

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO

VS.

JACKSON HEWITT TAX SERVICE,  
INC.

CIVIL ACTION NO. 08-3535  
NEW ORLEANS, LOUISIANA  
WEDNESDAY, APRIL 1, 2009  
11:00 A.M.  
SECTION "R"

**HEARING ON MOTIONS**

BEFORE THE HONORABLE DANIEL E. KNOWLES, III  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF,  
VICKI L. PINERO:

SESSIONS, FISHMAN, NATHAN &  
ISRAEL, LLP  
By: Bryan C. Hartley, Esq.  
Justin H. Homes, Esq.  
Harold Aucoin, Esq.  
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Metairie, Louisiana 70002  
(504) 838-3700

FOR THE DEFENDANT,  
JACKSON HEWITT TAX  
SERVICE, INC., ET AL.:

KELLY DRYE & WARREN, LLP  
By: Andrew S. Wein, Esq.  
Donna L. Wilson, Esq.  
3050 K Street, N.W., Suite 400  
Washington, D.C., 20007  
(202) 342-8887

FOR THE DEFENDANT,  
CRESCENT CITY TAX  
SERVICE, INC.:

BLUE WILLIAMS, LLP  
By: Thomas G. Buck, Esq.  
3421 N. Causeway Blvd., Suite 900  
Metairie, Louisiana 70002  
(504) 831-4091

REPORTED BY:

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OFFICIAL COURT REPORTER  
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Transcript produced by computer aided transcription.

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**P-R-O-C-E-E-D-I-N-G-S**

(WEDNESDAY, APRIL 1, 2009)

(11:00 A.M. - MORNING SESSION)

(COURT CALLED TO ORDER)

THE COURT: Call the case, please.

THE LAW CLERK: Civil Action Number 08-3535. Vicki L.

Pinero versus Jackson Hewitt Tax Service, Inc., et al

Will counsel make their appearance for the record.

MR. SHARTLE: Bryan Shartle on behalf of plaintiff.

THE COURT: Good morning.

MR. HOMES: Justin Homes also with the plaintiff, Your Honor.

MR. AUCOIN: Harold Aucoin on behalf of plaintiff.

MR. WEIN: Andrew Wein on behalf of defendants Jackson Hewitt Tax Service and Jackson Hewitt, Inc.

MS. WILSON: Donna Wilson on behalf of Jackson Hewitt, Inc, and Jackson Hewitt Tax Services.

THE COURT: Good morning.

MR. BUCK: Thomas Buck on behalf of Crescent City Tax Service, Incorporated.

THE COURT: All right, folks. I think we have two motions.

We have plaintiffs leave to file the third amended class action, and we have a motion to stay, is that right, by the defendants?

1 Let's talk about the plaintiff's motion first.

2 MR. SHARTLE: Your Honor, just to bring to speed where  
3 we are. We just left Judge Vance.

4 THE COURT: Yes. What happened?

5 MR. SHARTLE: Judge Vance denied our motion to dismiss  
6 the second amended complaint.

7 The second amended complaint actually asserts three  
8 causes of action, and I'm going let me clarify that.

9 The second amended class action complaint actually  
10 asserts three causes of action. They were attempting to dismiss  
11 all three. The Court denied their motion with respect to the  
12 invasion of privacy claim and the Unfair Trade Practice claim.

13 With respect to the fraud claim, she has granted us 15  
14 days leave to assert some additional facts that she deemed  
15 necessary.

16 With that ruling, we would request that the motion to  
17 stay now be denied.

18 With respect to our motion for leave, obviously we're  
19 going to have to file this third amended class action complaint  
20 in light of Judge Vance's ruling. So what we are actually  
21 seeking to do now is amend some complaint, whether it be by way  
22 of fourth amended complaint or add those causes of action to the  
23 third amended complaint we have to file now, we want to include  
24 in this amended complaint this new cause of action under the  
25 Louisiana Loan Broker Statute. We briefed the cause of action.

