

05-0607-cv

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

TERESA LOPEZ, on behalf of herself and all others similarly situated and
ELIJAH STACKHOUSE, Potential Class Member Seeking to Opt Out,
Plaintiffs,

ALL STATE CONSULTANTS, INC. also known as City Mortgage Bankers,
BANKERS TRUST COMPANY and NORWEST BANK MINNESOTA NATIONAL
ASSOCIATION, Trustee For The Delta Funding Home Equity Loan Trust,
Defendants,

DELTA FUNDING CORPORATION, DELTA FINANCIAL CORPORATION
and DELTA FUNDING HOME EQUITY LOAN TRUST,
Defendants-Appellees,

-against-

BERTHA MCKNIGHT, Objector Class Member,
Objector-Appellant,

WARREN SHIRLEY, Objector Class Member, ETHEL FORREST,
Objector Class Member, LUCILLE HARDIN, Objector to Settlement Agreement,
ANNA MAE DAWSON, Objector to Settlement Agreement, CHRISTINE NICOLL,
Objector to Settlement Agreement, PEARLINE BROWN, Objector to Settlement
Agreement, and NY ACORN, Objector to Settlement Agreement,
Objectors.

ON APPEAL FROM THE U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK
No. CV 98 7204 (CPS)(MDG)

**BRIEF FOR *AMICI CURIAE* NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES AND CENTER FOR RESPONSIBLE LENDING IN SUPPORT OF
APPELLANT-OBJECTORS AND ARGUING FOR REVERSAL**

(Counsel listed on inside cover page)

Ira Rheingold
Stephen Gardner
National Association of
Consumer Advocates
1730 Rhode Island Avenue, NW
Suite 805
Washington, DC 20036
202-452-1989 (phone)
202-452-0099 (fax)
ira@naca.net
steve@consumerhelper.com

Amanda Quester
Center for Responsible Lending
910 17th Street, NW, Suite 500
Washington, DC 20006
202-349-1872 (phone)
202-289-9009 (fax)
amy.quester@responsiblelending.org

RULE 26.1 DISCLOSURE STATEMENT

The Center for Responsible Lending (“CRL”) is a non-profit supported organization under the Internal Revenue Code. CRL’s supporting, or parent organization, is the Center for Community Self-Help, which is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The Center for Community Self-Help’s mission is to create ownership and economic opportunities for minorities, women, rural residents, and low-wealth families. Neither CRL nor the Center for Community Self-Help has issued shares or securities.

The National Association of Consumer Advocates is a non-profit membership organization of law professors, public sector lawyers, private lawyers, legal services lawyers, and other consumer advocates. It is organized under the laws of the State of Massachusetts and is tax-exempt under section 501(c)(6) of the Internal Revenue Code. It has no parent corporation, nor has it issued shares or securities.

DATED: July 15, 2005

Respectfully submitted,

AMANDA QUESTER
Center for Responsible Lending
910 17th Street, NW, Suite 500
Washington, DC 20006
(202) 349-1872, (202) 289-9009 (fax)
amy.quester@responsiblelending.org

IRA RHEINGOLD
STEPHEN GARDNER
National Association of Consumer
Advocates
1730 Rhode Island Avenue, NW,
Suite 805
Washington, DC 20036
202-452-1989 (phone)
202-452-0099 (fax)
ira@naca.net
steve@consumerhelper.com

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

INTEREST OF AMICI CURIAE..... 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

 I. Given the singular importance of homeownership and the egregious predatory lending practices at issue in this case, class counsel failed to make a sufficient record so that the Magistrate Judge could engage in the required review. 3

 A. Homeownership is the bedrock for families’ economic security. 4

 B. Courts around the country have recognized the high stakes in cases that threaten the home. 6

 C. The predatory lending practices at issue in this case have caused families to lose their homes and accumulated life savings..... 11

 i. Asset-Based Lending..... 12

 ii. Excessive Fees 13

 iii. Flipping and Default Interest 15

 iv. Deceptive and Fraudulent Sales Practices 17

 v. Targeting of Minority, Low-Income, and Elderly Homeowners..... 17

 vi. The Rising Problem of Foreclosures Due to Predatory Lending..... 18

 II. Class Counsel Failed to Adhere to Prescribed Guidelines for Consumer Class Action Cases, and Failed to Follow Accepted Practices for Settling Cases Involving Homeownership. 19

A. Class counsel failed to consult with interested parties and experienced lawyers representing homeowners in cases against Delta.	21
B. Representative plaintiffs received disproportionate compensation.	23
C. The Settlement release offends standard practice, especially in light of the small relief granted to the majority of absent class members.	24
D. The notice was inadequate, confusing and failed to meet prescribed standards.....	28
E. The Settlement failed to include any mechanism for monitoring Delta’s compliance.....	29
CONCLUSION.....	30
CERTIFICATE OF COMPLIANCE.....	32
PROOF OF SERVICE.....	33

TABLE OF AUTHORITIES

CASES

<u>Amchem Prods., Inc. v. Windsor</u> , 521 U.S. 591 (1997).....	21
<u>Bank of New York v. Hoyt</u> , 617 F. Supp. 1304 (D.R.I. 1985).....	9
<u>Block v. Hirsh</u> , 256 U.S. 135 (1921)	7
<u>Butler v. U.S. Dept. of Housing & Urban Dev't</u> , 595 F.Supp. 1041 (E.D. Pa. 1984).....	9
<u>First Nat'l Bank of Sentinel v. Anderson</u> , 206 Okla. 54, 240 P.2d 1066 (1952)	10
<u>Gardner & North Roofing & Siding Corp. v. Board of Governors of Fed. Reserve Sys.</u> , 464 F.2d 838 (D.C. Cir. 1972).....	9
<u>Hargraves v. Capital City Mortgage Corp.</u> , 140 F. Supp. 2d 7 (D.D.C. 2000)	27
<u>In re Englander</u> , 95 F.3d 1028 (11th Cir. 1996)	10
<u>In re Jones</u> , 193 B.R. 503 (Bankr. E.D. Ark. 1995).....	10
<u>In re Kretzinger</u> , 103 F.3d 943(10th Cir. 1996).....	10
<u>In re Miller</u> , 103 B.R. 65 (Bankr. N.D.N.Y. 1989)	10
<u>In re Perry</u> , 345 F.3d 303, 317 (5th Cir. 2003)	10
<u>N. C. Freed Co., Inc. v. Board of Governors of Fed. Reserve Sys.</u> , 473 F.2d 1210 (2d Cir. 1973)	9-10
<u>Reitman v. Mulkey</u> , 387 U.S. 369 (1967)	7
<u>Ruiz v. New Garden Tp.</u> , 232 F. Supp. 2d 418 (E.D. Pa. 2002), rev'd on other grounds, <u>Ruiz v. New Garden Tp.</u> , 376 F.3d 203 (3d Cir. 2004)	9
<u>Smith v. Fidelity Consumer Discount Co.</u> , 898 F.2d 907 (3d Cir. 1990)	9

