UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, individually and on behalf of all others similarly situated,	)	Civil Action No. 08-03535
	)	Sec. R
Plaintiffs,	)	JUDGE SARAH S. VANCE
v.	)	Mag. 3
	)	MAGISTRATE JUDGE DANIEL E. KNOWLES, III
JACKSON HEWITT TAX SERVICE INC.; JACKSON HEWITT INC.; and, CRESCENT CITY TAX SERVICE, INC. d/b/a JACKSON HEWITT TAX SERVICE,	)	
Defendants.	)	

REPLY TO MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE THIRD AMENDED CLASS ACTION COMPLAINT

Despite the following statutory language, defendants argue that plaintiff and the class members have *no remedy* to recover the fees, interest, and other charges they paid defendants as unlicensed loan brokers:

> The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. ***In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee***.

La. Rev. Stat. § 9:3572.12(D) (emphasis added).

Plaintiff, Vicki L. Pinero, submits this reply memorandum in response to the memoranda filed by defendants, Jackson Hewitt Tax Service Inc.; Jackson Hewitt Inc.; and, Crescent City Tax Service, Inc. d/b/a Jackson Hewitt Tax Service (hereinafter jointly referred to as "Defendants") in opposition to plaintiff's Motion for Leave to File Third Amended Class Action Complaint. The Court should grant plaintiff's leave motion and permit plaintiff to file her Third Amended Class Action Complaint, asserting a new claim under La. Rev. Stat. § 9:3572.1, *et seq.* (the "LA Loan Broker Statute").

I. INTRODUCTION

Defendants do *not* fundamentally dispute:

- They are loan brokers subject to the LA Loan Broker Statute.
- The loans they broker are subject to the LA Loan Broker Statute.
- They are unlicensed loan brokers.
- They violated the LA Loan Broker Statute by brokering loans without a license.
- They received fees, interest, and/or other charges through their unlawful and unlicensed loan brokering.

Instead, Defendants argue, despite their violation of the LA Loan Broker Statute, plaintiff and the class members have no remedy against them. Defendants are wrong. Plaintiff's proposed amendment would *not* be "futile." The Court should grant plaintiff's leave motion for at least 5 reasons.

First, the LA Loan Broker Statute provides an express private right of action for persons who pay fees, interest, or other charges to unlicensed loan brokers. *See* La. Rev. Stat. § 9:3572.12(D) ("In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.").

Second, even if the Court were to rule the LA Loan Broker Statute does not provide an express private right of action, plaintiff and the class members are entitled to return of all fees, interest, and other charges wrongfully received by Defendants through their unlawful and unlicensed loan brokering based upon Louisiana's broad principles of equity.

Third, La. Rev. Stat. § 9:3552 does *not* govern claims under the LA Loan Broker Statute. That statute only applies to "extenders of credit."

Fourth, plaintiff has sufficiently alleged that Defendants collected a loan fee from her.

Fifth, plaintiff has *not* acted dilatory in asserting her claims under the LA Loan Broker Statute. In an effort to promote judicial efficiency, plaintiff is seeking leave to amend her current lawsuit, rather than file a separate lawsuit asserting the new claim.

II. LAW AND ARGUMENT

Before addressing Defendants' arguments, it is necessary to review the relevant laws.

A. Background

1. The Louisiana Consumer Credit Law

In 1972, pursuant to 1972 La. Acts 454, the Louisiana Legislature amended the Louisiana Revised Statutes by adding a new Chapter, entitled "Louisiana Consumer Credit Law." The newly added chapter contained only §§ 9:3510 to 9:3568. ***Most importantly***, the newly added chapter did *not* contain the statutes at issue in the proposed amended complaint relating to loan brokering, *i.e.*, §§ 9:3572.1 to 9:3572.12. In fact, the newly added chapter did *not* address loan brokering in any way.

Included in the new legislation was § 9:3552, which created civil penalties for "extenders of credit." In relevant part, § 3552 provided in 1972:

> A. Violations discovered as a result of written consumer complaint
>
> (1) Intentional violations or violations not caused by good faith errors.
>
> (a) If the court finds that the ***extender of credit*** has intentionally or as a result of error not in good faith violated the provisions of this chapter, the consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney's fees. The right to recover the civil penalty under this subsection accrues only after
>
> (i) written notice is given to the ***extender of credit*** by certified mail addressed to the extender of credit's place of business in which the consumer credit transaction arose;
>
> (ii) a copy of such notice is mailed to the ***extender of credit's*** agent for service of process; and
>
> (iii) thirty (30) days have elapsed since receipt of such notice by the extender of credit, and the violation has not been corrected.