1 We believe that it's a viable cause of action and I can go  
2 through the details as to why, Your Honor.

3 THE COURT: That's all right. I've read them.

4 I mean, I read what you submitted, so basically I think  
5 I understand.

6 MR. SHARTLE: Sure.

7 THE COURT: We don't have a scheduling order in this  
8 case yet?

9 MR. SHARTLE: No, they haven't even answered yet.

10 THE COURT: All right. Let's hear from your opponent.  
11 What's your interpretation of Judge Vance's ruling?

12 MR. WEIN: Andrew Wein.

13 First of all, as to what just occurred and the  
14 interpretation as to what we just saw where we came from.

15 Judge Vance ruled from the bench that she did not find  
16 the allegations as to fraud, and presumably as well as she found  
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24 importance of making sure that when one alleges fraud that one  
25 is careful about what specificity with which one does so. So

1 she didn't say anything about what she was ruling, I don't  
2 believe with regard to the invasion of privacy claim. She  
3 didn't rule from the bench on that. Perhaps a ruling would be  
4 forthcoming, but in any event, I would certainly think it's a  
5 stretch to interpret that as a denial of our motion to dismiss.

6 THE COURT: Okay.

7 MR. WEIN: With regard to the motions that are here  
8 today, Your Honor, can I have a simple time line which I think  
9 will actually help the Court a little bit? And I want to  
10 describe it.

11 May I approach.

12 THE COURT: Yes.

13 MR. WEIN: Thank you very much.

14 But before I address the points that Mr. Shartle  
15 raised, I want to give you some contacts to this case.

16 On January 7th, Judge Vance dismissed six or seven  
17 counts in the first amended complaint, and on January 27th,  
18 plaintiff filed a second amended complaint, which we just were  
19 discussing which she had granted leave to do by Judge Vance  
20 purportedly procuring deficiencies as to two of the dismissed  
21 claims. The claim under the Unfair trade Practices Act and the  
22 fraud claim, fraudulently induced claim. One month later, the  
23 plaintiff filed this motion before Your Honor saying that I want  
24 to file a third amended complaint with these new allegations.

25 Now, what happened in that one month I think is

1 illustrative. The first thing that happened is that Jackson  
2 Hewtitt moved to dismiss the second amended complained, a  
3 motion, which as I just explained, the judge found merit, and in  
4 fact ordered the plaintiff to go and fix her claims.

5 Secondly, plaintiff requested leave to file a motion  
6 for reconsideration asking Judge Vance to reconsider her  
7 dismissal of one of the six causes of action she had dismissed.

8 Both Jackson Hewtitt and plaintiff asked for oral  
9 argument on these motions. So the third important thing that  
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11 that she wanted to hear oral argument on our motion to dismiss,  
12 but was not interested in hearing oral argument on the motion  
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16 interestingly, in her opposition to the motion to dismiss before  
17 Judge Vance on page 3 says, Judge Vance, don't rule on this  
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19 file a third amended complaint before Magistrate Judge Knowles.

20 I think this time line speaks of volumes of the  
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22 being to avoid and explicitly asking for a delay on a ruling  
23 that in fact wound up dismissing a portion of her claims, which  
24 brings us to where we are now, plaintiffs seeking to add a new  
25 claims based on a transaction which occurred over three years

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2 by the opposition and any other issue that interest the Court, I  
3 think the simplest basis to understand our request that the  
4 Court denied this motion is that the proposed claim is seemingly  
5 obviously time barred. Whether you're dealing with a 60-day  
6 statute of limitations covered by the Consumer Credit Law or  
7 you're dealing with the general one year Statute of limitations,  
8 plaintiffs claim would still be barred.

9 Not only has plaintiff not rebutted this position in  
10 his reply, he has totally ignored the issue, and I would argue  
11 that he's waived it. Certainly has not suggested any  
12 alternative suggestions as what the Statute of limitations ought  
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17 he's asking the Court to interpret it, but at the end of the  
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19 complaint seeks to put in a claim that's timed barred, it's  
20 obviously futile. I don't think there's been any sort of  
21 rebuttal position taken by the defendant -- by the plaintiff  
22 that it isn't time barred.

23 THE COURT: What about the motion to stay?

24 MR. WEIN: With regard to the motion to stay, Your  
25 Honor, I think the fact that after we filed the motion to stay



1 he then said, well, I have a total new set of allegations he  
2 wants to make part of this case, I think speaks to the merits of  
3 our motion to stay frankly.

