. Department of Housing and Urban Development (September 1999).

7. EquiCredit and its parent company, Bank of America ("BOA"), are a major participant in the subprime lending industry. At the end of 1999, BOA was the largest servicer of subprime mortgage loans in the United States, with a portfolio of over \$22 billion. In 1998 EquiCredit originated or underwrote approximately \$3.7 billion in mortgage loans. Through the first three months of 1999, the total was approximately \$1.6 billion. Prospectus Supplement to Prospectus dated June 9, 1999 relating to Registration No. 333-71489, EquiCredit Home Equity Loan Trust 1999-2 (hereafter, "Prospectus Supplement").

8. EquiCredit packages its loans to consumers and issues mortgage-backed securities to raise additional capital for its operations. For example, the Prospectus Supplement shows a pooling by EquiCredit of 12,781 mortgage loans from 48 states, including 1,343 from Pennsylvania. The total principal balance of the loans was \$825,683,542.96. Prospectus Supplement at S-21, 22.

9. The annual interest rates on the pooled mortgages with fixed rates ranged from 5.75% to 19.45%, with a weighted average of approximately 10.28%. Approximately 90.87% of the loans were secured by first mortgage liens on the consumer's home. Prospectus Supplement at S-18, 19.

10. To originate mortgage loans, EquiCredit markets its loan products very heavily to mortgage brokers. EquiCredit uses advertising, presentations at conventions and meetings, and other

promotional activities, to contact persons licensed or unlicensed as loan brokers, and to encourage the brokers to offer loans to low income persons with little or no credit standing for the purpose of assisting them in arranging for the loans from EquiCredit. By way of example, in Philadelphia, Pennsylvania EquiCredit has utilized Express Equity, James Holleran, Arrow Building Systems, Inc. and Archer Funding, Inc. as persons to assist or work with EquiCredit in originating loans. In Pittsburgh, EquiCredit has utilized the services of Alternative Mortgage Lending, Inc., William LiVorio and others to solicit and originate home equity loans. These entities or persons are referred to hereinafter as “brokers.”

11. These brokers act as sales agents for EquiCredit in that they perform numerous functions on behalf of EquiCredit including but not limited to taking and preparing a loan application, arranging an appraisal, gathering credit information, and structuring mortgage loans to meet EquiCredit’s underwriting requirements.

12. EquiCredit establishes various policies and procedures in order to make it more attractive for brokers to arrange loans with EquiCredit rather than other lenders, including

(a) not requiring written broker contracts until loan closing,

(b) having class members sign an EquiCredit form document acknowledging the validity of the broker fee at closing,

(c) not limiting broker fees or setting standards for the amount of broker fees, and

(d) the other policies and practices challenged in this action.

B. The Role of the Brokers

13. The brokers solicit and offer their “services” for sale to others in the ordinary course of business. The brokers offer services in the form of providing advice and assistance to consumer homeowners in seeking extensions of credit. The brokers also undertake to obtain credit for

homeowners by arranging appraisals, obtaining credit information, preparing loan applications and documents and other similar activities. These services are performed for payment to be paid from the proceeds of the EquiCredit loans eventually obtained by the brokers.

5. The broker's services are sold as a result of, or in connection with, a contact with class members at their homes or by telephone.

14. The services are offered to consumers for personal, family and household matters. Extensions of credit obtained by the brokers are subject to the Federal Trade Commission Preservation of Claims Trade Regulation, 16 C.F.R. 433.1 (1976) (the "Holder Rule"). The Holder Rule requires that any installment loan contract entered into as a result of a transaction with a seller of services must contain the following contractual provision:

NOTICE
ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR
COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICE
OBTAINED WITH THE PROCEEDS HEREOF, RECOVERY
HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS
PAID BY THE DEBTOR HEREUNDER.

15. The Holder Rule requires that any holder of the installment contract will be subject to any claims the buyer has against the seller of services.