La. Rev. Stat. § 9:3552(A)(1)(a)(i)-(iii) (emphasis added) (1972 version). Although § 3552 has been amended since 1972, the above-quoted part of the statute has remained unchanged and still only applies to "extenders of credit."

Also included in the new legislation was a definition section. In 1972, § 3516 provided in relevant part:

> The term "extender of credit" or "creditor" as used in this Chapter includes a seller in a consumer credit sale or transaction made with the use of a seller credit card or otherwise, a lessor in a consumer lease, or a lender in a consumer loan, a revolving loan account, or a lender credit card transaction.

La. Rev. Stat. § 9:3516(16) (1972 version). Since 1972, the definition of "extender of credit" has been revised and is now defined as follows:

> The term "extender of credit" or "creditor" as used in this Chapter includes a seller in a consumer credit sale, revolving charge account, or transaction made with the use of a seller credit card or otherwise, or a lender in a consumer loan, a revolving loan account, or a lender credit card transaction. "Creditor" also includes a subsequent assignee or transferee of the consumer's obligation, but does not include a bona fide pledgee.

La. Rev. Stat. § 9:3516(18) (2009 version).

Defendants are *not* "sellers" or "lenders," but instead "loan brokers." ***By statutory definition***, therefore, Defendants are *not* "extenders of credit." Considering this fact, and as further explained below, § 9:3552's civil penalties provision for "extenders of credit" does *not* apply to Defendants.

2. Regulation of Loan Brokers and Refund Anticipation Loans

Following the enactment of the Louisiana Consumer Credit Law, the Louisiana Legislature passed two additional pieces of relevant legislation, including the LA Loan Broker Statute and the Refund Anticipation Loan Act, La. Rev. Stat. §§ 9:3575.1 to 9:3575.10. These statutes are considered below.

a. LA Loan Broker Statute

In 1986, pursuant to 1986 La. Acts 729, the Louisiana Legislature passed the LA Loan Broker Statute, adding §§ 9:3572.1 to 9:3572.12. A "loan broker" is "any person who, for compensation or the expectation of compensation, obtains or offers to obtain a consumer loan from a third party either for another person domiciled in Louisiana, or for another person wherever domiciled, if the broker is operating in Louisiana." La. Rev. Stat.

§ 9:3572.1. Per La. Rev. Stat. § 9:3572.3(A)(1), "[u]nless a person has first been licensed by the commissioner [of financial institutions] . . . , he shall not engage in the business of loan brokering[.]" With respect to corporations, both the corporation and its employees must be licensed. *See* La. Rev. Stat. § 9:3572.4 ("A corporation that is a loan broker shall be licensed and shall act as a loan broker only through natural persons who are licensed loan brokers.").

Section 9:3572.2 excludes certain persons from the definition of "loan broker." When originally passed, § 9:3572.2 did *not* exclude tax return preparers from the definition. In 2003, however, subsection (B)(9) was added to § 9:3572.2. *See* 2003 La. Acts 665. Since 2003, § 9:3572.2(B)(9) has excluded from the definition of "loan broker" "[a]n ***income tax preparer who is an authorized Internal Revenue Service e-file provider*** and whose ***only brokering activity is facilitating refund anticipation loans***." *See* La. Rev. Stat. § 9:3572.2(B)(9) (emphasis added). A "refund anticipation loan" is "a loan whereby the creditor ***arranges to be repaid directly by the Internal Revenue Service from the anticipated proceeds of the debtor's income tax refund***." *Id.* (emphasis added).

Upon information and belief, Defendants are "income tax preparers" and "authorized Internal Revenue Service e-file providers" to whom the above exception *may* apply. However, as set forth in plaintiff's proposed third amended complaint, the exception does *not* apply because Defendants' brokering activity is *not* limited to "only brokering . . . refund anticipation loans." *Id.* Instead, Defendants broker many types of non-refund anticipation loan products, including Pre-File Money Now Loans; Holiday or HELP Loans; Flex Loans; and, iPower Loans. *See* Docket No. 77, Proposed Amend. Compl., at ¶¶ 15-30.

