Chapter 6 Credit Overcharges

Michael P. Malakoff has been a member of Malakoff, Doyle & Finberg, P.C. (or its predecessors) since 1971, where he specializes in class action litigation. A 1970 graduate of the University of Pittsburgh Law School, he is a charter member and former Chairman of the Allegheny County Antitrust and Class Action Committee, and has served on the faculty or as a lecturer on class action programs sponsored by the American Bar Association, American Trial Lawyers Association, Practicing Law Institute, Pennsylvania Bar Institute, New York Academy of Trial Lawyers, and the Allegheny County Bar Association. He serves as a member of the Advisory Boards of the RICO Law Reporter and the Class Action Law Reporter. He is also a NACA Charter Board Member and Chairman of the NACA Issues Committee.

Mr. Malakoff is the author of numerous publications including "An Overview of Force-Placed Insurance Suits," Practicing Law Institute, 1996; and "Financial Services Litigation," Practicing Law Institute, 1996. Mr. Malakoff has handled a number of landmark class action cases involving interest/usury installment contract overcharges, mortgage overcharges, forced-placed automobile insurance, misappropriation of insurance benefits, and multiple other claims against lenders and insurance companies. His firm specializes in consumer and Erisa class actions.

The first case (§6.1) involves a claim against a car dealer and the dealer's service contract provider for charging the consumer an excessive price for a service contract where the dealer retained a portion of the price the consumer paid for the service contract. A service contract provides for specified repairs of the automobile under certain conditions. The complaint alleged that the consumer was charged $1180.00 plus interest at 12% per year for the service contract, but that the seller paid the service contract issuer less than that amount and retained the difference. The complaint in § 6.3 avers that this practice violated the motor vehicle sales finance act,[1] the state UDAP statute,[2] the dealer's fiduciary duty to the consumer,[3] and resulted in unjust enrichment.

The second case involves a class action complaint against a finance company for imposing an origination fee in a loan which refinanced its own home loan with the consumer and also charged a $50 annual fee in addition to maximum finance charge. The complaint in § 6.2 alleges that each of those charges violate the state usury as exceeding the maximum permissible interest and violating the unfair and deceptive acts and practices (UDAP) law. See generally National Consumer Law Center, The Cost of Credit § 7.2.2.1 (1995); National Consumer Law Center, Unfair and Deceptive Acts and Practices § 5.1.8.2 (4th Ed. 1997). Section 63 is a brief arguing that the claims involving the origination fee and UDAP should not be dismissed.

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[1] See National Consumer Law Center, The Cost of Credit §§ 2.3.3.4, 7.2.3 (1995).
[2] See National Consumer Law Center, Unfair and Deceptive Acts and Practices § 5.4.5.1 (4th Ed. 1997).
[3] See National Consumer Law Center, The Cost of Credit §§ 8.7.1, 11.8 (1995).

6.1 Amended Complaint

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

OLIVIA NEWTON JOHN, individually and on behalf of all others similarly situated,	)	CODE:
	)	No.
Plaintiff,	)	CIVIL DIVISION
v.	)	AMENDED CLASS ACTION COMPLAINT
GENERAL ELECTRIC CAPITAL WARRANTY CORPORATION; HERITAGE INDEMNITY CORPORATION; CHASE MANHATTAN BANK, USA, N.A.; and MERVIS MOTORS INC., d/b/a WETZEL MOTOR WORKS,	)	FILED ON BEHALF OF OLIVIA NEWTON JOHN
Defendants.	)	

AMENDED CLASS ACTION COMPLAINT

This class action arises out of a scheme to sell motor vehicle service contracts to Pennsylvania car buyers at prices inflated to include car dealer commissions, in violation of Pennsylvania statutory and common law. General Electric Capital Warranty Corporation ("GE Warranty"), a service contractor, engaged in this scheme with Heritage Indemnity Corporation, an insurer of GE Warranty's service contracts (the "GE service contracts"), and Pennsylvania car dealers, including Mervis Motors Inc., d/b/a Wetzel Motor Works ("Wetzel").

Plaintiff John brings this class action on behalf of a class of all Pennsylvania car buyers who financed the purchase of a motor vehicle and a GE service contract through an installment contract.

PARTIES AND THEIR PREDECESSORS IN INTEREST

The Representative Plaintiff, Olivia Newton John, is an adult individual residing at [Address]. On October 24, 1996, she entered into a retail installment contract with Mervis Motors Inc., d/b/a Wetzel Motor Works,

through which she purchased a used vehicle and a GE service contract. *See* Exhibit A.

Defendant, General Electric Capital Warranty Corporation ("GE Warranty"), is incorporated in Delaware and conducts business in Pennsylvania and other states. Its address for service in Pennsylvania is CT Corporation System, [Address]. GE Warranty is a wholly owned subsidiary of the General Electric Company. GE Warranty issues and administers GE service contracts, which Ms. John and other Pennsylvania car buyers have purchased. It is believed and therefore averred that either GE Warranty or its predecessor issued the service contract purchased by Ms. John.

Defendant, Mervis Motors Inc., is incorporated in Pennsylvania with a location at [Address]. Doing business under the fictitious name "Wetzel Motor Works," Mervis Motors Inc. ("Mervis") entered into a retail installment contract with Ms. John, through which it agreed to finance her purchase of a vehicle and a GE service contract. For the purpose of selling GE service contracts to car buyers like Ms. John, Mervis acted as an agent for GE Warranty. In all other capacities, it acted only as a vehicle seller.

Defendant, Chase Manhattan Bank USA, N.A. ("Chase"), is incorporated in Delaware and conducts business in Pennsylvania and other states. It has offices located at [Address]. Chase is the assignee of some of the installment contracts signed by Ms. John and other Pennsylvania car buyers to finance the purchase of a vehicle and a GE service contract.

Defendant, Heritage Indemnity Company ("Heritage"), is incorporated in Delaware and conducts business directly or indirectly through the other Defendants in Pennsylvania. Heritage is a wholly owned subsidiary of the General Electric Company. Heritage insures GE service contracts purchased by Ms. John and other Pennsylvania car buyers.