<u>State v. Homeside Lending, Inc.</u> , 826 A.2d 997, 1009-11 (Vt. 2003)	28
<u>U.S. v. All Assets of Statewide Auto Parts, Inc.</u> , 971 F.2d 896 (2d Cir. 1992)	7
<u>U.S. v. Premises & Real Prop. at 4492 S. Livonia Rd.</u> , 889 F.2d 1258, 1263 (2d Cir. 1989)	7
<u>U.S. v. The Leasehold Interest in 121 Nostrand Ave., Apartment 1-C, Brooklyn, New York</u> , 760 F. Supp. 1015, 1029 (E.D.N.Y. 1991).....	8
<u>United States v. Delta Funding Corp.</u> , No. CV 00 1872 (E.D.N.Y.)	18, 27
<u>United States v. Single Family Dwelling</u> , Civ. No. 85-0246-F, slip op. at 38 (D. Mass. Nov. 26, 1986)	7

STATUTES

12 U.S.C. § 2601 et seq.	26-27
15 U.S.C. § 1601 et seq	13, 26, 27
15 U.S.C. § 1691.....	27
42 U.S.C. § 3601.....	27

REGULATIONS

12 C.F.R. Part 226	13, 26
--------------------------	--------

RULES

Fed. R. Civ. P. 23.....	21
-------------------------	----

OTHER AUTHORITIES

ACORN, Separate and Unequal 2004: Predatory Lending in America (Feb. 2004).....	18
------------------------------------------------------------------------------------	----

Ana M. Aizcorbe et al., <u>Recent Changes in U.S. Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances</u> , Federal Reserve Bulletin (Jan. 2003).	15
CRL, Prepayment Penalties in Subprime Loans: When Qualifying for a Better Mortgage Doesn't Pay Off (Mar. 16, 2005)	15
Dan Immergluck & Geoff Smith, Risky Business – An Econometric Analysis of the Relationship Between Subprime Lending and Neighborhood Foreclosures (Woodstock Institute Mar. 2004)	18
Eric Belsky & Joel Prakken, Housing Wealth Effects: Housing's Impact on Wealth Accumulation, Wealth Distribution and Consumer Spending, W04-13 (Joint Center for Housing Studies of Harvard University Dec. 2004).....	5
Eric Stein, Quantifying the Economic Cost of Predatory Lending (Coalition for Responsible Lending 2001)	11
Hon. Helen Berrigan, <u>Putting the “Class” in Class Actions</u> , 8 The Consumer Advocate No. 2, at 1 (Mar.-Apr. 2002).....	21
Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2003.....	5
National Association of Consumer Advocates, Standards and Guidelines for Litigating and Settling Consumer Class Actions, 176 F.R.D. 375 (Oct. 8, 1997).....	passim
OCC Advisory Letter (AL2003-2) from David Hammaker, Deputy Comptroller of Currency (Feb. 21, 2003)	12
Rakesh Kochhar, The Wealth of Hispanic Households: 1996-2002, 20-21 (Pew Hispanic Center Oct. 2004).....	6
Roberto G. Quercia et al., The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments (Center for Community Capitalism, Kenan Institute for Private Enterprise, University of North Carolina at Chapel Hill Jan. 25, 2005)...	19

U.S. Census Bureau, Net Worth and Asset Ownership of Households, 1998 and 2000, at 10 tbl. E & 15 tbl. I (May 2003)..... 6

U.S. Department of Housing and Urban Development & U.S. Department of Treasury Task Force on Predatory Lending, Curbing Predatory Home Mortgage Lending (June 2000) 17, 19

Zhu Xiao Di, Housing Wealth and Household Net Wealth in the United States: A New Profile Based on the Recently Released 2001 SCF Data, W03-8 (Joint Center for Housing Studies of Harvard University Dec. 2003)..... 5, 6

INTEREST OF AMICI CURIAE

The National Association of Consumer Advocates (“NACA”) is a non-profit group of attorneys and advocates committed to promoting consumer justice and curbing abusive business practices that bias the marketplace to the detriment of consumers. Its membership is comprised of over 1,000 law professors, public sector lawyers, private lawyers, legal services lawyers, and other consumer advocates across the country.

NACA’s interest in this appeal stems from the extensive work that its membership has done on predatory lending issues. NACA is also concerned that the settlement does not comply with the guidelines that NACA has established for class action settlements.

The Center for Responsible Lending (“CRL”) is dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. A nonprofit, nonpartisan research and policy organization, CRL promotes responsible lending practices and access to fair terms of credit for low-wealth families. CRL is an affiliate of Self-Help, one of the nation’s largest community development financial institutions. CRL is interested in this appeal because it is concerned about the homeownership interests and family wealth of the over 67,000 class members who may be affected by the settlement.

SUMMARY OF ARGUMENT

Homeownership is the bedrock for families' economic security, and predatory lending is the single greatest threat to homeownership. Of prime concern are precisely the practices described in Plaintiffs' complaint – including asset-based lending, excessive fees, flipping, increased interest charges upon default, deceptive and fraudulent sales practices, and targeting of minority, low-income, and elderly homeowners for abusive loans. Thousands of borrowers have lost or may lose their home equity and in many cases their homes due to these abusive practices of Delta Funding Corporation (“Delta”). In light of what is at stake in this case and the longstanding judicial recognition of the importance of the home, class counsel failed to present sufficient information to the Magistrate Judge to support the certification of the class and approval of the settlement.