C. The Pennsylvania Consumer Protection Law and Credit Services Act

16. Pennsylvania's Consumer Protection Law ("CPL") requires that all contracts for services resulting from a contact with the consumer at the consumer's home, or by telephone, must be in writing and provided at the point of sale or contracting. 73 P.S. § 201-7(b). Such written contract must contain notices about rights of cancellation within three days from the date of contracting. 73 P.S. § 201-7.

17. The Pennsylvania Credit Services Act ("CSA") regulates all persons who, for money or

valuable consideration, obtain extensions of credit for persons seeking an extension of credit or who advise or assist such persons in obtaining credit. 73 P.S. § 2182. Persons or entities performing these services are called “Credit Service Organizations.”

18. The CSA imposes comprehensive duties of written disclosure on persons who obtain extensions of credit for others or advise and assist others to obtain credit for a fee. Such persons must enter into written contracts with persons seeking the credit and, before entering such contracts, must provide a written information sheet. 73 P.S. §§ 2184, 2185 and 2186. The “Information Sheet” must provide a “complete and detailed description of the services to be performed” . . . and “the total amount the buyer will become obligated to pay for the services . . .” 73 P.S. § 2186.

19. In agreeing to provide service in obtaining credit, the person must obtain a written contract signed by the person seeking credit which contains the following:

1. a statement in conspicuous, 10-point bold type which provides a right of cancellation within five days;
2. the terms and conditions of payment, including the total amounts of all payments to be made by the person seeking credit whether to the “credit servicer” or to some other person;
3. a “full and detailed description” of the service to be performed by the “credit servicer” for the person seeking credit including the estimated time for performing such services; and
4. the business address of the “credit servicer” or its agents.

20. The brokers utilized by EquiCredit are governed by both the CPL and the CSA. The brokers are therefore required by Pennsylvania law to provide consumers a written contract as soon as a broker contract is formed, and to provide written disclosures and cancellation rights. 3 P.S. §§201-7, 2185, 2186.

21. These required written disclosures are material to consumers because they provide notice and understanding about (a) the amount they will pay the broker and the lender in fees; (2) the

type of loan contemplated; and (b) the type of security to be provided. Such disclosures protect consumers against “bait and switch” schemes whereby brokers may promise one type or amount of a loan orally, but then obtain substantially different loan terms, which are not disclosed to consumers until loan closing, when it is psychologically and practically difficult for the consumer to seek other loan alternatives. They also prevent consumers from misunderstanding the role of the broker, and the fact that the broker will receive a fee separate from lender fees and charges.

22. EquiCredit has adopted a policy or practice pursuant to which brokers do not provide and/or are not required by EquiCredit to provide any written contract, or disclosures required by Pennsylvania law at the time the broker submits a loan application or first makes inquiries about a loan with EquiCredit. EquiCredit’s policy or practice is merely to require the broker to provide a signed broker agreement with the loan documents after the loan closing.

23. As standard practice, brokers utilized by EquiCredit do not provide the required written contractual disclosures, or the right to cancel the broker contract, prior to closing EquiCredit mortgage loans.

6. EquiCredit also has a policy or practice of not limiting or restricting the amount of the brokers’ fees, and of not requiring that the brokers’ fees bear any reasonable relationship to services provided to the consumer.

D. The Real Estate Settlement Procedures Act Bar on Unearned Fees

7. The Real Estate Settlement Procedures Act (“RESPA”) prohibits payment of fees in connection with a residential mortgage loan for a referral, when the fee is not based on services actually provided to the consumer.

8. In 1998, the United States Department of Housing and Urban Development (“HUD”) issued a policy statement regarding RESPA and its application to mortgage broker fees.

The HUD policy statement made it clear that lenders like EquiCredit had a duty to insure that broker fees were not paid from loan proceeds unless the fees were reasonably related to actual services contracted for by, and provided to, the consumer.