STATEMENT OF THE CASE

GE Warranty is a multi-million dollar, publicly-traded sales company that issues and administers GE service contracts ("GE service contracts").

GE Warranty sells its service contracts to consumers through car dealers.

Mervis and other Pennsylvania car dealers have sold service contracts for GE Warranty.

Plaintiff believes and therefore avers that GE Warranty's relationships with Mervis and other Pennsylvania car dealers that sell GE service contracts (the "dealer-agents") are governed by written agreements.

Plaintiff believes and therefore avers that these written agreements give rise to an agency relationship between GE Warranty and its dealer-agents, because GE Warranty engaged the dealer-agents to sell its service contracts subject to its right of control and because the dealer-agents accepted the tasks accordingly.

Plaintiff believes and therefore avers that GE Warranty is the principal in these agency relationships.

Generally, under the written agreement governing the relationship between a service contractor and a car dealer who sells the service contracts, the car dealer undertakes numerous obligations to the service contractor, such as duties to:

- Use sales materials and blank form contracts provided by the service contractor;

- Follow instructions, procedures, and underwriting rules and guidelines set by the service contractor;

- Notify the service contractor of all contracts sold and/or deliver them to the service contractor, within the required time; and

Deliver payments to the service contractor within the required time.

1. Generally, under such written agreements, the service contractor retains substantial control over the sale and administration of the service contracts, such as the rights to:

- Set and modify the instructions, procedures, and underwriting rules that govern the sale of the service contracts;

- Set and modify the instructions, procedures, and underwriting rules that govern the implementation of the service contracts;

- Reject, recall, return, or terminate service contracts that were not issued in accordance with the governing instructions, procedures, and underwriting rules; and

Determine whether and how to satisfy a service claim.

2. Plaintiff believes and therefore avers that GE Warranty's written agreements with Mervis and other Pennsylvania car dealers confer rights and duties similar to these, or other rights and duties, that give rise to an agency relationship.

3. On October 24, 1996, Mervis, acting as GE Warranty's agent, sold Olivia Newton John a GE service contract for $1,180.00, which it thereafter financed. In this connection, Ms. John entered into a retail installment contract with Mervis, through which she financed both a motor vehicle and the GE service contract at an annual percentage rate of twelve percent (12%).

4. Ms. John filled out an application for the service contract, which lists GE Warranty as the "Obligor" under the service contract, and Heritage Indemnity as the insurer of the service contract. *See* Exhibit B.

5. Under its retail installment contract with Ms. John, Mervis was required to deliver all of the $1,180.00 paid by Ms. John to GE Warranty or its agent as payment for the GE service contract.

6. Plaintiff believes and therefore avers that Mervis retained or received a potion of the $1,180.00 sale price as a commission or other profit on the sale of the service contract to Ms. John.

7. Plaintiff believes and therefore avers that Mervis and the other Pennsylvania dealer-agents retained or received part of the sale price for each of the GE service contracts sold to the Class Members.

8. GE Capital Warranty and Heritage Indemnity also received part of the service contract sale price charged to each Class Member.

9. Mervis and each of the other car dealers were acting within the scope of their authority as GE Warranty's agents at all relevant times insofar as selling GE service contracts to Class Members.

CLASS ALLEGATIONS

10. This action is brought as a class action pursuant to Pa. Civ. R.P. § 1701 *et seq.*, on behalf of all Pennsylvania car buyers who financed both the purchase of a motor vehicle and a GE service contract through an installment contract within six (6) years of the filing date of this Class Complaint.

11. The Class is believed to include thousands of Pennsylvania car buyers and is, therefore, so numerous as to make it impracticable to bring all members of the respective class before the Court. The exact number of car buyers is unknown to the Plaintiff, Ms. John, but may be determined from the records maintained by the Defendants. In many instances, such persons either are unaware that claims exist on their behalf or have knowledge of their potential claims, but have sustained damages in

amounts too small to justify the expense and effort required to bring suit separately. These damages, addressed collectively through the class action mechanism, are substantial enough to justify legal action.

12. Common questions of law and fact affect the rights of each member of the Class. Among the common questions of law and/or fact are:

1. Did Mervis and other car dealers who sold GE service contracts violate the Pennsylvania Motor Vehicle Sales Finance Act, 69 P.S. § 601 *et seq.*, by charging car buyers more for GE service contracts than the car dealer "expends or expects to expend therefor?"

2. Did Mervis and other car dealers who sold GE service contracts violate the Pennsylvania Unfair and Deceptive Trade Practice Act, 73 P.S. § 201-1 *et seq.*, by: (1) failing to disclose to Ms. John and the Class Members that they had retained part of the purchase price of the GE service contracts; and (2) retaining part of the purchase price of the GE service contracts?

3. Did Mervis and other car dealers who sold GE service contracts breach their fiduciary duties to Ms. John and the Class Members by directly or indirectly retaining part of the purchase price of the GE service contracts they sold?

4. Is Chase liable under the FTC Notice for the statutory violations and breaches of fiduciary duty of Mervis and other car dealers who sold GE service contracts to the Class Members and assigned their installment contracts to Chase?

5. Is GE Warranty liable under the doctrine of respondeat superior for the statutory violations and breaches of fiduciary duty of Mervis and car dealers who sold GE service contracts to Class Members?

6. Are the Defendants liable for unjust enrichment, on the ground that the GE service contracts are void, when none of the Defendants are authorized to sell this type of insurance in Pennsylvania?

13. Plaintiff John will assure the adequate representation of all members of the class. She has no conflict with Class Members in the maintenance of this action, and her claims are identical or at least typical of claims of the Class Members.

14. Plaintiff John has no relationship with Defendants except as set forth in this Amended Class Complaint. Her interests in this action are

antagonistic to Defendants' interests, and she will vigorously pursue the class claims. She is aware that she cannot settle this action without Court approval.

15. Plaintiff John can acquire the financial resources to litigate this action. Undersigned counsel has agreed to pay all reasonable and necessary costs to litigate this action.