Consideration of the settlement under the guidelines that NACA has established for consumer class actions shows that the settlement does not comply with accepted practices for settling class actions and certainly does not live up to the higher standards that should be applied in any case where homes are at risk. Class counsel did not reach out to legal services organizations that were representing Delta borrowers in pending foreclosure proceedings or organizations with recognized expertise in the field, as

prescribed guidelines for class action settlements suggest. Contrary to accepted practice, the settlement provides disproportionate relief to the named class representatives and includes a release that would waive claims that were not even part of this action in exchange for negligible relief for the overwhelming majority of absent class members. Notices sent to borrowers are confusing and inadequate and fall far short of NACA standards, and the settlement gives Delta the authority to administer the settlement without setting up mechanisms to monitor Delta's compliance. In light of these weaknesses in the settlement and the tremendously high stakes involved in the case, Amici respectfully urge the Court to reverse the certification and approval of the class action settlement.

ARGUMENT

- I. Given the singular importance of homeownership and the egregious predatory lending practices at issue in this case, class counsel failed to make a sufficient record so that the Magistrate Judge could engage in the required review.

The resolution of this case will affect thousands of homeowners who have lost or could lose their hard-earned home equity and, in many cases, their homes due to Delta's predatory lending practices. While this is not a foreclosure action, it is a case about the abusive practices of a notorious predatory lender that have driven many borrowers into default and foreclosure. Despite the seriousness of the claims raised in this action, the

Magistrate Judge accepted the class settlement without questioning the many unsupported assertions made by Delta, demanding adequate discovery, evaluating the potential recovery under the released claims, or explaining how the paltry and disparate relief and sweeping releases included in the settlement could possibly be appropriate.¹ This cursory treatment was unacceptable given the singular importance of homeownership to American families, which courts have recognized time and again, and the predatory lending practices at issue in this case.

A. Homeownership is the bedrock for families' economic security.

Homeownership is the bedrock for economic security as the primary way for families to build wealth. Home equity accounts for more than one-

¹ For a longer discussion of these failures, see Brief for Appellant-Objectors at 20-63. As Appellant-Objectors have shown, class counsel failed to create an evidentiary record supporting the settlement. Indeed, there is no way that class counsel could have created such a record because class counsel simply did not spend the time required to be in a position to evaluate class members' claims. Brief of Appellant-Objectors at 43-44 & Ex. G. Crucial discovery, including depositions of Delta employees, was never pursued. Id. Only one attorney, associate Curt Beck, appeared on behalf of plaintiffs at the fairness hearing, and his presentation was extraordinarily brief. A1572-84. He deferred in many instances to Defendants' counsel or made conclusory assertions that Appellant-Objectors have shown to be false. See, e.g., Brief of Appellant-Objectors at 32-33. Given the limited and sometimes inaccurate information that class counsel provided, the Magistrate Judge was simply not in a position to engage in the required review.

third of the average net wealth of U.S. households.² According to one estimate, the value of the housing stock owned by U.S. households had surpassed \$15 trillion by late 2003.³ Many more Americans own homes than stocks,⁴ and among those who own both, an estimated two-thirds hold more of their wealth in home equity than stocks.⁵

The borrowers that Delta allegedly targeted for its predatory loans – minority, low-income, and elderly homeowners – hold an even larger share of their net wealth in home equity.⁶ A recent Pew Hispanic Center study found that among African-American and Latino homeowners, the median family in each group held 88 percent of its total wealth in the form of home

² Zhu Xiao Di, *Housing Wealth and Household Net Wealth in the United States: A New Profile Based on the Recently Released 2001 SCF Data*, W03-8, at 8-9 (Joint Center for Housing Studies of Harvard University Dec. 2003) (considering households with a positive net wealth based on data from the 2001 Survey of Consumer Finances).

³ Eric Belsky & Joel Prakken, *Housing Wealth Effects: Housing's Impact on Wealth Accumulation, Wealth Distribution and Consumer Spending*, W04-13, at 6 (Joint Center for Housing Studies of Harvard University Dec. 2004) (citing the Federal Reserve Board's Flow of Funds).

⁴ Di, *supra*, at 17; Belsky, *supra*, at 3, 8 (“In 2001, about 68 percent of households owned a home but only 52 percent held stocks either directly or indirectly.”)

⁵ Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2003*, at 6.

⁶ Di, *supra*, at 7, 10; A941, at ¶ 1.

equity.⁷ As of 2002, the median homeowner with income below \$20,000 held over three-fourths of their household net wealth in home equity.⁸

Housing wealth is also a markedly larger portion of the net wealth held by the elderly, who are often victims of predatory lending schemes.⁹

Home equity is the single largest savings account most people will ever have. This equity is used by families to send children to college, start new businesses, or weather crises such as job loss or extended illness. In addition to the wealth effects, there are of course massive non-economic costs when families lose their homes or are threatened with losing their homes through foreclosure. Because of the stakes, any proposed settlement that involves borrowers' homeownership interests must be scrutinized with the utmost care, which was not done in this case.

B. Courts around the country have recognized the high stakes in cases that threaten the home.

Courts around the country have recognized how central homeownership is and how important it is to keep families in their homes.

⁷ Rakesh Kochhar, *The Wealth of Hispanic Households: 1996-2002*, 20-21 (Pew Hispanic Center Oct. 2004); see also U.S. Census Bureau, *Net Worth and Asset Ownership of Households, 1998 and 2000*, at 10 tbl. E & 15 tbl. I (May 2003).

⁸ Di, supra, at 7.

⁹ Id.

As the U.S. Supreme Court observed over 80 years ago, when homes are at stake it drastically changes the calculus in favor of protecting home occupants: “Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present.”¹⁰

When owners face the possibility of having their homes taken away from them, a higher standard applies. This Court consistently has recognized that “an individual's substantial interest in the home . . . is entitled to a unique sensitivity from federal courts.”¹¹ In light of this substantial interest, “it is clear that a ‘home’ is entitled to special due process safeguards.”¹²

Courts carefully have sought to avoid causing individuals to unnecessarily lose their homes, even when such a loss might turn out to be

¹⁰ Block v. Hirsh, 256 U.S. 135, 156 (1921); see also Reitman v. Mulkey, 387 U.S. 369, 385 (1967) (Douglas, J., concurring) (“Urban housing is clearly marked with the public interest.”).

¹¹ U.S. v. Premises & Real Prop. at 4492 S. Livonia Rd., 889 F.2d 1258, 1263 (2d Cir. 1989) (requiring notice and adversarial hearing for property forfeiture actions to comply with due process, when the property is a home) (internal citations omitted).