In light of this fact, Defendants are required to be licensed as loan brokers under the LA Loan Broker Statute. This is no surprise to Defendants. In its 10-Ks from 2006 through 2008, Jackson Hewitt Tax Service Inc. acknowledged "many states . . . have statutes regulating, through licensing and other requirements, the activities of brokering loans and offering credit repair services to consumers as well as local usury laws which could be applicable in certain circumstances." *Id.* at ¶ 33.

Defendants apparently concede they are required to be licensed and that they have violated the LA Loan Broker Statute, but argue plaintiff and the class members have no remedy for Defendants' unlawful and unlicensed loan brokering activity. As explained below, Defendants' position is illogical.

b. Refund Anticipation Loan Act

In 1992, pursuant to 1992 La. Acts 228, the Louisiana Legislature passed the Refund Anticipation Loan Act, adding §§ 9:3575.1 to 9:3575.10. The purpose of the legislation was to regulate "refund anticipation loans." *See* La. Rev. Stat. § 9:3575.1 (1992 version).

In 1997, the Refund Anticipation Loan Act was repealed. *See* 1997 La. Acts. 798. The Act, however, is informative. Section 3575.10 contained an exemption from the LA Loan Broker Statute for registered facilitators of refund anticipation loans, *but only when brokering refund anticipation loans*. As to all other types of loans, the Refund Anticipation Loan Act *expressly stated that a license was required under the LA Loan Broker Statute*:

> A person who is registered as a facilitator of refund anticipation loans under this Part shall be exempt from the definition of a consumer loan broker and shall not be required to be registered under R.S. 9:3572.1 *et seq.*, relative to consumer loan brokers, in order for such person to broker refund

> anticipation loans. ***The brokering of any other type of consumer loan shall, however, require registration as a consumer loan broker***.

La. Rev. Stat. § 9:3575.10(B) (emphasis added).

B. The LA Loan Broker Statute Provides an Express Private Right of Action

Defendants argue "§ 9:3572 contains no language suggesting, let alone expressly stating, that it creates a private right of action against loan brokers." Docket No. 81, at p. 6. In its entirety, § 9:3572.12 provides as follows:

> A. A loan made in violation of this Part shall not be invalid solely for that reason.
>
> B. A person who violates a provision of this Part may be assessed a civil penalty of not more than one thousand dollars for each violation. ***The commissioner may*** maintain a civil action in a court of competent jurisdiction to recover such a civil penalty, together with his costs and attorney fees incident to such action.
>
> C. (1) ***The commissioner may***, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that any fact or condition exists which, if it had existed at the time of the original application for licensure, would have warranted the denying of its issuance.
>
> (2) ***The commissioner may***, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that the loan broker violated a provision of this Part or a rule or regulation of the commissioner issued pursuant thereto, or that the loan broker willfully, either orally or in writing, misrepresented the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender.
>
> D. ***The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee***.

> E. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by this Part or by any order of the commissioner issued pursuant to any Section of this Part, or which is declared to be illegal in this Part, ***the commissioner may***, in his discretion:
>
> (1) Issue any order, including but not limited to cease and desist orders, which he deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this Subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. Any such hearing or appeal therefrom shall be held in accordance with the Administrative Procedure Act.
>
> (2) Apply to the district court of any parish in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as he deems necessary.

La. Rev. Stat. § 9:3572.12 (emphasis added).

The LA Loan Broker Statute prohibits "[t]he contracting to receive any fee, interest, or other charge in violation of [the statute]" ***and*** the receiving of any such fee, interest, or charge. *See* La. Rev. Stat. § 9:3572.12(D). As to the prohibition against "contracting" for such a fee, the statute grants a private remedy to any "aggrieved person." The statute provides: "The contracting to receive any fee, interest, or other charge in violation of this Chapter ***shall result in forfeiture by the loan broker to the benefit of the aggrieved person*** of the entire fee, plus damages in the amount of twice the fee." *Id.* (emphasis added).