16. Undersigned counsel are experienced in litigating class actions and have handled numerous consumer class actions in the state and federal courts. Counsel are handling this case on a contingent basis and will receive compensation for their professional services only as awarded by this Court.

17. A class action provides a fair and efficient method of adjudicating this controversy. Plaintiff John and the Class Members have substantive claims that are similar, if not identical, in all material respects and will require evidentiary proof of the same kind and application of the same law. As Defendants have treated and are treating all members of the Class in a similar manner, equitable and declaratory relief are appropriate with respect to the Class.

18. There are no unusual legal or factual issues which would cause management problems not normally and routinely handled in class actions. Damages may be calculated with mathematical precision.

19. Because most members of the Class either do not know that their rights have been violated or could not economically justify the effort and expense required to litigate their individual claims for relatively small damages, a class action is the only practical proceeding in which they could recover. As a result of the doctrine of *stare decisis*, individual actions could substantially impair the rights of the putative Class Members and spawn inconsistent results that require Defendants to treat similarly situated Class Members differently.

20. Plaintiff John is unaware of any other similar litigation against Defendants, and this action will further the public policies underlying Pennsylvania's Motor Vehicle Sales Finance Act, 69 P.S. § 201-1 *et seq*.

21. This Court is an appropriate forum since Defendants do business within this forum.

COUNT ONE

PENNSYLVANIA MOTOR VEHICLE SALES FINANCE ACT CLAIMS AGAINST DEFENDANT MERVIS

A. Under the Motor Vehicle Sales Finance Act, a Car Dealer Cannot Directly or Indirectly Receive Part of the Sale Price of a GE Service Contract

22. The allegations contained in the preceding paragraphs are incorporated.

23. The Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 619 and § 631, strictly limits the finance and other charges a car dealer may contract for and receive through an installment sale contract ("installment contract"). Section 631 of the MVSFA provides, *inter alia*:

> *A licensee under this act shall not charge, contract for, collect or receive from the buyer, directly or indirectly, any further or other amount for costs*, charges, examination, appraisal, service, brokerage, commission, expenses, interest, discount fees, fines, penalties or other thing of value in connection with the retail sale of a motor vehicle under an installment sale contract in excess of the cost of insurance premiums, other costs, the finance charges, refinance charges, default charges, recording and satisfaction fees, court costs, attorney's fees and expenses of retaking, repairing and storing a repossessed motor vehicle which are authorized by the provisions of this act. (Emphasis added).

24. Under the MVSFA, a car dealer may extend credit to a car buyer to finance service contracts. However, Section 618(d) of the MVSFA prohibits the car dealer from directly or indirectly receiving part of the sale price:

> *Such other costs paid or payable by the buyer shall not exceed the amount which the seller expends or intends to expend therefor*. Any such costs which the seller has collected from the buyer, or which have been included in the buyer's obligation under the installment sale contract which are not disbursed by the seller, as contemplated, shall be immediately refunded or credited to the buyer. (Emphasis added).

25. The MVSFA does not authorize a car dealer to charge a car buyer more for a service contract than the "seller expends or intends to expend therefor."

26. Mervis and the other Pennsylvania dealer-agents violated Section 618 of the MVSFA by: (1) charging car buyers more than it expended or intended to expend for GE service contracts; (2) contracting to finance excessive GE service contract charges and/or (3) receiving more than it expended or intended to expend.

B. A Service Contract Does Not Qualify as Insurance Under the MVSFA

27. One statutory exception to the MVSFA's general prohibition that the "costs paid or payable by the buyer shall not exceed the amount which the seller expends or intends to expend." is that Pennsylvania car dealers may receive a commission on certain types of insurance they sell to car buyers, which represents the price difference between the "premium" and the actual cost. *See*, *e.g.*, 69 P.S. § 614(4) and (7); 69 P.S. § 631.

28. The GE service contract does not qualify as insurance on which car dealers may receive a commission under the MVSFA. The MVSFA only authorizes car dealers to sell insurance "limited to insurance against substantial risk of damage, destruction, or theft of such motor vehicle" that is "written for the dual protection of the buyer and of the seller or subsequent holder. . ." MVSFA 69 P.S. § 617. The GE service contract does not fall within the scope of this limited type of insurance. Therefore, Mervis and the other Pennsylvania dealer-agents violated the MVSFA by charging car buyers more for GE service contracts than it expended or intended to expend.

29. Alternatively, if the GE service contract does qualify as insurance, the entire sale was void because GE Warranty, Mervis and other Pennsylvania dealers-agents were not authorized to sell this type of insurance in Pennsylvania.

30. Plaintiff John and the other Class Members have sustained damages as a result of Mervis' and the other dealer-agents' violations of the MVSFA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the Class she represents, requests damages against Mervis equal to that portion of the GE service contract sale price retained by Mervis, plus a pro rata share of the finance charges Mervis car buyers have paid on charges for the GE service contracts. Finally, Defendant Mervis should be enjoined from retaining or receiving any portion of the GE service contract sale price as profit, income, or commission.

COUNT TWO

MVSFA CLAIMS AGAINST DEFENDANT CHASE UNDER THE FTC NOTICE TO CONSUMER CONTRACT HOLDERS

31. The allegations contained in the preceding paragraphs are incorporated.

32. Chase is the assignee of some, but not all, of the Class Members' installment contracts with car dealers that were used to finance the purchase of GE service contracts. Chase was the assignee of Mervis' installment contract with Ms. John.

33. Ms. John's installment contract with Mervis contained the following notice, which is required by the Federal Trade Commission (the "FTC notice"):

> 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 SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

34. Each of the installment contracts Chase was assigned contained an identical or virtually identical FTC notice.

35. Under the FTC notice, Chase, the assignee or "holder" installment contracts entered into by Ms. John and other Class Members, is subject to all of the claims and defenses that Ms. John and other Class Members can assert against the car dealers who assigned their installment contracts to Chase.