¹² Id. at 1264, quoting United States v. Single Family Dwelling, Civ. No. 85-0246-F, slip op. at 38 (D. Mass. Nov. 26, 1986) (Report and Recommendation of Magistrate); see also U.S. v. All Assets of Statewide Auto Parts, Inc., 971 F.2d 896, 902 (2d Cir. 1992) (a claimant’s interest in his home merits special constitutional protection).

temporary. When determining whether a pre-seizure hearing provides sufficient protection for one's substantial interests in his or her home, courts are concerned whether "[o]wners and occupants who have a viable defense to forfeiture could be ousted from their homes until they were given the opportunity to defeat the forfeiture proceeding by successfully establishing their defenses at trial."¹³ In the case of a possible forfeiture of a residence, "due process requires that private and public interests be given weight and a societal judgment be made about how the risk of error should be distributed between the litigants."¹⁴ Under such circumstances, there is ample justification for imposing a higher burden of proof on the party seeking the forfeiture "in light of the important role of decent housing in maintaining human dignity and the strong likelihood that the loss of public housing will result in homelessness."¹⁵

Safeguarding homeownership rights also weighs heavily on courts that are called upon to review the regulation of loans secured by homes. When contractors challenged an application of the Truth in Lending Act to

¹³ U.S. v. The Leasehold Interest in 121 Nostrand Ave., Apartment 1-C, Brooklyn, New York, 760 F. Supp. 1015, 1029 (E.D.N.Y. 1991).

¹⁴ Id. at 1032.

¹⁵ Id.

home security interests, this Court, with an awareness of the multifarious pitfalls created by statutory liens, interpreted the applicable sections of the statute to ensure that a homeowner would not “unwittingly lose one of his most precious possessions, his home.”¹⁶

When courts consider whether to issue preliminary injunctions that will affect residential occupancy, the grave consequences of losing one’s home strongly tilts the balance of equities in favor of the homeowners’ interests. So, for example, a defendant could be enjoined from foreclosing on a plaintiffs’ house, since “[p]ermitting [plaintiffs] to lose their home prior to being afforded a full and fair hearing on their request for mortgage [assistance] would violate the national housing purposes.”¹⁷ Similarly,

¹⁶ N. C. Freed Co., Inc. v. Board of Governors of Fed. Reserve Sys., 473 F.2d 1210, 1216 (2d Cir. 1973); see also Gardner & North Roofing & Siding Corp. v. Board of Governors of Fed. Reserve Sys., 464 F.2d 838, 842 (D.C. Cir. 1972); Bank of New York v. Hoyt, 617 F. Supp. 1304, 1310-11 (D.R.I. 1985) (finding that Congress in the Depository Institutions Deregulation and Monetary Control Act sought to “promote the national housing policy and the American dream of home ownership”); Smith v. Fidelity Consumer Discount Co., 898 F.2d 907, 911 (3d Cir. 1990).

¹⁷ Butler v. U.S. Dept. of Housing & Urban Dev’t, 595 F.Supp. 1041, 1047 (E.D. Pa. 1984). (“Congress clearly indicated that it is in the public interest to assist low- and moderate-income households in avoiding foreclosure of their mortgages and loss of their homes.”); see also Ruiz v. New Garden Tp., 232 F. Supp. 2d 418, 429 (E.D. Pa. 2002) (granting a preliminary injunction to avoid eviction: “Here, the irreparable harm consists not merely in the asserted due process violation, but in the fact that the plaintiffs will be displaced from their homes, a circumstance that would be especially

courts consistently apply homestead exemption laws in favor of protecting homes against seizure by creditors.¹⁸

Chief Judge Sifton recognized the importance of homeownership, not only for what it means in America, but also what it means to the individual:

[A] single house is worth as much to the person who lives in it as all of the houses are to all of the people who live in it, so one of the things you've got to be cautious about as a class representative is, you got to represent the class, the legal principles, the general improvement of the law, the general improvement of how people behave, but you also got to pay attention to the individuals involved.¹⁹

Because of the recognized importance of the home, any judicial action, including class action settlements, that involves homeownership interests must be reviewed with extraordinary care.

intolerable without an opportunity to be heard.”), rev'd on other grounds, Ruiz v. New Garden Tp., 376 F.3d 203 (3d Cir. 2004).

¹⁸ See In re Englander, 95 F.3d 1028, 1031 (11th Cir. 1996) (“[H]omestead exemption laws [should] be liberally applied to the end that the family shall have shelter and shall not be reduced to absolute destitution.”); In re Kretzinger, 103 F.3d 943, 945 (10th Cir. 1996) (quoting First Nat'l Bank of Sentinel v. Anderson, 206 Okla. 54, 240 P.2d 1066, 1068 (1952)) (“[Homestead exemption] provisions are to be liberally construed in the interest of the family home.”); In re Perry, 345 F.3d 303, 317 (5th Cir. 2003) (“Homesteads are favorites of the law”); In re Miller, 103 B.R. 65, 67 (Bankr. N.D.N.Y. 1989) (“Grounded upon public policy, the purpose of the homestead exemption is to protect a debtor-homeowner and his immediate family from losing their family dwelling because of economic adversity.”); In re Jones, 193 B.R. 503, 506, (Bankr. E.D. Ark. 1995) (“All presumptions are to be made in favor of the preservation and retention of the homestead.”).

¹⁹ A206-07.

- C. The predatory lending practices at issue in this case have caused families to lose their homes and accumulated life savings.

Predatory lending is a serious and growing problem, affecting homeowners throughout the nation. It includes a set of abusive home lending practices that deprive homeowners of hard-earned home equity. The secondary market for subprime loans has encouraged such abuses, creating incentives for lenders to take advantage of vulnerable borrowers and failing to engage in basic due diligence that could prevent abuses from taking place. While not all subprime loans are predatory, predatory lending is concentrated in the subprime market. In 2001, CRL estimated that predatory lending cost U.S. borrowers over \$9 billion each year in lost homeowner equity, back-end penalties, and excess interest paid.²⁰

Amici are very concerned about precisely the predatory lending practices at issue in this case, including the extension of credit without regard to a borrower's ability to repay, the stripping of equity through excessive fees, flipping of loans, deceptive and fraudulent sales practices, and the targeting of minority, low-income, and elderly homeowners for abusive loans. These abusive practices have not only limited the equity-

²⁰ Eric Stein, Quantifying the Economic Cost of Predatory Lending (Coalition for Responsible Lending 2001), available at <http://www.responsiblelending.org/pdfs/Quant10-01.pdf>.

building potential for homeownership, but have led families to lose their homes and their accumulated life savings.

i. Asset-Based Lending

A particularly troubling predatory lending practice is making loans that the lender knows or has reason to know the borrower will be unable to repay.²¹ Instead of evaluating whether the borrower will be able to repay the loan by checking the borrowers' income and engaging in other appropriate

²¹ The Office of the Comptroller of the Currency described asset-based lending in a recent advisory letter as follows:

[A] fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower's ability to repay the loan according to its terms absent resorting to that collateral. This abusive practice leads to 'equity stripping.' When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than the norm.