With respect to the "receipt" of any fee, interest, or other charge in violation of the LA Loan Broker Statute, § 9:3572.12(D) grants a private remedy to "the person by whom

it has been paid." The statute provides: "In case the fee has been paid, ***the person by whom it has been paid may recover from the loan broker*** the amount of the fee thus paid, plus damages in the amount of twice the fee." *Id.* (emphasis added).

The fact that other statutes containing a private cause of action may contain different language than the language in § 9:3572.12 is of no moment. As proven by the statutes cited by Defendants, there is no uniform language for remedy provisions. Indeed, the remedy provision contained in § 9:3552—*the provision Defendants contend controls plaintiff's claims under the LA Loan Broker Statute*—contains language similar to the remedy language in § 9:3572.12.[1] Further, the private remedy provision contained in § 9:3572.12(D) is similar to other private remedy provisions, including the remedy provisions in §§ 9:3518.2;[2] 9:3518.3;[3] 9:3568;[4] 9:3571.1;[5] and, former § 9:3575.8(C)

[1] *Compare* La. Rev. Stat. § 9:3552(A)(1)(a) ("If the court finds that the extender of credit has intentionally or as a result of error not in good faith violated the provisions of this chapter, the consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney's fees.") *with* La. Rev. Stat. § 9:3572.12(D) ("The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.").

[2] *See* La. Rev. Stat. § 9:3518.2(D) ("If any credit card is issued to a person who has not requested or accepted by use the issuance of such credit card, the issuer shall be liable to the person whose name appears on the credit card for any damages and expenses or either, including attorney fees, which the person incurs due to the use of such credit card without permission of the person to whom it is issued.").

[3] *See* La. Rev. Stat. § 9:3518.3(D) ("Any provider who violates the provisions of this Section shall be liable to the cardholder and the issuer for any damages or expenses, or both, including attorney fees, which the cardholder or issuer incurs due to the use of the cardholder's credit card without the permission of the cardholder.").

[4] *See* La. Rev. Stat. § 9:3568(D) ("Effective January 1, 2004, each creditor, potential creditor, credit reporting agency, or other entity which violates the provisions of this Part shall be liable to the victim of an identity theft for all of the documented out-of-pocket expenses caused by such creditor, potential creditor, credit reporting agency, or other entity and suffered by the victim as a result of the identity theft, plus reasonable attorney fees.").

[5] *See* La. Rev. Stat. § 9:3571.1(G)(1) ("Any person who is denied credit, insurance, or employment on the basis of erroneous or inaccurate information furnished by a credit reporting agency is entitled to the

relating to refund anticipation loan facilitators.[6]

Defendants' analysis is also backwards. Defendants argue the power to assert § 9:3572.12(D) claims for restitution and damages belong to the Commissioner of Financial Institutions, *not* the consumers affected by the unlawful activity. This argument is illogical and presumes too much. Generally, the Commissioner's recovery right is limited to seeking "penalties." Where the Commissioner's power includes the right to seek "restitution" on behalf of consumers, the power is expressly stated.[7] Further, the reference to the Commissioner in all but subparagraph (D) of § 9:3572.12 supports plaintiff's interpretation of the remedy provision. If the legislature intended to permit only the Commissioner to assert § 9:3572.12(D) claims for restitution and damages, why is the Commissioner not even mentioned in § 9:3572.12(D)?

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recovery from such agency of his actual damages, plus reasonable attorney fees and court costs, if both of the following exist . . . ."); La. Rev. Stat. § 9:3571.1(G)(2) ("Any person who is required to have erroneous or inaccurate information removed from his credit report as a condition to having his credit, insurance, or employment application approved is entitled to the recovery of his actual damages, plus reasonable attorney fees and court costs, if both of the following exist . . . .").

[6] *See* La. Rev. Stat. § 9:3575.8(C) (1992 version) ("A facilitator who engages in an activity prohibited under R.S. 9:3575.7 in connection with a refund anticipation loan is liable to the debtor for damages of three times the amount of the refund anticipation loan fee or other unauthorized charge plus reasonable attorney's fees.").