36. As the holder of installment contracts entered into by Ms. John and other Class Members, Chase is liable to the same extent as Mervis and other car dealers that violated the MVSFA by directly or indirectly receiving part of the sale price of GE service contracts.

37. John and the other Class Members have been damaged as a result of their car dealers' violations of the MVSFA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represents, requests damages against Chase equal to that portion of the GE service contract sales price retained by Mervis and other car dealers who assigned their installment contracts to Chase, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Finally, Defendant Chase should also be enjoined from collecting from service contract buyers any portion of the GE service contract

sale price that is received or retained by car dealers-agents as profit, income, or commission.

COUNT THREE

MVSFA CLAIMS AGAINST DEFENDANT GE WARRANTY AS A PRINCIPAL LIABLE FOR THE ACTS OF ITS AGENTS, MERVIS AND OTHER CAR DEALERS

38. The allegations contained in the preceding paragraphs are incorporated.

39. The written agreements governing GE Warranty's relationships with Mervis and the other Pennsylvania car dealers who sold GE service contracts gave rise to an agency relationship between GE Warranty and its dealer-agents.

40. GE Warranty is liable as a principal for actions of its dealer-agents that were within the scope of the agency.

41. As Mervis and the other Pennsylvania dealer-agents were acting within the scope of their authority as GE Warranty's agents when they violated the MVSFA, GE Warranty is liable for their MVSFA violations.

42. Representative Plaintiff John and the other Class Members have been damaged as a result of their car dealers' violations of the MVSFA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represents, requests damages against GE Warranty equal to that portion of the GE service contracts retained by Mervis and the other car dealers, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Finally, GE Warranty should be enjoined from collecting from buyers any portion of the GE service contract sale price that is received or retained by car dealers-agents as profit, income, or commission.

COUNT FOUR

BREACH OF FIDUCIARY DUTY CLAIMS AGAINST DEFENDANT MERVIS

43. The allegations contained in the preceding paragraphs are incorporated.

44. With respect to the sale and financing of the GE service contracts, Mervis and the other Pennsylvania dealer-agents had fiduciary responsibilities both to Ms. John and the other Class Members.

45. In Pennsylvania, when one party receives money to be applied to a particular purpose for the benefit of another party, a trust relationship generally arises, and the party who agrees to pay money to another or for a particular purpose is a trustee for purposes of making the payment.

46. Mervis and the other Pennsylvania dealer-agents became trustees for the purpose of delivering the amounts Ms. John and other Class Members agreed to pay for their GE service contracts to GE Warranty.

47. As a trustees, Mervis and the other Pennsylvania dealer-agents owed fiduciary duties to Ms. John and other Class Members, which they breached by directly or indirectly retaining part of the GE service contract sale prices.

48. Ms John and the other Class Members have suffered damages, and Mervis and other dealer-agents have benefitted from its breach of their fiduciary duties.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class represents, requests damages against Mervis equal to that portion of the GE service contracts retained by Mervis, plus a pro rata share of the finance charges Mervis's car buyers have paid on charges for the GE service contracts. Finally, Mervis should also be enjoined from receiving or retaining any portion of the GE service contract sale price as income, commission, or profit.

COUNT FIVE

BREACH OF FIDUCIARY DUTY CLAIMS AGAINST DEFENDANT CHASE UNDER THE FTC NOTICE

49. The allegations contained in the preceding paragraphs are incorporated.

50. Chase is or was the holder of installment contracts entered into by Plaintiff John and other Class Members, and under the FTC notice is therefore liable for the breaches of fiduciary duty committed by Mervis and the other car dealers who assigned their installment contracts to Chase, to

the same extent as if Chase itself had committed the breaches of fiduciary duty.

51. Ms. John and the other Class Members have suffered damages, and Mervis and other dealer-agents have benefitted from its breach of their fiduciary duties.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represents, requests damages against Chase equal to that portion of the GE service contracts retained by Mervis and the other car dealers, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Finally, Chase should be enjoined from collecting any portion of the GE service contract sale price received or retained by the car dealer as income, commission, or profit.

COUNT SIX

BREACH OF FIDUCIARY DUTY CLAIMS AGAINST DEFENDANT GE WARRANTY AS A PRINCIPAL LIABLE FOR THE ACTS OF ITS AGENTS, MERVIS AND OTHER CAR DEALERS

52. The allegations contained in the preceding paragraphs are incorporated.

53. The written agreements governing GE Warranty's relationships with Mervis and the other Pennsylvania car dealers who sold GE service contracts gave rise to an agency relationship between GE Warranty and its dealer-agents.

54. GE Warranty is liable as a principal for actions of its dealer-agents that were within the scope of the agency.

55. As Mervis and the other dealer-agents were acting within the scope of their authority as GE Warranty's agents when they breached their fiduciary duties to the Class Members, GE Warranty is liable for breaches of fiduciary duty.

56. Further, GE Warranty aided and abetted Mervis and its other dealer-agents to breach their fiduciary duties. GE Warranty provided both substantial assistance and encouragement to its dealer-agents in their breach of their fiduciary duties, by contracting to pay them for their service contract sales by allowing them to retain or receive a portion of each service contract sale price.

57. Representative Plaintiff John and the other Class Members have been damaged as a result of their car dealers' breaches of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represent, requests damages against GE Warranty equal to that portion of the GE service contracts retained by Mervis and the other dealer-agents, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Finally, GE Warranty should be enjoined from collecting any portion of the GE service contract sale price received or retained by the car dealer as income, commission, or profit.

COUNT SEVEN

CLAIMS AGAINST DEFENDANT MERVIS FOR VIOLATIONS OF PENNSYLVANIA'S UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

58. The allegations of the preceding paragraphs are incorporated.

59. Under Pennsylvania's Unfair and Deceptive Trade Practice Act ("UDTPA"), 73 P.S. § 201-1 *et seq.*, it is an unfair and deceptive practice to engage in any "fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2 (4)(xxi).

60. Mervis and the other dealer-agents violated § 201-2 (4)(xxi) by: (1) failing to disclose to Ms. John and the Class Members that they retained part of the GE service contract sale price; and (2) in fact, retaining part of the GE service contract sale price.