E. Facts Regarding Plaintiff Mildred E. Samuel

24. In 1982, Plaintiff Mildred Samuel and her husband purchased their home at 3332 North Bouvier Street in a modest section of North Philadelphia. Mrs. Samuel's husband passed away in June 1989 and she now lives alone in the home. She is a 67-year-old retired postal worker.

25. Mrs. Samuel paid off the original mortgage on her home in March 1997.

26. In December 1999, Mrs. Samuel contracted with James M. Holleran ("Holleran") and Arrow Building Systems, Inc. ("Arrow Building"), for various improvements and repairs to her home to be made by Arrow Building, as a result of a contact with her at her residence and/or by telephone.

9. Holleran and his corporation, Archer Funding, Inc. ("Archer Funding") promised to arrange financing for the home improvements on Mrs. Samuel's behalf, and, acting as a broker, eventually presented a mortgage loan application to Defendant EquiCredit.

10. Holleran and Archer Funding regularly referred consumers to EquiCredit for loans in 1998 and 1999.

27. EquiCredit decided not to extend Mrs. Samuel a loan in the amount or on the terms that she requested. Rather, EquiCredit decided to offer Mrs. Samuel a substantially larger consolidation mortgage loan, including refinancing her utility and tax bills.

28. EquiCredit never notified Mrs. Samuel of its denial of Mrs. Samuel's credit application nor did it ever notify Mrs. Samuel of its counteroffer, pursuant to section 1691(d)(1) of ECOA.

29. EquiCredit created a written loan application in Mrs. Samuel's name. This application was seen by Mrs. Samuel for the first time at the closing of the loan. The application overstated Mrs. Samuel's income by \$264.59 and failed to list any deductions or living expenses paid monthly by Mrs. Samuel. The loan application stated that Mrs. Samuel's income was \$1,161.09 a month. However, her only income was \$1,002.50 each month in Social Security benefits. Of that \$1,002.50, the sum of \$106.00 is automatically withdrawn each month by the Social Security Administration and Medicare, leaving Mrs. Samuel with an income of \$896.50 per month. Mrs. Samuel did not indicate that she had any other source of income, and in fact had none.

30. Defendant EquiCredit failed to verify Mrs. Samuel's income.

31. The loan closing took place on or about December 10, 1999 at Plaintiff's home, about one week after Holleran inspected Mrs. Samuel's home for the first time, and only a short time after Mrs. Samuel was first contacted by Holleran and Arrow Building..

11. Present at the closing in Mrs. Samuel's home were Holleran, Walter Ackah, a legal assistant for the law firm of Kotsopoulos & Bennett P.C., and Mrs. Samuel.

12. Mrs. Samuel did not have a meaningful opportunity to read the loan documents at the closing because Holleran and Ackah kept presenting her with the papers and instructing her to sign.

32. As part of the loan closing, Mrs. Samuel was required to sign a document purporting to confirm that three days had elapsed after the loan closing, and she did not intend to exercise her right under TILA to rescind the loan. This notice had the purpose and effect of undermining the borrower's right to reconsider the loan and rescind it for three days after closing.

33. While Plaintiff had initially requested a home improvement loan, instead, she was required to sign a note in the amount of \$30,100, secured by a mortgage on her home. The note amount included, in addition to the \$18,000 in home improvements, the sums of \$1,656.33 to the

City of Philadelphia for real estate taxes, \$2,932.75 for water/sewer bills, \$825.32 to Philadelphia Gas Works and \$835 for electric service. At no time did Mrs. Samuel request or apply for a refinancing loan to pay off her tax, water and utility bills. In fact, EquiCredit made an overpayment on her gas bill, leaving Mrs. Samuel with a credit. In addition, Mrs. Samuel was charged a "broker fee" of \$1709.63, a \$250 appraisal fee, a \$270 "processing fee" and other various charges and fees. Mrs. Samuel also unknowingly purchased credit life insurance with a \$300.00 premium.

34. As a result, instead of borrowing \$18,000 for home improvements, Plaintiff ended up borrowing over \$30,000 at an annual percentage rate of 13.26% for taxes, water, utility bills and life insurance she did not request.