OCC Advisory Letter (AL2003-2) from David Hammaker, Deputy Comptroller of Currency (Feb. 21, 2003).

underwriting, some predatory lenders make loans based solely on the value of the home that secures the loan. Borrowers who receive such loans often default almost immediately, as many Delta borrowers did.²²

This predatory practice was one of the concerns that prompted enactment of the Home Ownership and Equity Protection Act (“HOEPA”) in 1994, which limits certain predatory practices for high-cost loans and specifically prohibits lenders from engaging in a pattern or practice of making such loans without regard to ability to repay.²³ Delta has conceded that it made more than one thousand HOEPA loans without an income check or to borrowers whose debt to income ratio exceeded 50%.²⁴

ii. Excessive Fees

Predatory lenders frequently pad loans with excessive fees that have the effect of stripping equity from borrowers. When they are financed into the loan, high fees are deceptively “costless” to many borrowers because the borrower does not feel the pain of counting out thousands of dollars in cash

²² See, e.g., A5-6 (identifying borrowers scheduled for foreclosure sale who had all defaulted within a year of receiving their loans and in some cases apparently could not even make their first out-of-pocket payment); A977, at ¶ 124.

²³ 15 U.S.C. § 1639(h); 12 C.F.R. § 226.32.

²⁴ A1505-06.

at closing. The borrower sees the loss only later, when the loan is paid off and the equity remaining in his or her home is reduced by the amount of the fees. In addition, the fees last forever, because the borrower's wealth is permanently stripped away even if he or she manages to refinance just one week after closing.

The fees on Delta loans identified in Plaintiffs' complaint are shockingly high: Plaintiff Juanita Edwards paid a loan origination fee equal to 10% of the loan amount, while Plaintiff Virginia Williams paid a 10% "mortgage broker" fee.²⁵

In addition to these "front-end" fees, predatory lenders also charge hidden "back-end" prepayment penalties that borrowers are obligated to pay if they choose to pay off the debt before the end of the scheduled term of the loan – for example to refinance at a better rate. Paying the penalty strips additional equity from a borrower's home. The penalty itself can also trap a borrower in a bad loan when he or she could otherwise refinance into a better-priced product. To refinance, a borrower must either have cash in hand to pay the prepayment penalty or be able to finance the penalty into the new loan. Adding the penalty into the new loan amount, however, can raise

²⁵ A983, at ¶ 150; A996, at ¶ 199.

the loan-to-value ratio so high that the borrower is no longer eligible for a loan with a better rate.

CRL has estimated that 850,000 families lose \$2.3 billion each year from their home equity wealth because of prepayment penalties in subprime loans.²⁶ Plaintiffs' complaint alleges that in violation of an express HOEPA requirement, many Delta loans included a prepayment penalty equal to 5% of the original amount of the mortgage.²⁷ For a \$150,000 loan, this fee is \$7,500, which according to one estimate is about 40 percent of the total net wealth of the median African-American family as of 2001.²⁸

iii. Flipping and Default Interest

The impact of excessive fees on a loan is often compounded by abusive loan flipping.²⁹ Flipping of borrowers occurs when lenders refinance subprime loans, often multiple times, within a short time period.

²⁶ CRL, *Prepayment Penalties in Subprime Loans: When Qualifying for a Better Mortgage Doesn't Pay Off* (Mar. 16, 2005).

²⁷ See, e.g., A18; A76; A588; A960, at ¶ 59; A967-68, at ¶ 87; A980, at ¶ 135.

²⁸ Ana M. Aizcorbe et al., Recent Changes in U.S. Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances, Federal Reserve Bulletin (Jan. 2003), at 8.

²⁹ A942, at ¶ 4; A1319.

With each refinancing, the lender charges high fees, stripping equity from the home in the process and failing to provide the borrower with any net tangible benefit from the transaction.

Another predatory practice is charging increased interest upon default, making it impossible for borrowers to cure their default. According to Plaintiffs' complaint, Delta illegally charged borrowers 24% default interest.³⁰ For Plaintiffs Mary and William Young, this provision resulted in more than \$2,000 additional interest each month after they defaulted on their 1998 loan of \$113,600.³¹ Assuming the Youngs have not made payments since May 1999,³² they would owe over \$165,000 in default interest today under the terms of their note. While the settlement amends class members' notes to lower the illegal default interest rate prospectively, it does not appear to provide class members with any compensation for the tens of thousands of dollars in illegal default interest that they have already been charged.³³

³⁰ A977, at ¶¶ 124-25; A980, at ¶ 135; see also A4-6; A17; A41; A75; A587.

³¹ A994, at ¶ 189

³² A1356.

³³ A1213, at ¶ 1.

iv. Deceptive and Fraudulent Sales Practices

Predatory lenders like Delta misrepresent the nature and terms of their loans – or fail to provide such information entirely – in order to induce borrowers to enter into mortgage loan transactions they cannot afford. As Plaintiffs allege throughout their complaint, predatory lenders prevent borrowers from reviewing and understanding key loan documents at closing, exaggerate the benefits of the loan, and engage in high-pressure sales tactics.³⁴

v. Targeting of Minority, Low-Income, and Elderly Homeowners

As appalling as these practices are, they are made worse when predatory lenders target minority, low-income, and elderly homeowners for their abusive loans. U.S. Department of Housing and Urban Development research found that borrowers in upper-income African-American neighborhoods were twice as likely as homeowners in low-income white neighborhoods to refinance with a subprime loan.³⁵ In 2002, African-Americans were 3.6 times as likely as whites to receive a home purchase

³⁴ A941-1050; see also A592-594; A693-697; A758-763; A1323-31.