61. Ms. John and other car buyers relied on the integrity of Mervis and other dealer-agents to disclose financial stake in the sale of GE service contracts.

62. Alternatively, since Mervis and other dealer-agents violated their fiduciary duties to Ms. John and other car buyers by directly or indirectly retaining part of the GE service contract sales price, Ms. John's and other car buyers' reliance must be presumed.

63. Ms. John and the other car buyers have been injured as a result of Mervis' and other dealer-agents' violations of the UDTPA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represents, requests damages against Mervis equal to that portion of the GE service contracts retained by Mervis, plus a pro rata share of the finance charges Mervis car buyers have paid on charges for the GE service contracts. Because the violations of the Pennsylvania UDTPA were willful, the requested damages should be tripled as provided for by 77 P.S. § 201-9.2 and in no event less than $100. Finally, Mervis should be enjoined from receiving or retaining any portion of the GE service contract sale price as income, commission, or profit.

COUNT EIGHT

UDTPA CLAIMS AGAINST DEFENDANT CHASE UNDER THE FTC NOTICE

64. The allegations of the preceding paragraphs are incorporated.

65. Chase is liable for the UDTPA violations of Mervis and the other dealer-agents that assigned installment contracts to Chase under the FTC notices contained in the those contracts.

66. Ms. John and the other car buyers have been injured as a result of Mervis' and other dealer-agents' violations of the UDTPA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she seeks to represent, requests damages against Chase equal to that portion of the GE service contracts retained by Mervis and the other dealer-agents who assigned their contracts to Chase, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Because the violations of the Pennsylvania UDTPA were willful, the requested damages should be tripled. Finally, Chase should be enjoined from collecting any portion of the GE service contract sale price received or retained by the car dealer as income, commission, or profit.

COUNT NINE

UDTPA CLAIMS AGAINST DEFENDANT GE WARRANTY AS A PRINCIPAL LIABLE FOR THE ACTS OF ITS AGENTS, MERVIS AND OTHER CAR DEALERS

67. The allegations of the preceding paragraphs are incorporated.

68. The written agreements governing GE Warranty's relationships with Mervis and the other Pennsylvania car dealers who sold GE service contracts gave rise to an agency relationship between GE Warranty and its dealer-agents.

69. GE Warranty is liable as a principal for actions of its dealer-agents that were within the scope of the agency.

70. As Mervis and the other dealer-agents were acting within the scope of their authority as GE Warranty's agents when they violated the UDTPA, GE Warranty is liable for their violations of the UDTPA.

71. Representative Plaintiff John and the other Class Members have been damaged as a result of their car dealers' violations of the UDTPA.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff John, individually and on behalf of the class she represents, requests damages against GE Warranty equal to that portion of the GE service contracts retained by Mervis and the other dealer-agents, plus a pro rata share of the finance charges car buyers have paid on charges for the GE service contracts. Because the violations of the Pennsylvania UDTPA were willful, the requested damages should be tripled as provided for by 73 P.S. § 201-9.2 and in no event less than $100. Finally, GE Warranty should be enjoined from collecting any portion of the GE service contract sale price received or retained by the car dealer as income, commission, or profit.

COUNT TEN

UNJUST ENRICHMENT CLAIM AGAINST DEFENDANTS MERVIS, GE WARRANTY, CHASE, AND HERITAGE

72. The allegations of the preceding paragraphs are incorporated.

73. If the GE service contracts are deemed insurance, they are void because none of the Defendants was authorized to sell this type of insurance in Pennsylvania. In that case, Defendants Mervis, GE Warranty, Chase, and Heritage improperly charged Ms. John and the other Class Members for the service contracts, improperly collected money from Ms. John and the other Class Members to pay for the service contracts, and improperly retained such money.

74. Therefore, if the GE service contracts are deemed insurance, Defendants Mervis, GE Warranty, Chase, and Heritage have been unjustly enriched by the amounts Plaintiff John and the Class Members paid for their GE service contracts.

75. Representative Plaintiff John and the other Class Members have been damaged as a result of Defendants' unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff John, individually and on behalf of the class she represents, requests this Court to: (1) require Defendants to account for the monies paid by Ms. John and the other Class Members for GE service contracts; and (2) return the monies that they paid for the GE service contracts and pro-rata interest charges, through imposition of a constructive trust and/or restitution of the monies.

VERIFICATION

I, Olivia Newton John, have read the foregoing **Amended Class Action Complaint** and the facts contained therein are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which statute provides that false statements are subject to criminal penalties.

Olivia Newton John

CERTIFICATE OF SERVICE

I hereby certify that on the *15th* day of May 2000, a true and correct copy of the foregoing ***Amended Class Action Complaint*** was served upon the following individuals in the manner set forth below:

Via U.S. Mail, postage prepaid:
Attorney for Defendant
Street
City, State 123456

Via facsimile:

Attorney for Defendant
Street
City, State 123456

Counsel for Defendants General Electric Warranty Corporation and Heritage Indemnity Corporation

Via U.S. Mail, postage prepaid:

Attorney for Defendant
Street
City, State 123456

Counsel for Defendant Chase Manhattan Bank USA, N.A.

Attorney for Plaintiff

6.2 Second Amended Complaint

IN THE TWENTIETH JUDICIAL CIRCUIT,
LEE COUNTY, OF THE STATE OF FLORIDA

HANK WILLIAMS and CINDY WILLIAMS, on behalf of themselves and all others similarly situated, Plaintiffs, v. HOUSEHOLD FINANCE CORPORATION III, Defendant.	)	No. CLASS REPRESENTATION

SECOND AMENDED COMPLAINT

1. This is a class action filed on behalf of Florida borrowers who have contracted for lines of credit or loans with Household Finance Corporation III ("Household") on which they were charged interest at an annual percentage rate of 18% and, in addition, an annual fee. The class includes borrowers who have been charged a so-called loan origination fee on a line of credit or loan that was used to pay off a prior Household loan.