35. Mrs. Samuel also was required to pay \$898.25 in miscellaneous fees for items including recording the deed, transfer of taxes, title insurance, a credit report check, and closing fees, plus \$2,689.63 in finance charges, including a \$1,709.63 broker fee, as a condition of getting a loan she did not want.

36. Mrs. Samuel was never told the amount of the broker fee, given a written disclosure of the fee or a written agreement, or any notice of her right to cancel the broker contract, and never agreed to pay the broker fee, at any time prior to the loan closing.

37. As a result of the home equity loan transaction, Mrs. Samuel went from having no mortgage payment to undertaking to pay \$357.39 out of her \$846.50 net monthly income for fifteen (15) years, plus taxes and insurance.

38. At all relevant times Holleran, Arrow Builders and Archer Funding acted as agents for Defendant EquiCredit, in that they performed numerous lender functions, including taking a loan application, gathering supporting information, arranging an appraisal, structuring a loan to meet

EquiCredit's underwriting requirements, and in numerous other respects.

39. EquiCredit, Holleran, Archer Funding and Arrow Builders all engaged in fraudulent or deceptive conduct in their dealings with Mrs. Samuel, including, but not limited to:

a. failing to clearly explain the role of the broker and the amount and basis of compensation prior to becoming involved and performing services; failing to clearly explain the Defendants' motives in requiring Mrs. Samuel to borrow additional sums to pay her tax and water bills and other debts, so that EquiCredit could have a first mortgage loan and therefore evade Pennsylvania usury laws;

b. failing to clearly explain the advantages and disadvantages of a consolidation loan; and

c. failing to explain to Mrs. Samuel her right of rescission.

40. On April 20, 2000, Mrs. Samuel's counsel sent a notice of rescission to EquiCredit at both its Jacksonville, Florida and Trevese, Pennsylvania addresses, exercising Mrs. Samuel's right under TILA to rescind the loan, based on HOEPA violations.

41. EquiCredit did not comply with Mrs. Samuel's demand for rescission within the time allowed by TILA.

V. CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action on behalf of herself and on behalf of the following class (the "Class"):

all homeowners in the Commonwealth of Pennsylvania who, during the six year period preceding the filing of this action (the "Class Period"), entered into loan transactions with Defendant EquiCredit which resulted in a mortgage on their homes, and which included one or both of the

following features:

A) some portion of the loan proceeds was used to pay a broker fee,

B) some portion of the loan proceeds were used to fund home improvements,

Excluded from the Class are the Defendants and all officers and directors of the Defendants.

43. The members of the Class are so numerous that joinder of all members is impracticable. Although Plaintiff does not know the exact number of Class members, Plaintiff avers, based on SEC filings by Defendants, that there are approximately 10,000 to 20,000 class members in Pennsylvania. The class members will be readily identifiable from the mortgage loan files and computerized records of EquiCredit and U.S. Bank.

44. Plaintiff's claims are typical of the claims of the members of the Class. The losses to the Plaintiff were caused by the same course of conduct that gave rise to the claims of other members of the Class.

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

46. Defendants have acted on grounds generally applicable to the plaintiff Class, such that final declaratory and injunctive relief is appropriate with respect to the Class as a whole. In particular, plaintiff seeks injunctive relief providing class members notice of the terms of their alleged broker contracts and their right to cancel the contracts, and receive restitution of the broker fees, as well as declaratory relief regarding the illegality of defendants' practices.

47. Common questions of law and fact predominate over questions which may affect only individual members of the Class because Defendants have acted or refused to act on grounds generally applicable to the Class.

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

(a) Whether paying broker a fee based on a contract first provided at loan closing violates the CSA or the CPL, and whether failing to insure broker compliance with door-to-door sales 3-day cancellation notice rule is a CPL violation by EquiCredit.