4 All we want to get done is clear out what are the  
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7 courtroom where Judge Vance said you still have not alleged for  
8 purposes of specificity under a Rule 9(b), what are you  
9 allegeing that the different parties did? And so I just think  
10 that before we proceed with answering discovery, and this is --  
11 she's giving them 15 days. So this is going to move quickly.  
12 Once we can get a complaint before us that we actually know is  
13 what we're looking and what the allegations are, that makes more  
14 sense and then proceed with discovery.

15 THE COURT: But don't we have on the books -- I mean,  
16 didn't Judge Vance order you all to submit a joint discovery  
17 schedule? I mean, has that been done?

18 MR. WEIN: We're happy to sit down and talk about a  
19 schedule that would begin once, you know, we get a complaint  
20 before us, we're happy to sit down. That not what happened.  
21 What happened is that plaintiff just served discovery and said  
22 answer it before I even filed a response -- before I've even  
23 filed a second amended complaint.

24 THE COURT: My concern is not so much what the  
25 plaintiff did. My concern is what Judge Vance has ordered, and

1 I read the record and I may be wrong to say the parties are to  
2 jointly submit a discovery schedule and it has not been done,  
3 has it?

4 MR. WEIN: I apologize. That's not our interpretation.  
5 I mean, we argue that is with regard to class certification.

6 THE COURT: I could be wrong. I certainly will look at  
7 it again.

8 MR. WEIN: We're certainly happy to discuss a  
9 reasonable schedule. Frankly, that's never been something that  
10 plaintiff has been interested in doing.

11 THE COURT: But you made a good point. I mean, if  
12 we're going to know a lot more in 15 days than we know now,  
13 perhaps that --

14 MR. WEIN: I would just suggest that a schedule that  
15 would be agreed to would be tied off of a resolution of whatever  
16 the actual complaint is going to be.

17 THE COURT: That might be make more sense, but let me  
18 take a look it.

19 Counsel, do want to respond to the time bar part of  
20 this?

21 MR. SHARTLE: Absolutely. Absolutely, Your Honor.

22 First of all, they're throwing out a bunch of  
23 arguments, and so I tried to address them all as best as I can.

24 Obviously, we're not interested in filing a claim that  
25 is time barred. The 10-year prescriptive period applies to

1 this. I've spoken with opposing counsel about this fact. If  
2 Your Honor would like we can bore you through supplemental  
3 briefing the issue. I have a memorandum here. I have the  
4 relevant cases. I was anticipating they might raise this issue.  
5 There are plenty of cases which find that the 10-year  
6 prescriptive period applies for personal actions, statutes where  
7 it doesn't tell you what the prescriptive period is many courts  
8 have held to be subject to the 10-year period.

9 As to our attempt to continue to delay this case, I  
10 don't understand that argument. This is the first request we've  
11 made to the Court to permit us to amend. We could have filed  
12 these claims outside this lawsuit. In all honesty that was an  
13 issue discussed amongst everyone on our side. And we thought  
14 that this was the most efficient way to do it. Why not amend  
15 the complaint, we already all the parties here? Rather than  
16 have two lawsuits, let's have one. So I don't understand that  
17 argument, Your Honor. These are viable claims that are not  
18 barred by the statute of limitations, so we would request that  
19 you grant us an amendment here.

20 One point I will add, and again, I think this shows  
21 that we are not trying to be unreasonable or unfair here. I  
22 will agree that to the extent Judge Vance's order, which I would  
23 expect to be entered today, does not deny the motion to dismiss  
24 as I thought she did with respect to the invasion of privacy  
25 claim and their interpretation of that ruling today is correct,

1 I'll stay discovery, because I agree it doesn't make any sense  
2 to do any discovery if that part of the case is still subject to  
3 possible dismissal.

4 I heard Judge Vance, she was only focused on the fraud  
5 claim. Her limitation as to permitting us to amend related to  
6 the fraud claim. I heard her deny, while I acknowledge she did  
7 not specifically say their motion to dismiss with respect to the  
8 invasion of privacy claim, but if her order comes out and she  
9 says that she's dismissing all the claims subject to us  
10 amending, then I'll agree to stay discovery until that amended  
11 complaint is filed.