JURISDICTION

76. This Court has exclusive original jurisdiction under to Fl. Stat. § 26.012(2)(a), because this action involves an amount in controversy that exceeds the sum of $15,000, exclusive of interest, costs and attorney's fees and, therefore, is not cognizable in the county courts. *See* Fl. Stat. § 34.01(1)(c)(4).

77. The Twentieth Judicial Circuit has jurisdiction because Mr. and Mrs. Williams resided in Lee County, Florida at all relevant times, and Household has a principal place of business in Lee County, Florida.

PARTIES

4. Plaintiffs Hank Williams and Cindy Williams ["the Williamses"] have resided, at all relevant times, at [Address]. They bring this action on behalf of themselves and all other Florida borrowers similarly situated.

5. Defendant Household Finance Corporation III is a consumer finance company incorporated in Florida, with a principal place of business at [Address].

6. The Williamses have had protracted loan relationships with Household that extended back to at least October 29, 1985. During this extended time period, Household engaged in the practice of "loan flipping" the Williamses into and out of Household loans, charging them substantial costs and expenses for each "flip." The Williamses do not have a complete record of their loan transactions with Household. An account of the Williams' five (5) known loan transactions with Household is set forth below.

7. On October 29, 1985, the Williamses signed a revolving loan agreement with Household ("Loan 1") secured by a mortgage on their personal residence (the "Mortgage 1"). At that time, they received an initial loan advance from Household of $9,967.82. *See* Note at Exhibit A and Amendment to Note at Exhibit B. Household assigned Loan 1 No. 313200-20-777574. The initial interest rate on Loan A was 9.5%. Mortgage 1 was for a face amount of $11,600. *See* Mortgage at Exhibit C. The Williamses, in connection with this loan, paid various mortgage-related costs and expenses to Household and others.

8. Less than two weeks later, on November 13, 1985, the Williamses signed a second revolving loan agreement with Household ("Loan 2"), which was also secured by a mortgage on their home ("Mortgage 2"). *See* Second Mortgage, Exhibit D. Loan 2 was assigned loan No. 31320-17-777574. The interest rate on Loan 2 is currently unknown. Mortgage 2 was for a face amount of $18,800. For a second time, the Williamses paid various mortgage-related costs and expenses to Household and others.

9. Plaintiffs have not yet established how much Household charged, or how much the Williamses actually paid, on Loans 1 and 2. The Williamses have been unable to locate copies of documents

related to Loans 1 and 2, and also have been unable to obtain copies of the files for these loans from Household. In this connection:

10. When the Williamses attempted to obtain their loan files related to Loan 1 from Household, Household responded that, "We were unable to locate your loan papers. Please accept this letter as a paid in full receipt for your account number NA, in the amount of $11,600 and made on 10/29/95." *See* Exhibit E.

11. When the borrowers attempted to obtain their loan files related to Loan 2 from Household, Household again responded that it was "unable to locate [the Williams' loan] papers on "account number 31320-17-777574 in the amount of $18,800," Loan 2. *See* Exhibit F.

12. On or about April 22, 1999, Household filed a satisfaction of mortgage on the Williams' first mortgage. *See* Exhibit G. On or about June 14, 1999, Household filed a satisfaction of mortgage on the Williams' second mortgage. *See* Exhibit H.

13. On or about October 15, 1996, Household again "loan flipped" the Williamses into another revolving loan, which provided the Williamses a line of credit up to $8,000 ("Loan 4"). *See* Loan No. 313200-08-901667. *See* Exhibit I.

14. Loan 4 was used to pay a previous Household loan to the Williamses ("Loan 3"), about which Plaintiffs have no additional information. Household assigned Loan 3 the loan No. 31320011832727. The Williamses owed $4,052.76 on Loan 3 when they entered into Loan 4. Household distributed Loan 4 as follows:

To: HFC On Acct. No. 31320011832727	$4,052.76
To: HFC Annual Fee	$25.00
To: State of Florida, Documentary Stamps	$28.00
Cash or Check to Borrower	*$1,094.24*
Total Advances	$5,200.00

See Exhibit I.

15. Under Loan 4, the Williamses owed Household $5,848.78. *See*1/2/97 account statement (amount owed is shown next to due date) at Exhibit J. The Williamses paid Household an APR of 19.8% on this loan.

16. Household's February 2, 1997 statement showed that the Williamses owed Household $5,838.69 on Loan 4. *See* Exhibit K. Household's March 8, 1997 statement showed that, on February 20, 1997, Household credited the Williamses $5,884.17, fully prepaying Loan 4 through yet another loan "flip." *See* Exhibit L. Household provided a new loan to the Williamses ("Loan 5"), assigned Loan No. 313200-12-10036304. *See* Exhibit M. Loan 5 was also secured by a mortgage on their home. *See* Exhibit N.

17. On Loan 5, Household charged the Williamses both a loan origination fee of 4% ($1,000) *and* an annual fee of $50.00. *See* Exhibit O. The initial interest rate was calculated by a 13% margin over the prime rate as announced in the *Wall Street Journal*, i.e., ____%. The amount of the mortgage (and the line of credit) was $25,000. *See* Exhibit L.

Household's Loan Flipping Was Also Illegal

78. Household distributed the proceeds of Loan 5 as follows:

To: HFC On Acct No. 31320008901667	$5,884.17
To: ATT Univsl	$1,703.00
To: AVCO	$4,360.00
To: Bank NY	$3,983.00
To: Bealls	$262.00
To: Fashionbug	$454.00
To: Funb	$3,731.00
To: Sears	$416.00
To: HFC Annual Fee	$50.00
To: HFC Origination Fee	$1,000.00
Office Fees (Paid for Perfecting Security or for Recording Documents)	$24.00
	$87.00

Document Stamps	$60.00
Personal Property Tax	$*3,005.33*
Cash or Check to Borrower	$25,000.00
Total Advance(s)	

See Exhibit M.