[7] *See* La. Rev. Stat. § 9:3554(J) ("If it is found, after an administrative hearing, that consumers who have done business with the extender of credit have been aggrieved by an improper loan finance charge, credit service charge, deferral charge, delinquency charge, or improper rebate, or the inclusion of an improper item in the amount financed, the commissioner may institute a civil action on behalf of such consumers in any form which he deems appropriate to effectuate the provisions of this Subsection, in order to recover any such money improperly exacted from the consumer by the extender of credit, provided that sixty days have passed after giving notice by certified mail of his intentions. All monies recovered shall be returned to the aggrieved consumer in a manner deemed to be reasonable and which shall assure prompt and expeditious payment to the consumer, in whole or in part, and is calculated to minimize the expenses associated with the distribution of such monies.").

C. Even If the Court Were To Rule the LA Loan Broker Statute Does Not Provide an Express Private Right of Action, Plaintiff Would Still Have an Equitable Claim for Return of All Fees, Interest, and Charges Being Held Unlawfully By Defendants

"The common law maxim is, where there is a right there is a remedy. [Louisiana] courts uniformly act upon the same maxim; and it is in effect adopted by the code, which enjoins upon the judges to decide according to the principles of equity, when there is no express law. There can be no failure of justice for want of express regulation." *City Bank of New Orleans v. McIntyre*, 1844 WL 1549, *3 (La. 1844). "The maxim that where there is a right there is a remedy . . . means nothing more than that whatever may be due to one may be demanded judicially in some form or other; or, in other words, that the courts are open for the vindication of all rights no matter what they may be." *Succession of Pizzati*, 75 So. 498, 508 (La. 1917).

The Louisiana Civil Code embodies the fundamental principle of law that where there is a right there is a remedy. La. Civ. Code art. 4 provides "[w]hen no rule for a particular situation can be derived from legislation or custom, ***the court is bound*** to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages." La. Civ. Code art. 4 (emphasis added). Further, the Civil Code expressly provides such equitable remedies as enrichment without cause under La. Civ. Code art. 2298 and payment of a thing not owed under La. Civ. Code art. 2299.

Equity principles are particularly relevant here. The usurious short-term loans at issue have been the subject of justifiable criticism. The loans and the fees and costs associated therewith are rarely clearly explained to consumers. Further, low-income and uneducated Americans are often the target of these abusive loans, which include APRs

into the triple digits. (The APR associated with plaintiff's Pre-File Money Now Loan is 118.905%. *See* Docket No. 77, Proposed Amend. Compl., at ¶ 46, Exhibit HH.). John Hewitt, ***one of the founders of Jackson Hewitt***, called these loans "a kind of predatory lending." *See* Exhibit A, 11/28/06 Article. Mr. Hewitt has publicly stated his disapproval of such loans, comparing their high fees to cash-advance, "payday" loans. *See* Exhibit B, 12/12/06 Article. The National Consumer Law Center has stated:

> Most importantly, we are concerned that this product enables the RAL industry to keep draining tax refunds and Earned Income Tax Credit (EITC) benefits despite IRS efforts to speed refunds, which were expected to help reduce the volume of traditional RALs. Thus, the RAL industry appears to be developing in the direction of more speed at more expense and more risk. It appears to be responding to the potential of faster IRS refunds by introducing a loan product that can get the "jump" on tax filing season, *allowing tax preparers and high rate lenders to continue exploiting the tax refunds of cash-strapped low-wage workers*.

Exhibit C, 11/2006 Article (emphasis added).

To the extent the Court were to rule the LA Loan Broker Statute does not provide an express private right of action, plaintiff and the class members would still have an equitable claim for return of all fees, interest, and other charges paid to Defendants as unlicensed loan brokers. Such equitable claim could be brought under La. Civ. Code art. 2298 based upon unjust enrichment, or La. Civ. Code art. 2299 based upon payment of a thing not owed.

D. Section 9:3552 Does Not Govern Claims under the LA Loan Broker Statute

Defendants argue plaintiff's § 9:3572.12 claim "is governed by § 9:3552[.]" Docket No. 81, at p. 7. Defendants are wrong for at least 3 reasons.

First, as noted, § 9:3552 relates to only "extenders of credit." *See* La. Rev. Stat. §

9:3552(A)(1)(a)(i)-(iii). Moreover, the cases cited by Defendants involve "extenders of credit."