³⁵ U.S. Department of Housing and Urban Development & U.S. Department of Treasury Task Force on Predatory Lending, *Curbing Predatory Home Mortgage Lending* 48 (June 2000).

loan from a subprime lender³⁶ and 4.1 times as likely as whites to receive a refinance loan from a subprime lender.³⁷ These disparities are not mere happenstance, but instead result in many cases from the type of systematic targeting alleged in Plaintiffs' complaint.³⁸

vi. The Rising Problem of Foreclosures Due to Predatory Lending

In addition to stripping minority, low-income, and elderly borrowers of their home equity, abusive subprime mortgages have led directly to home foreclosures. Because predatory lenders are known to target certain neighborhoods, the odds are good that one victim of predatory lending lives down the street from another. In this way, whole communities are affected, especially when foreclosures become rampant.³⁹ Between January 1998 and

³⁶ ACORN, *Separate and Unequal 2004: Predatory Lending in America* 35 (Feb. 2004).

³⁷ Id. at 19.

³⁸ A941-942, at ¶ 1; see also United States v. Delta Funding Corp., No. CV 00 1872 (E.D.N.Y.), A805-07.

³⁹ A recent study published by the Woodstock Institute based on data from the Chicago metropolitan area found that subprime lending was a “dominant driver of the increased and highly concentrated neighborhood foreclosure levels of the late 1990s and through 2002.” Dan Immergluck & Geoff Smith, *Risky Business – An Econometric Analysis of the Relationship Between Subprime Lending and Neighborhood Foreclosures*, at 23 (Woodstock Institute Mar. 2004). The study also noted that the impact of foreclosures is most keenly felt in “modest-income neighborhoods where

September 1999, the foreclosure rate of subprime loans was more than ten times the foreclosure rate of prime loans.⁴⁰ One study found that about 20% of subprime loans that were originated between 1998 and 2000 were foreclosed upon at least once by the end of 2003,⁴¹ and the foreclosure rates would presumably be even higher for particularly abusive subprime lenders like Delta. Because class members' homes are on the line in this action, the Magistrate Judge should have conducted a much more searching review to balance the limited value to be gained for the class against the serious threat of foreclosure faced by thousands of borrowers.

II. Class Counsel Failed to Adhere to Prescribed Guidelines for Consumer Class Action Cases, and Failed to Follow Accepted Practices for Settling Cases Involving Homeownership.

Class actions play an important role in combating abuses against consumers by the lending industry. In the context of home lending cases

foreclosures more often lead to abandonment and blight” and that these costs are “borne by entire communities, not just by the lender or borrower.” *Id.* at 24.

⁴⁰ HUD-Treasury Task Force on Predatory Lending, *supra*, at 34-35.

⁴¹ Roberto G. Quercia et al., *The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments* (Center for Community Capitalism, Kenan Institute for Private Enterprise, University of North Carolina at Chapel Hill Jan. 25, 2005), at 21.

involving significant damage claims, class action settlements must be carefully crafted to ensure that these goals are achieved.

In 1997, NACA adopted its “Standards and Guidelines for Litigating and Settling Consumer Class Actions,” which were subsequently published in Federal Rules Decisions, 176 F.R.D. 375 (1997) (hereinafter referred to as the “Guidelines”). (Attached as Addendum A) The Guidelines are directed primarily at discouraging abusive practices at the time of settlement of consumer class actions.⁴²

The Guidelines are intended to “educate practitioners about how to avoid conduct which is, or may appear to be, improper and about the most appropriate and effective way to fulfill the special obligations of class counsel to the class.”⁴³ The Guidelines address how to curb abuses, while advocating keeping class actions as a vehicle for protecting consumers and holding economically powerful interests responsible for the harm they do.

NACA adopted 10 guidelines.⁴⁴ Not all guidelines are relevant to the Lopez v. Delta Funding Corp. class action and settlement, but the Settlement

⁴² 176 F.R.D. at 378.

⁴³ Id.

⁴⁴ The NACA Guidelines are: (1) The propriety of class actions when individual recoveries are small, (2) Certificate settlements, (3) Settlements when other class actions are on file, (4) Additional compensation to named

here violates the guidelines that do apply – guidelines 3, 4, 5, and 8.⁴⁵ The Settlement also ignores the special considerations that exist in cases involving homeownership because of the gravity of harms which can be incurred by homeowners should they participate, or fail to participate, in a settlement.⁴⁶

- A. Class counsel failed to consult with interested parties and experienced lawyers representing homeowners in cases against Delta.

Guideline #3, “Settlements When Other Class Actions are on File” advises class counsel to “attempt to learn of any pre-existing cases and to communicate with other plaintiffs’ counsel in such cases prior to or

plaintiffs, (5) Class member releases, (6) Cy pres awards, (7) Attorneys fee considerations, (8) Improved notice of settlement, (9) Approval of settlement classes, and (10) Interlocutory appeal of class certification. In 2002, the Chief Judge of the Eastern District of Louisiana described the Guidelines as “an excellent document” and recommended them “to anyone who does class action litigation.” Hon. Helen Berrigan, Putting the “Class” in Class Actions, 8 The Consumer Advocate No. 2, at 1 (Mar.-Apr. 2002).

⁴⁵ Guideline #7 concerns attorneys fee, which are in issue in this case, but are not addressed here.

⁴⁶ Although Amici limit their argument here to an analysis of the settlement under the NACA Guidelines, the class settlement also fails to comply with the requirements of Federal Rule of Civil Procedure Rule 23 and the Supreme Court’s decision in Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997), as Appellant-Objectors explain in their brief.

promptly after filing an overlapping case.”⁴⁷ Guideline #3 also instructs class counsel to notify persons or groups that may have an interest in the case regarding a settlement, and specifically recommends that NACA and the National Consumer Law Center (“NCLC”) “receive notice of settlements in consumer class actions such as challenges to deceptive home improvement financing schemes or overcharges by financial institutions.”⁴⁸ Curt Beck and Abbey Gardy failed to consult with others, including legal services organizations in the New York metropolitan area representing homeowners with Delta loans involved in foreclosure proceedings and NY ACORN, which had members with Delta loans.⁴⁹ Class counsel also failed to reach out to NACA or NCLC, well-known national consumer law organizations with significant expertise in home equity lending cases involving the claims alleged in the complaint.

⁴⁷ 176 F.R.D. at 385.

⁴⁸ Id. at 386.