79. The single largest creditor that benefited from Household's loan was Household. (Exhibit M). By flipping earlier loans into Loan 5, Household thus was able to charge:

(1) A $1,000 loan origination fee (4% of $25,000); and

(2) A $50 annual fee; and

(3) Interest at the rate of 18% on the unpaid loan balance that included the $1,000 loan origination fee and the $50 annual fee; and

(4) A commission on the insurance sold to the Williamses; and finally,

(5) Repayment on its loan at Account No. 31320008901667, in the amount of $5,884.17.

80. Under Florida law, a "loan origination fee [up to 4%] may be charged by a lender over and above the 18% per annum interest ceiling." *See* Fl. Stat. § 494.001(3). On Loan 5, Household charged the Williamses $1,000.00, or 4% of $25,000. However, as set forth below, $5,884.17 of this $25,000 did not represent a new loan, and therefore, Household could not charge a loan origination fee on this portion of the $25,000 revolving line of credit.

81. A substantial part of the principal of Loan 5 was used to prepay Loan 4, and, therefore, that part of Household's so-called $1,000 loan origination fee constituted a prepayment fee on Loan 4. That is, the loan origination fee was calculated on a principal amount of $25,000, which included the $5,884.17 pay-off on Loan 4. Therefore, $253.36 ($5,884.17 x 4%) of the $1000 origination fee was actually a fee for prepaying Loan 4. Household thus charged the Williamses at least $235.36 to prepay Loan 4.

82. Household retained $6,934.17 or over 27% of the $25,000 principal of Loan 5, calculated as follows:

Unpaid balance on prior loan	$5884.17
Loan origination fee	$1000.00
Annual fee	$50.00
	$6934.17

83. Other creditors were paid off by Household's February 20, 1997 loan, but in substantially smaller amounts than the amount Household retained.

84. The following chart summarizes Household's five known loans to the Williamses, beginning in October, 1985:

Loan Number	Household Loan Number	Date of Loan	Amount
1	313200-00-777574	October 29, 1985	$11,600
2	31320-17-777574	November 13, 1985	$18,800
3	313200-11-832727	Unknown	Unknown
4	3132000-08-901667	October 16, 1996	$8,000
5	313200-12-	February 20, 1997	$25,00

	100363		0

Household's Annual Fee of $50 Was Illegal

85. Prior to 1980, Fl. Stat. § 687.03(1) did not include "lines of credit" within its scope. However, in 1980, Fl. Stat. § 687.03(1) was expanded to include lines of credit (and charges for lines of credit) within the 18% per annum interest ceiling. Under Fl. Stat. § 687.03(1), it is "unlawful for any person . . . to reserve, charge or take for any . . . line of credit . . . a rate of interest greater than the equivalent of 18% per annum simple interest . . . ."

86. On Loan 5, Household contracted for and charged the Williamses an "annual fee" of $50 and in addition, contracted to charge additional annual fees of $50 in each subsequent year that the Williamses retained their $25,000 line of credit. Household's contract with the Williamses to charge a $50 annual fee was illegal under Fl. Stat. § 687.03(1).

CLASS REPRESENTATION ALLEGATIONS

87. This legal action is brought as a class action pursuant to Fl. R. Civ. Proc. 1.220(b)(3) on behalf of all Florida residents who obtained lines of credit or loans through Household with an annual percentage rate of 18%, and in addition were charged an "annual fee," and who made a payment on their loan obligation within five (5) years of the commencement of this legal action. The class includes Florida borrowers who were charged a so-called loan origination fee on a loan that was used in whole or in part to refinance a previous Household loan.

88. Class Plaintiffs are so numerous as to make it impracticable to bring all members of the class before the Court. The exact number of Florida borrowers to whom Household has charged "annual fees" in connection with a line of credit or loan is unknown, but can be determined from records maintained by Household. In addition, the exact number of Florida borrowers with whom Household has refinanced prior Household loans to enable it to generate loan cancellation fees is also unknown, but can also be determined from Household's records. In many instances, such persons are unaware that claims exist on their behalf. Even if some class members have knowledge of their claims, their monetary damages are too small to justify the expense of individual lawsuits. However, if their damages are aggregated, the amount at issue makes litigation financially feasible.

89. Common questions of fact and law exist, which affect the rights of each member of the Plaintiff class and predominate over questions unique to individual borrowers. Among the predominating questions of fact and/or are:

(6) Did Household violate Fl. Stat. § 687.03(1) by charging, reserving or collecting a sum of money greater than 18% simple interest when, in addition, it charged and collected from borrowers, annual fees?

(7) Did Household violate Fl. Stat. § 687.03(1) by charging, receiving and/or collecting a sum of money greater than 18% simple interest when it imposed loan cancellation fees on borrowers (i.e., the so-called loan origination fees) when it used borrower's loan money to prepay one or more of its earlier loans?

(8) Did Household violate Florida's Deceptive and Unfair Trade Practices Act, Fl. Stat. § 501.201, *et seq.*, by loan flipping to generate loan cancellation fees?

90. The Williamses will assure that all class members will be adequately represented. They have no conflict with other class members in the maintenance of this class action. Their claims are not only typical of, but are identical to the claims of the class. The Williamses have no relationship with Household except as debtors. They are aware that they cannot settle this action without court approval. Their interests in this action are antagonistic to the interests of Household, and they will vigorously pursue the class claims.

91. The Williamses have an agreement with undersigned counsel, which provides that counsel will advance all reasonable and necessary costs to litigate this action contingent on the success of the action.

92. Retained counsel are experienced in litigating class actions and have handled many consumer class actions against financial institutions in both state and federal courts. Counsel are handling this case on a contingent basis and will receive compensation for their professional services only as awarded by the Court.

93. A class action provides a fair and efficient method of adjudicating this controversy. The substantive claims of the Williamses are identical to those of the class plaintiffs and will require evidentiary proof of the same kind and application of the same law.

94. The class claims do not involve any unusual legal or factual issues which would cause management problems not normally and routinely handled in class actions. Damages may be calculated with mathematical precision from information Household maintains in its records, so the cost of administering a recovery can be minimized.