Second, Defendants ignore the history behind § 9:3552. Defendants rely upon the following language in § 9:3552 when arguing § 9:3572.12 claims are "governed" by § 9:3552: "If the court finds that the extender of credit has intentionally or as a result of error not in good faith violated the *provisions of this chapter*, the consumer is . . . ." La. Rev. Stat. § 9:3552(A)(1)(a) (emphasis added). According to Defendants, "the plain language of § 9:3552 requires that any and all violations of 'this chapter,' which includes § 9:3572.12, is subject to the provisions of § 9:3552." Docket No. 81, at p. 7. This argument is easily dismissed.

As noted, when originally enacted, the Consumer Credit Law included only §§ 9:3510 to 9:3568. The "chapter" did *not* include the sections set forth in the LA Loan Broker Statute. With this understanding in mind, § 9:3552's reference to other "provisions of this chapter" is intended to apply to only the original sections included in the original chapter enacted as part of the original Consumer Credit Law, *i.e.*, §§ 9:3510 to 9:3568.

Third, Defendants' argument would result in a senseless application of other statutes contained in the same "chapter." For example, if the Court were to accept Defendants' argument, how would the identity theft statute, § 9:3568, or the credit reporting statute, § 9:3571.1, work? Both of these statutes are in the same "chapter" as § 9:3552. Applying § 9:3552 to these statutes, which already contain an express private remedy provision, would not make sense.

E. Plaintiff Sufficiently Plead Defendants Collected a Loan Fee From Her

Defendants argue plaintiff's leave motion should be denied because plaintiff failed to "allege that Jackson Hewitt collected fees or interest from her." Docket No. 81, at p. 9. Again, Defendants are wrong.

Contrary to Defendants' argument, plaintiff sufficiently alleges she paid fees, costs, and other charges to Defendants, which must be returned. *See* Docket No. 77, Proposed Amend. Compl., at ¶¶ 3, 34-35, 69 & 116. Indeed, in paragraph 69, plaintiff alleges she "seeks and is entitled to reimbursement of all fees paid to Defendants." *Id.* at ¶ 69.

Moreover, a copy of plaintiff's loan application and related documents are attached to the proposed amended complaint. *Id.* at ¶ 46 & Exhibit HH. These documents show the fees, interest, and other charges paid to Defendants. *Id.*

Even if plaintiff's allegations and exhibits were insufficient, however, Defendants misunderstand the reach of § 9:3572.12(D), which prohibits not only the "receipt" of fees, interest, and other charges by an unlicensed loan broker, but the mere "contracting" to receive such fees, interest, or charges. *See* La. Rev. Stat. § 9:3572.12(D). Defendants do *not* dispute that they improperly "contracted" to receive fees, interest, or other charges from plaintiff and the class members.

F. Plaintiff Is Acting In Good Faith and Promoting Judicial Efficiency

Defendants accuse plaintiff of filing her leave motion in "bad faith and with dilatory motive." Docket No. 81, at p. 10. Nothing could be further from the truth.

First, plaintiff has *not* sought to amend her complaint repeatedly to avoid dismissal

of her case. On July 15, 2008, as a matter of right, plaintiff amended her complaint. *See* Docket No. 9. Pursuant to the Court's January 7, 2009 order, plaintiff filed her Second Amended Class Action Complaint. *See* Docket Nos. 54 & 57. Plaintiff's current leave motion represents her ***first*** request for permission to amend. Considering no scheduling order has been entered in this case, the Court should grant plaintiff's leave motion.

Second, as the papers in this case indicate, the factual and legal issues involved are complex. To avoid any unfair or unfounded allegations, plaintiff and undersigned counsel have first completed all necessary research and due diligence. There has been no intentional delay or dilatory motive. The proposed amendment has not been sought to rescue any claim from possible dismissal. Instead, the proposed amendment seeks to add wholly new and different facts and claims. *See* Docket No. 77.

Third, plaintiff is promoting judicial efficiency. Plaintiff could have asserted her proposed new claims in a separate lawsuit. For the sake of judicial efficiency, however, plaintiff is seeking leave to amend her current lawsuit and have all legal issues addressed in one lawsuit.

III. CONCLUSION

For the foregoing reasons, the Court should grant plaintiff's leave motion and permit her to file the Third Amended Class Action Complaint.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record ✓ by ECF; __ by email; __ by hand; __ by fax; __ by FedEx; __ by placing a copy of same in the U.S. Mail, postage prepaid this 27th day of March 2009.

/s/ Bryan C. Shartle
Bryan C. Shartle

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