(b) Whether excessive, percentage-based broker fees violate RESPA's prohibition on fee splitting or kickbacks, and/or are CPL violations.

(c) Whether EquiCredit was required to provide a notice of counteroffer under ECOA, where class members applied for home improvement financing, and EquiCredit implicitly denied the requested financing and offered mortgage refinancing and consolidation loans instead.

(d) Whether EquiCredit violated the CPL or other laws by failing to include the FTC Preservation of Claims Notice in class members' notes when the notes were "purchase money loans" as defined by the FTC Rule.

(e) Whether the loans from EquiCredit were "home improvement installment contracts" within the meaning of HIFA, and whether Defendants violated HIFA's restrictions on loan fees and costs.

(f) Whether EquiCredit's imposition of charges prohibited by HIFA constitutes an unfair and deceptive trade practice under UDAP.

(g) Whether EquiCredit's imposition of charges prohibited by HIFA subjects it to liability under Pennsylvania usury law.

(h) Whether the promise to finance home improvements, when in reality a first mortgage refinancing is contemplated, is a CPL violation.

(i) Whether Plaintiff and members of the Class have sustained damages by reason of EquiCredit's wrongful conduct and, if so, the proper measure of damages; and

(j) Whether Plaintiff and members of the Class are entitled to injunctive or declaratory relief.

49. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because such treatment 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 sizable corporate defendants.

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

VI. CLAIMS

Count I - RESPA

51. EquiCredit makes or invests in residential real estate loans aggregating more than \$1 million per year. The transactions at issue in this case were, therefore, "federally related mortgage loans" within the meaning of sections 2602 and 2607 of RESPA.

52. In the course of the transaction with Plaintiff Samuel, and the transactions with members of the Class, Defendant EquiCredit gave, and the brokers received, a fee, kickback or thing of value pursuant to an understanding between the broker and EquiCredit that the broker would refer business to EquiCredit, in violation of 12 U.S.C. §2607(a).

53. In the course of the transaction with Plaintiff Samuel, and the transactions with members of the Class, EquiCredit gave the brokers a portion, split or percentage of the settlement

charges collected from the borrowers, other than for services actually performed by the brokers, in violation of 12 U.S.C. §2607(b).

54. As the result of these violations of RESPA, Defendants EquiCredit and Bank of America are liable to Plaintiff Samuel and the Class, pursuant to 12 U.S.C. §2607(d) for statutory damages in the amount of three times the broker fees imposed, plus reasonable attorneys fees and costs.

Count II: CSA and CPL Claims Regarding Broker Fee Agreements

55. EquiCredit aids and abets the violation of Pennsylvania's CSA and CPL laws by brokers, and/or is engaged in a civil conspiracy with brokers to violate Pennsylvania law. EquiCredit fails to require brokers to submit a signed broker agreement with any loan application, and instead only requires that the agreement be provided and signed at closing.

56. EquiCredit also uniformly fails to insure that any broker contract entered into as a result of a door-to-door sale or telephone solicitation contains the three-day cancellation notice required by Pennsylvania Law, 73 Pa. Stat. §201-7, and fail to include the FTC's Preservation of Claims and Defenses notice in contracts when its inclusion is required.

13. Defendants' conduct constitutes "unfair and deceptive acts and practices" prohibited by Pennsylvania's CPL. Plaintiff class members suffered damages including, but not limited to, the illegal broker fees, as a result. Class members are entitled to rescission and treble damages.

Count III: ECOA

57. EquiCredit's refusal to provide small loans for home improvements or other purposes as requested by borrowers, its failure to notify applicants of the fact that it is denying their initial credit request and making a counteroffer, and its insistence on refinancing the homeowner's prior

mortgage, has a discriminatory impact on African-American homeowners and on neighborhoods with substantial percentages of African-American homeowners.

14. EquiCredit's failure to provide proper notice of its counteroffers to class members also violates the notice requirements of ECOA and regulations thereunder.