95. A class action is the only proceeding through which class members can recover their damages, because class members are either unaware that their rights have been violated or would be unable to secure counsel to pursue their relatively small individual claims.

96. This Court is an appropriate legal forum, because the Williamses and many class members reside in this judicial district and Household conducted business in this judicial district during the class period.

COUNT I

HOUSEHOLD'S VIOLATION OF FLORIDA'S USURY STATUTE § 687.03

Plaintiffs' Annual Fee Claims

97. The averments set forth in the preceding paragraphs in the Complaint are incorporated.

98. Prior to the amendment of Fl. Stat. § 687.03(1) in 1980, this provision did not include within its scope the phrase "line of credit." On and after 1980, Florida Statute § 687.03(1) provided in relevant part:

> [I]t shall be usury and unlawful for any person . . . to reserve, charge, or take for any loan, advance of money, *line of credit*, forbearance to enforce the collection of money, or other obligation a rate of interest greater than the equivalent of 18 percent per annum simple interest, either directly or indirectly, by way of commission for advances, discounts, or exchange, or by any contract, contrivance or device whatever whereby the debtor is required or obligated to pay a sum of money greater than the actual principal sum received together with interest at the rate of the equivalent of 18 percent per annum simple interest. (Emphasis added).

99. Household violated Fl. Stat. § 687.03(1) by charging, reserving or collecting in connection with its lines of credit, in addition to its annual percentage rate of 18% an annual fee of $50.

100. Household willfully reserved, charged and collected from class members more than the 18% legal rate on its lines of credit, in violation of Fl. Stat. § 687.04, which provides in relevant part:

> Any person . . . willfully violating the provisions of s. 687.03 shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity; and when said usurious interest is taken or reserved, or has been paid, then and in that event the person who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest shall forfeit to the party from whom such usurious interest has been reserved, taken, or exacted in any way double the amount of interest so reserved , taken, or exacted.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, the Williamses, on behalf of themselves and all others similarly situated class members, respectfully request this Court to grant the following relief:

a. Damages equal to double the alleged interest wrongfully charged by and paid to Household;

b. Forfeiture of all interest owing Household on any line of credit or loan; and

c. Such other relief, including costs and expenses, that as this Court deems just and proper.

COUNT II

HOUSEHOLD'S VIOLATION OF FLORIDA'S USURY STATUTE § 687.03
Plaintiffs' Loan Cancellation Fee Claims

101. The averments in the preceding paragraphs are incorporated.

102. Household had a practice of "loan flipping," and in such transactions, it charged borrowers a so-called loan origination fee on the face amount of a loan agreement even when a substantial part of this money was used to prepay Household on an earlier loan. In connection with Loan 5, for example:

A. Household contracted for and charged the Williamses both a so-called loan origination fee of $1,000 (4% of $25,000) *and* in addition, an annual fee of $50.00. Household retained $1,050 of the $25,000 the Williamses borrowed, but required the Williamses to pay 18% interest on the entire $25,000. The Williamses were thus required to pay 18% on both the $1,000 so-called loan origination fee paid to Household (i.e., $180 for the first year and thereafter so long as the unpaid balance of the line of credit exceeded $1,000) and 18% on the $50 annual fee (i.e., $9.00/year), although the borrowers never had the use of a substantial portion of their loan proceeds.

B. If Household had not loan flipped the Williamses on Loan 5, Household would have only been able to charge a so-called loan origination fee of $764.63 (4% of [$25,000 - $5,884.17]) instead of $1,000, and the Williamses would have saved about $235.37 in so-called loan origination charges in the first year alone. The Williamses, under a non-flipped transaction, in the years thereafter would only have to pay 18% on $764.63 instead of on $1,000 for an additional savings of $42.36 a year.

103. Household, by charging a loan origination fee on loans that in substantial part were used to prepay previous Household loans, was effectively able to obtain more than 18% per annum simple interest on its loan money, and thereby violated Fl. Stat. § 687.3(1).

104. In essence, a borrower that was "loan-flipped" by Household was required to pay an illegal loan prepayment charge.

105. Household systematically engaged in a practice of refinancing or "loan flipping" borrowers like the Williamses into and out of loans, to generate illegal loan prepayments and loan charges.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, the Williamses, on behalf of themselves and all others similarly situated class members, respectfully request this Court to grant the following relief:

a. Damages equal to double the alleged interest wrongfully charged by and paid to Household;

b. Forfeiture of all interest owing Household on any line of credit or loan; and

c. Such other relief, including costs and expenses, as that this Court deems just and proper.

COUNT III

HOUSEHOLD'S VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, § 503.201

106. The averments in the preceding paragraphs are incorporated.

107. Household, by imposing loan prepayment fees (which it mislabeled as "loan origination fees"), engaged in an "unfair" . . . or "unconscionable" practice under Florida Deceptive and Unfair Trade Practices Act, Fl. Stat. § 501.201 which statute provides:

> (3) "Violation of this part" means any violation of this act and may be based upon any of the following:
>
> * * *
>
> (c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition *or unfair, [ ] or unconscionable acts or practices*.

Fl. Stat. § 501.203(3)(c). (Emphasis added).

108. Household had a practice of systematically "loan flipping" to obtain interest charges greater than 18% simple interest. Household's "loan flipping" constituted a contrivance or device for Household to obtain an additional 4% on its pre-existing loans.

109. The Plaintiffs have suffered ascertainable losses of money and property as a result of Household's violations of the Florida Deceptive and Unfair Trade Practices Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the Williamses, on behalf of themselves and all other similarly situated class members respectfully request this Court to grant the following relief:

a. Actual damages pursuant to Fl. Stat. § 501.211;

b. Attorneys' fees and costs pursuant to Fl. Stat. §§ 501.211, 501.2105; and
c. Such other relief as this Court deems necessary and proper.

Dated: February 14, 2000

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true on the 14th day of February 2000, a correct copy of the foregoing ***Second Amended Complaint*** was served upon the following individual, via U.S. Priority Mail, addressed as follows:

Attorney for Defendant
Street
City, State 12345
Telephone

Attorney for Plaintiff