12 One other issue, Your Honor, that I'd like to raise,  
13 because again, I have put everyone on notice and we're not  
14 trying to burden the Court or the defendants, these are  
15 complicated legal issues here, they really are, and I think  
16 opposing counsel will knowledge that. We do intend on adding  
17 another plaintiff to the complaint. So to the extent Your  
18 Honor's inclined to grant leave to add to our complaint these  
19 additional claims, I think opposing counsel would agree that  
20 there will be no opposition to adding the plaintiff. It's not  
21 going to in any way change the claims, we're just adding another  
22 plaintiff. The same type of loan as the current plaintiff got,  
23 so it's not going to in any way fundamentally change the case.  
24 So with that, Your Honor, I request leave to amend.

25 THE COURT: What I'm going to do, folks is I need to

1 take a look at what Judge Vance did before I rule, so I'm going  
2 to take it under advisement.

3 With regard to the time bar, if you want to file  
4 something else, do it by Monday, okay. And you've briefed it,  
5 but if you want to file anything else, you may do so.

6 MR. WEIN: Yes. Thank you very much.

7 THE COURT: But I'll take it under advisement. Let me  
8 see what Judge Vance did first.

9 MR. SHARTLE: One other thing. The only thing I would  
10 ask, because Judge Vance only gave us 15 days to amend, what I  
11 was hoping we could do, so that we don't have to have a fourth  
12 amended complaint, that in the third amended complaint in  
13 response to Judge Vance's order today, that I could not only add  
14 the additional facts that Judge Vance thought were necessary to  
15 keep the fraud claim viable, but to also add these additional  
16 claims.

17 THE COURT: You'll have a ruling on that shortly.

18 Yes, sir.

19 MR. WEN: Judge, the only thing I would like to clarify  
20 one issue.

21 With regard to this figment of adding an additional  
22 plaintiff, we had not agreed to that, and, frankly, what I had  
23 asked plaintiff's counsel to discuss if you have something. Why  
24 don't you let me look at it, and then I can give you an answer  
25 as to whether or not we agree we agree with your

1 characterization, since obviously we have some differences as to  
2 characterization, that it's the same claim, so I would like to  
3 see that. I think we have a right to see that before the Court  
4 sort of, without anything before it, grants the right to add an  
5 additional plaintiff.

6 MR. SHARTLE: I'm hopeful that we can work this out,  
7 and I'm hopeful that opposing counsel will trust my  
8 representation that it's the same loan, and the cause of action  
9 changes not at all. It is the same claim.

10 THE COURT: I suggest you notify the Court once you've  
11 had a chance to look at it.

12 MR. WEIN: The only other thing I wanted to clarify is  
13 I wanted to make sure I didn't mishear. If there's something  
14 about Mr. Shartle's filing as to the time bar issue, that we  
15 take issue with, that we have permission to file --

16 THE COURT: His are due on Monday. You can file  
17 something by Wednesday if you have a response, but don't feel  
18 the need to.

19 MR. WEIN: No, I understand.

20 THE COURT: We'll take it under advisement.

21 Thank you very much.

22 THE CLERK: Clerk all rise all rise.

23 Court's in recess.

24 Victor \*\*\* THE LAW CLERK: Civil Action Number 08-3535.

25 Vicki L. Pinero versus Jackson Hewitt Tax Service, Inc., et al.

1 Will counsel make their appearance for the record.

2 MR. SHARTLE: Bryan Shartle on behalf of plaintiff.

3 THE COURT: Good morning.

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9 MS. WILSON: Donna Wilson on behalf of Jackson Jewitt,  
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12 MR. BUCK: Thomas Buck on behalf of Crescent City Tax  
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22 THE COURT: Yes. What happened?

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21 THE COURT: That's all right. I've read them.

22 I mean, I read what you submitted, so basically I think  
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24 MR. SHARTLE: Sure.

25 THE COURT: We don't have a scheduling order in this



1 case yet?

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2 will actually help the Court a little bit? And I want to  
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22 fact ordered the plaintiff to go and fix her claims.