58. BOA, through EquiCredit and through other divisions and subsidiaries, does offer second mortgages, home equity lines of credit, and other suitable credit products for homeowners who seek to finance home improvements or need money for other reasons.

59. As a result of EquiCredit's violation of ECOA, Plaintiff Samuel is entitled to actual and punitive damages and attorneys fees, pursuant to 15 U.S.C. §1691e.

60. As a result of EquiCredit's violation of ECOA, EquiCredit is liable to the Class pursuant to 15 U.S.C. §1691e(b), including, but not limited to, actual damages in the amount of the points charged by EquiCredit on the amount of the loans in excess of the amount of the loan initially sought by the borrower.

Count IV: Pennsylvania Usury Law (HIFA)

61. The credit transactions between Plaintiffs and certain class members and EquiCredit were home improvement installment contracts within the meaning of HIFA.

62. The transactions were structured in violation of an express prohibition in HIFA, section 500-407, against charging consumers fees, costs, commissions or other charges not authorized by the act. The transactions also included consolidation of other cash loans, in violation of section 500-408 of HIFA.

63. Under Act 6 and the CPL, Plaintiffs and members of the Class are entitled to recover damages of three times the amount of the excess charges paid, plus reasonable attorney's fees and costs. 41 P. S. §§502, 503; 73 P. S. § 201-9.2.

Count V: HOEPA - Plaintiff Samuel Only

64. EquiCredit has adopted underwriting standards that do not adequately measure ability to repay, allows exceptions to its guidelines, and does not have sufficient verification procedures to ensure that borrower income is adequately determined and considered.

15. EquiCredit has engaged in a pattern or practice of making loans to borrowers with high cost mortgage loans without regard to their ability to pay, in violation of HOEPA, 15 U.S.C. §1639(f), including the loans made to plaintiff Samuel.

16. Plaintiff Samuel is therefore entitled to rescission of her mortgage loan, together with appropriate declaratory and injunctive relief and actual and statutory damages.

Count VI - TILA -Plaintiff Samuel Only

65. As a result of the violations of TILA and Regulation Z, pursuant to sections 1635(a) and 1640(a) of TILA, Defendants EquiCredit and US Bank, Trustee are liable to plaintiff Samuel for

(a) Rescission of the transactions between plaintiff and EquiCredit, including a declaration that plaintiff is not liable for any finance charges or other charges imposed by EquiCredit.

(b) Termination of any security interest in plaintiff's property created under the transactions.

(c) Return of any money or property given by the plaintiff to anyone, including EquiCredit, in connection with the transactions.

(d) Actual and statutory damages pursuant to section 1640(a)(1), (3) and (4) of TILA.

(e) Reasonable attorneys fees and costs.

Count VII: Fraud, CPL and Breach of Fiduciary Duty, Plaintiff Samuel Only

66. At all relevant times, Archer Funding and James Holleran acted as agents for EquiCredit

in soliciting plaintiff Mildred Samuel to enter into a home improvement financing arrangement funded by EquiCredit, in preparing and structuring her mortgage application, and in controlling the disbursement of loan proceeds. Moreover, EquiCredit aided and abetted the fraudulent conduct of Archer Funding and James Holleran, and benefited from the fruits of their fraud.

67. At the loan closing at Mrs. Samuel's home, the settlement agent, Mr. Ackah, whispered to Mrs. Samuel that the \$1,709.63 fee to Archer Funding listed on the settlement sheet was to be paid to Holleran. This was the first time that Archer Funding was identified to Mrs. Samuel.

68. Mrs. Samuel did not knowingly agree to engage a third-party broker and pay him additional compensation.

69. If Holleran or Archer Funding were in fact acting as a mortgage broker for Mrs. Samuel, the conduct in steering her to a high-priced home equity loan refinancing transaction with points and fees in excess of 8% of the loan and refinancing her tax and utility debt, was a gross violation of their fiduciary duty toward Mrs. Samuel.