⁴⁹ See Brief for Appellant-Objectors at 12-15; A1317-34 (affidavit from Josh Zinner of South Brooklyn Legal Services (“SBL”) explaining that SBL’s Foreclosure Prevention Project worked with many Delta borrowers and indicating that SBL contacted Abbey Gardey after reviewing the proposed settlement and several settlement notices to express its concerns).

B. Representative plaintiffs received disproportionate compensation.

Guideline #4, “Additional Compensation to Named Plaintiffs”

acknowledges that class representatives who expend considerable efforts may deserve greater compensation for their time and expense.⁵⁰ There is no record, however, that the case subjected the eight class representatives to additional responsibilities to justify the enormous disparity between the relief that they will receive and the meager relief that will be provided to the overwhelming majority of absent class members.⁵¹ Class representatives are to receive not only the \$2,000 incentive reduction in their loan balances, but also a completely restructured loan that gives them a realistic opportunity of avoiding foreclosure, while over 67,000 absent class members receive inconsequential credits or checks and their homes are placed at greater risk because of the inappropriate general release discussed below.⁵²

⁵⁰ 176 F.R.D. at 387.

⁵¹ See Brief for Appellant-Objectors at 28-30 (detailing the disproportionate relief class representatives received over absent class members). In home loan cases, particularly when broad releases are contemplated, counsel needs to pay particular attention to the scope and breadth of the class. In this case, it appears that class counsel made no effort to maximize the benefit of the settlement for class members by limiting the class size in geographic scope or time period. In fact, the settlement class was bigger than the class they sued on behalf of, including not only Delta borrowers with viable or common claims, but all individuals who entered into mortgage loan

- C. The Settlement release offends standard practice, especially in light of the small relief granted to the majority of absent class members.

Guideline #5, “Class Member Releases” discourages the release of claims that have not been alleged in the pleadings and certified by the Magistrate Judge. If claims not included in the complaint are released, the class members should get compensation for the additional released claims.⁵³ A national class action that requires class members to opt out should not bind class members to a substantial release, especially in the context of home lending cases.

The General Release in Lopez v. Delta Funding Corp. extends beyond the scope of the Guideline, and well-beyond accepted practices. The causes of action in the complaint were limited: violations of the Home Ownership and Equity Protection Act, the Truth in Lending Act, and state unfair and deceptive practices acts, and common law claims based on the law of unconscionability and the equitable right to redeem.⁵⁴ Class counsel initially

transactions on or after November 19, 1992 and on or before October 31, 1999 with Delta or with another lender whose loan was purchased by Delta.

⁵² A1213-21, A1505-07, A1928.

⁵³ 176 F.R.D. at 389.

⁵⁴ A941-1048.

agreed to waive all claims – including defenses to foreclosure – to obtain next to no relief for the overwhelming majority of class members.⁵⁵ Under pressure from the Objectors, Delta modified the settlement to carve out defenses to any foreclosure or other action or claim by a released party for all class members except HOEPA Early Payment Default and Disputed HOEPA Early Payment Default class members.⁵⁶

However, the amended settlement still waives all other claims that have been or could be asserted relating to the origination or terms of the class members’ loans — including a host of claims against Delta that were never part of this action.⁵⁷ The release even includes claims against entities that are not parties.⁵⁸

⁵⁵ A1870-72.

⁵⁶ A1892-93, A1918, A1954-55.

⁵⁷ A1955 (defining “Released Parties” as “Delta Funding Corporation; all of the other Defendants; their parents, subsidiaries and affiliates; holders and former holders of Covered Loans . . . ; brokers and former brokers of Covered Loans; the successors and assigns of such entities; and the officers, directors, attorneys, employees, agents, trustees and representatives of all of the foregoing entities”). The Order excludes any claim that was asserted in a class action lawsuit pending on the date of the Agreement and actually known by Delta management prior to that date. A1954.

⁵⁸ Compare A1955 with A1041.

Given what is at stake, any one individual’s claim could be worth tens of thousands of dollars. In the absence of adequate discovery, there is no way to know all of the claims that the over 67,000 class members might have against Delta and the other entities covered by the release. Predatory lending victims have successfully pursued a wide variety of theories in other loan origination cases – including, inter alia, claims under the Truth in Lending Act (“TILA”),⁵⁹ HOEPA,⁶⁰ the Real Estate Settlement Practices Act (“RESPA”),⁶¹ the Equal Credit Opportunity Act (“ECOA”) and the Fair

⁵⁹ TILA requires lenders to disclose information about the terms of loans in order to assist borrowers in understanding the overall cost of credit. TILA also provides borrowers with a right to cancel certain loans secured by their principal residence. TILA provides for a range of remedies, including rescission, actual damages, statutory damages, attorney fees, and costs. 15 U.S.C. §§ 1635, 1640(a).

⁶⁰ Enacted in 1994 as an amendment to TILA, HOEPA limits certain predatory practices for high-cost loans. For closed-end refinancing loans and home equity loans that exceed the applicable rate or fee thresholds, HOEPA restricts or prohibits prepayment penalties, balloon payments, increased interest rates upon default, and negative amortization, 15 U.S.C. § 1639; 12 C.F.R. § 226.32. HOEPA also prohibits lenders from engaging in a pattern or practice of making high-cost loans without regard to ability to repay and requires additional disclosures. 12 C.F.R. §§ 226.32, 226.34. HOEPA provides the remedies available under TILA, as well as special enhanced damages. 15 U.S.C. §§ 1639, 1640(a). If a loan is covered by HOEPA, all borrower claims and defenses can generally be asserted against subsequent holders of the loan. 15 U.S.C. § 1641(d).

⁶¹ Enacted in 1974, RESPA protects consumers from excessive and abusive charges in the settlement of residential mortgages by requiring lenders to disclose the details of settlement costs and prohibiting certain charges. 12

Housing Act (“FHA”),⁶² the Racketeer Influenced and Corrupt Organizations Act (“RICO”), state unfair and deceptive practices acts, and common law fraud and unconscionability.