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8 saying I want to file a third amended complaint. And most  
9 interestingly, in her opposition to the motion to dismiss before  
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14 plaintiffs intent with regard to this motion. The real goal  
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18 claims based on a transaction which occurred over three years  
19 ago, and while we're prepared to discuss all the issues raised  
20 by the opposition and any other issue that interest the Court, I  
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22 Court denied this motion is that the proposed claim is seemingly  
23 obviously time barred. Whether you're dealing with a 60-day  
24 statute of limitations covered by the Consumer Credit Law or  
25 you're dealing with the general one year Statute of limitations,

1 plaintiffs claim would still be barred.

2           Not only has plaintiff not rebutted this position in  
3 his reply, he has totally ignored the issue, and I would argue  
4 that he's waived it. Certainly has not suggested any  
5 alternative suggestions as what the Statute of limitations ought  
6 to apply, and while there are other issues out there, I think  
7 that's frankly the simplest one at the end of the day. We could  
8 get into arguments about I could point out that the plaintiff  
9 has no case law that's ever interpreted this statute the way  
10 he's asking the Court to interpret it, but at the end of the  
11 day, I don't think this issue of you need to get there. If the  
12 complaint seeks to put in a claim that's timed barred, it's  
13 obviously futile. I don't think there's been any sort of  
14 rebuttal position taken by the defendant -- by the plaintiff  
15 that it isn't time barred.

16           THE COURT: What about the motion to stay?

17           MR. WEIN: With regard to the motion to stay, Your  
18 Honor, I think the fact that after we filed the motion to stay  
19 he then said, well, I have a total new set of allegations he  
20 wants to make part of this case, I think speaks to the merits of  
21 our motion to stay frankly.

22           All we want to get done is clear out what are the  
23 allegations particularly as to Jackson Hewitt from my client's  
24 prospective, given the fact, that, where we just came from a  
25 courtroom where Judge Vance said you still have not alleged for

1 purposes of specificity under a Rule 9(b), what are you  
2 allegeing that the different parties did? And so I just think  
3 that before we proceed with answering discovery, and this is --  
4 she's giving them 15 days. So this is going to move quickly.  
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6 what we're looking and what the allegations are, that makes more  
7 sense and then proceed with discovery.

8 THE COURT: But don't we have on the books -- I mean,  
9 didn't Judge Vance order you all to submit a joint discovery  
10 schedule? I mean, has that been done?

11 MR. WEIN: We're happy to sit down and talk about a  
12 schedule that would begin once, you know, we get a complaint  
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25 it again.

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2 reasonable schedule. Frankly, that's never been something that  
3 plaintiff has been interested in doing.

4 THE COURT: But you made a good point. I mean, if  
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8 would be agreed to would be tied off of a resolution of whatever  
9 the actual complaint is going to be.

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12 Counsel, do want to respond to the time bar part of  
13 this?

14 MR. SHARTLE: Absolutely. Absolutely, Your Honor.

15 First of all, they're throwing out a bunch of  
16 arguments, and so I tried to address them all as best as I can.

17 Obviously, we're not interested in filing a claim that  
18 is time barred. The 10-year prescriptive period applies to  
19 this. I've spoken with opposing counsel about this fact. If  
20 Your Honor would like we can bore you through supplemental  
21 briefing the issue. I have a memorandum here. I have the  
22 relevant cases. I was anticipating they might raise this issue.  
23 There are plenty of cases which find that the 10-year  
24 prescriptive period applies for personal actions, statutes where  
25 it doesn't tell you what the prescriptive period is many courts

1 have held to be subject to the 10-year period.

2           As to our attempt to continue to delay this case, I  
3 don't understand that argument. This is the first request we've  
4 made to the Court to permit us to amend. We could have filed  
5 these claims outside this lawsuit. In all honesty that was an  
6 issue discussed amongst everyone on our side. And we thought  
7 that this was the most efficient way to do it. Why not amend  
8 the complaint, we already all the parties here? Rather than  
9 have two lawsuits, let's have one. So I don't understand that  
10 argument, Your Honor. These are viable claims that are not  
11 barred by the statute of limitations, so we would request that  
12 you grant us an amendment here.

13           One point I will add, and again, I think this shows  
14 that we are not trying to be unreasonable or unfair here. I  
15 will agree that to the extent Judge Vance's order, which I would  
16 expect to be entered today, does not deny the motion to dismiss  
17 as I thought she did with respect to the invasion of privacy  
18 claim and their interpretation of that ruling today is correct,  
19 I'll stay discovery, because I agree it doesn't make any sense  
20 to do any discovery if that part of the case is still subject to  
21 possible dismissal.