70. Holleran converted an \$18,000 check from the loan proceeds to his own use, and the home repairs to Ms. Samuel's home were never completed pursuant to the home improvement contract. The repairs that were done were shoddily done and are defective, are presently falling apart and were never completed to a reasonable standard of workmanship. No work whatsoever has been done on Mrs. Samuel's kitchen.

17. Prior to and at the loan closing, EquiCredit, its closing agent, Holleran and Archer Funding made material misrepresentations and omitted material information in order to induce Mrs. Samuel to consummate the home equity loan, including, but not limited to:

(a) the failure to disclose to her that a broker was being engaged who would be paid separately from the lender and that the broker agreement was a separate agreement that she had three

days to cancel if she so chose;

(b) the failure to disclose to her that her request for a loan for home improvements was being rejected, and the reasons it was being rejected;

(c) the representations made to her at the loan closing that the home equity loan was beneficial and necessary for her to get the loan;

(d) failing to clearly explain the EquiCredit's motives in requiring Mrs. Samuel to borrow additional sums to pay taxes and utility bills, so that EquiCredit could have a first mortgage loan and thereby evade Pennsylvania usury laws;

(e) representing that Holleran and his companies would perform home improvements on Mrs. Samuel's home when he had no such intent.

71. The conduct of EquiCredit, Holleran and Archer Funding constituted unfair or deceptive acts or practices within the meaning of the CPL in that, among other reasons,

(a) EquiCredit and the broker arranged a transaction for Plaintiff which imposed credit costs and charges expressly prohibited by federal and Pennsylvania law, which is a per se unfair or deceptive practice;

(b) EquiCredit and the broker represented to Plaintiff that the consolidation and refinancing of pre-existing debt would be beneficial to her when in fact it was not, 73 P.S. § 201-2(v);

(c) EquiCredit and the broker did not provide Mrs. Samuel with notice of her right to cancel the alleged broker contract, which was "sold" as a result of a contact with Mrs. Samuel at her residence, in violation of 73 P.S. §201;

(d) EquiCredit and the broker violated federal and state statutes in connection with the transaction, which is per se unfair and deceptive conduct in violation of the CPL; and

(e) EquiCredit and the broker engaged in deceptive conduct which created a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi), including, without limitation, the specific representations and omissions described above.

72. The above misrepresentations and omissions were made with knowledge of their falsity and with the intent to induce Mrs. Samuel to enter into the contracts, and Plaintiff reasonably relied on them and suffered damages as a result.

73. Defendant EquiCredit is liable to Plaintiff Samuel for treble damages, attorneys fees and other appropriate relief, pursuant to 73 P.S. § 201-9.2 and common law.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests the following relief:

A. An Order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and her counsel to represent the Class;

B. An Order declaring that EquiCredit's actions as described above are in violation of the statutes and regulations set forth above;

C. An Order declaring that EquiCredit has engaged in a pattern or practice of extending credit to consumers based on the consumers' collateral without regard to the consumers' repayment ability;

D. An Order enjoining Defendants from continuing to engage in the illegal, unfair and deceptive practices described above;

E. An Order enjoining Defendants EquiCredit and US Bank from initiating or continuing foreclosure proceedings with respect to the homes of members of the Class;

F. An Order requiring EquiCredit and/or US Bank to notify class members of their right to

cancel their broker agreements and receive restitution of broker fees,

G. All relief set forth above following each individual Count asserted by the individual named Plaintiff and the Class;

H. Treble damages;

I. Statutory damages;

J. Attorneys' fees and costs; and

K. Such other relief at law or equity as the Court may deem just and proper.

COMMUNITY LEGAL SERVICES, INC.

Dated:

By: _____

Alan M. White
Kirsten E. Keefe
Irv Ackelsberg
3638 N. Broad Street
Philadelphia, PA 19140
(215) 227-2400

DONOVAN MILLER, LLC
David A. Searles
Michael D. Donovan
1608 Walnut Street, Suite 1400
Philadelphia, PA 19103
(215) 732-6020