Considering the breadth of valuable claims that predatory lending victims have pursued in the past and the egregious conduct in which Delta and its brokers have engaged, there is no way that class counsel could have performed the required evaluation of the effect of the settlement’s waiver on the over 67,000 class members in the limited time that counsel spent on this case.⁶³ Likewise, it was simply not possible for the Magistrate Judge to assess accurately the class members’ claims with the limited information that she received – including claims under RESPA, ECOA, FHA, and RICO

U.S.C. § 2601 et seq. RESPA includes a prohibition against kickbacks and unearned fees. 12 U.S.C. § 2607. RESPA permits treble damages, attorneys fees, and costs, and when a lender pays a broker a prohibited fee, borrowers may bring RESPA claims against both the broker and the lender. *Id.*

⁶² Predatory lending victims have also brought discrimination claims under the ECOA, 15 U.S.C. § 1691 et seq., and the FHA, 42 U.S.C. § 3601 et seq. See, e.g., Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7 (D.D.C. 2000). The FHA prohibits discrimination based on race, sex, and other factors in housing-related transactions. The ECOA prohibits discrimination against borrowers in the extension of credit and also imposes certain requirements on the application process. The U.S. Department of Justice alleged violations of both ECOA and the FHA in the action that it filed against Delta in 2000. United States v. Delta Funding Corp., No. CV 00 1872 (E.D.N.Y.), A805-07.

⁶³ See Brief of Appellant-Objectors at 43 & Ex. G.

and fraud and contract claims that were not plead or certified by the court and claims against nonparties who were not even before the court.

D. The notice was inadequate, confusing and failed to meet prescribed standards.

Guideline #8, “Improved Notice of Settlement” advises class counsel to use a simplified form that sets forth the “salient aspects of a settlement” in plain language.⁶⁴ The notice should include a “clear statement of how the consumer can tell whether he or she is a member of the class,” the number of class members, the total amount of relief to be given and an idea of how much the class member will receive, the amount of attorneys’ fees to be granted to class counsel, directions for opting out and information on how the class member can get further information regarding the settlement.⁶⁵

The Lopez v. Delta Funding Corp. notice was four pages of mostly single-spaced copy.⁶⁶ It is confusing, uses language that is not easily understood by consumers unfamiliar with the law and failed to give class

⁶⁴ 176 F.R.D. at 400.

⁶⁵ Id. NACA’s notice guideline was recognized by the court in State v. Homeside Lending, Inc., 826 A.2d 997, 1009-11 (Vt. 2003) (stating that NACA’s Guidelines “provide for instructive notice”).

⁶⁶ A1465-68; see also A1331.

members a definitive understanding of the relief they would receive.⁶⁷

Victims of home lending fraud would be particularly disadvantaged by a confusing notice of this nature.⁶⁸ Class counsel made no effort to ensure that vulnerable class members would be able to make an informed decision about participation.

E. The Settlement failed to include any mechanism for monitoring Delta's compliance.

Settlements should contain provisions sufficient to allow class counsel to evaluate whether the defendant is complying with settlement terms, as well as a means, if necessary, to enforce compliance. Especially when, as here, the defendant is solely responsible for the administration,⁶⁹ the Settlement should require Delta to submit timely monitoring reports. When a settlement affects the terms of individual loans, mechanisms should also be included to allow individual class members to enforce violations of the settlement, when the violations harm that class member.

⁶⁷ A1255 n.11.

⁶⁸ See A795 (Memorandum and Order of Chief Judge Sifton, filed March 6, 2000, requiring clear language in a notice to Delta borrowers because “a great percentage of those to whom the notice will be sent are elderly and poorly educated”).

⁶⁹ A1222-23, at ¶ 11.

CONCLUSION

The judgment should be reversed because the Magistrate Judge erred in certifying the class and approving the settlement. Because homeownership interests are unique, and the predatory lending practices alleged in the complaint directly threaten class members' homes, actions such as this should be reviewed with the utmost care. The settlement does not comply with accepted practices for settling class actions, much less the higher standards that should be applied in cases where homes are in jeopardy. It provides disproportionate compensation to the named class representatives and releases all borrowers' claims in exchange for minimal relief for nearly all absent class members. The notices provided regarding the settlement were inadequate, and the settlement itself does not include adequate monitoring provisions. Because of the problems with the settlement and the extremely high stakes, Amici respectfully urge the Court to reverse the certification and approval of the class action settlement.

DATED: July 15, 2005

IRA RHEINGOLD
STEPHEN GARDNER
National Association of Consumer Advocates
1730 Rhode Island Avenue, NW, Suite 805
Washington, DC 20036
202-452-1989 (phone)

202-452-0099 (fax)
ira@naca.net
steve@consumerhelper.com
Attorneys for Amicus Curiae
National Association of Consumer Advocates

AMANDA QUESTER
Center for Responsible Lending
910 17th Street, NW, Suite 500
Washington, DC 20006
(202) 349-1872 (phone)
(202) 289-9009 (fax)
amy.quester@responsiblelending.org
Attorney for Amicus Curiae
Center for Responsible Lending

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because this brief contains 6,888 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point.

AMANDA QUESTER
Attorney for Amicus Curiae
Center for Responsible Lending
910 17th Street, NW, Suite 500
Washington, DC 20006
(202) 349-1872 (phone)
(202) 289-9009 (fax)
amy.quester@responsiblelending.org

Dated: July 15, 2005

PROOF OF SERVICE

I, Amanda Quester, being duly sworn, depose and say:

1. I am not a party to this action, and I am over 18 years of age.
2. On July 15, 2005, I caused to be served true and correct copies of
the BRIEF FOR AMICI CURIAE NATIONAL ASSOCIATION
OF CONSUMER ADVOCATES AND CENTER FOR
RESPONSIBLE LENDING IN SUPPORT OF APPELLANT-
OBJECTORS AND ARGUING FOR REVERSAL by first class
mail, postage prepaid, upon the following:

Nina F. Simon
Jean Constantine-Davis
Lead Counsel for Appellant-Objectors
AARP Foundation Litigation
601 E Street, NW
Washington, DC 20049

April A. Newbauer
The Legal Aid Society
Queens Civil Division
120-46 Queens Blvd., 3rd Floor
Kew Gardens, N.Y. 11415

Brian Wolfman
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009

Irv Ackelsberg
Community Legal Service, Inc.
3638 N. Broad Street
Philadelphia, PA 19140

Donna Dougherty
Dionne Woodburn
Legal Services for the Elderly in Queens
97-77 Queens Blvd.
Rego Park, NY 11374

Eugene Licker
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154

Angela T. Bellizzi
Davis Polk & Wardwell
450 Lexington Avenue
Room 2934
New York, NY 10007

Karin E. Fisch
Abbey Gardy, LLP
212 East 39th Street
New York, NY 10016

Martin C. Bryce
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st. Floor
Philadelphia, PA 19103

Amanda Quester