22           I heard Judge Vance, she was only focused on the fraud  
23 claim. Her limitation as to permitting us to amend related to  
24 the fraud claim. I heard her deny, while I acknowledge she did  
25 not specifically say their motion to dismiss with respect to the

1 invasion of privacy claim, but if her order comes out and she  
2 says that she's dismissing all the claims subject to us  
3 amending, then I'll agree to stay discovery until that amended  
4 complaint is filed.

5           One other issue, Your Honor, that I'd like to raise,  
6 because again, I have put everyone on notice and we're not  
7 trying to burden the Court or the defendants, these are  
8 complicated legal issues here, they really are, and I think  
9 opposing counsel will know that. We do intend on adding  
10 another plaintiff to the complaint. So to the extent Your  
11 Honor's inclined to grant leave to add to our complaint these  
12 additional claims, I think opposing counsel would agree that  
13 there will be no opposition to adding the plaintiff. It's not  
14 going to in any way change the claims, we're just adding another  
15 plaintiff. The same type of loan as the current plaintiff got,  
16 so it's not going to in any way fundamentally change the case.  
17 So with that, Your Honor, I request leave to amend.

18           THE COURT: What I'm going to do, folks is I need to  
19 take a look at what Judge Vance did before I rule, so I'm going  
20 to take it under advisement.

21           With regard to the time bar, if you want to file  
22 something else, do it by Monday, okay. And you've briefed it,  
23 but if you want to file anything else, you may do so.

24           MR. WEIN: Yes. Thank you very much.

25           THE COURT: But I'll take it under advisement. Let me



1 see what Judge Vance did first.

2 MR. SHARTLE: One other thing. The only thing I would  
3 ask, because Judge Vance only gave us 15 days to amend, what I  
4 was hoping we could do, so that we don't have to have a fourth  
5 amended complaint, that in the third amended complaint in  
6 response to Judge Vance's order today, that I could not only add  
7 the additional facts that Judge Vance thought were necessary to  
8 keep the fraud claim viable, but to also add these additional  
9 claims.

10 THE COURT: You'll have a ruling on that shortly.  
11 Yes, sir.

12 MR. WEN: Judge, the only thing I would like to clarify  
13 one issue.

14 With regard to this figment of adding an additional  
15 plaintiff, we had not agreed to that, and, frankly, what I had  
16 asked plaintiff's counsel to discuss if you have something. Why  
17 don't you let me look at it, and then I can give you an answer  
18 as to whether or not we agree we agree with your  
19 characterization, since obviously we have some differences as to  
20 characterization, that it's the same claim, so I would like to  
21 see that. I think we have a right to see that before the Court  
22 sort of, without anything before it, grants the right to add an  
23 additional plaintiff.

24 MR. SHARTLE: I'm hopeful that we can work this out,  
25 and I'm hopeful that opposing counsel will trust my

1 representation that it's the same loan, and the cause of action  
2 changes not at all. It is the same claim.

3 THE COURT: I suggest you notify the Court once you've  
4 had a chance to look at it.

5 MR. WEIN: The only other thing I wanted to clarify is  
6 I wanted to make sure I didn't mishear. If there's something  
7 about Mr. Shartle's filing as to the time bar issue, that we  
8 take issue with, that we have permission to file --

9 THE COURT: His are due on Monday. You can file  
10 something by Wednesday if you have a response, but don't feel  
11 the need to.

12 MR. WEIN: No, I understand.

13 THE COURT: We'll take it under advisement.

14 Thank you very much.

15 THE CLERK: Clerk all rise all rise.

16 Court's in recess.

17 \* \* \* \* \*

18 C E R T I F I C A T E

19 I, Victor D. Di Giorgio, Official United States Court  
20 Reporter in and for the Eastern District of Louisiana, do hereby  
21 certify that the foregoing proceedings were taken down by me in  
22 shorthand at the time and place aforesaid, transcribed under my  
personal direction and supervision, and that the preceding pages  
represent a true and correct transcription, to the best of my  
ability and understanding.

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S/S Victor D. Di Giorgio,

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Victor D. Di Giorgio, CCR  
Official U.S. Court Reporter

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