IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

MICHAEL AND SHELLIE GILMOR, et al., Plaintiffs,	Case No. CV100-4263 CC
v.	
PREFERRED CREDIT CORPORATION, INC., et al.,	Division 2
Defendants.	

ORDER CERTIFYING PLAINTIFF CLASS

This matter is before the Court on Plaintiffs' Motion for Order Determining that this Action may be Maintained as a Plaintiffs' Class Action. In support of this Order to certify the class, the Court finds and concludes as follows:

I.

Plaintiffs seek certification of a statewide plaintiff class consisting of all those persons who obtained a second mortgage loan from Defendant Preferred Credit Corporation, Inc. ("Preferred Credit"), secured by Missouri residential real estate, and who may claim damage caused by Preferred Credit's alleged practice of charging certain "loan origination" and other closing costs and fees in violation of Missouri law, specifically Missouri's Second Mortgage Loans Act, §§ 408.231 RSMo., et seq. (the "MSMLA"), during the six (6) year period next preceding the date on which this action was commenced.

A. Michael and Shellie Gilmor

In September 1997, Plaintiffs Michael and Shellie Gilmor obtained a $40,000.00 mortgage loan from Preferred Credit. The Gilmors claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged the Gilmors

interest of 13.5% per year. In addition, Preferred Credit charged the Gilmors a $3,200.00 "loan origination fee," some 8% of the total loan amount, as well as a "Loan Processing Fee" fee of $335.00, a $125.00 "underwriting fee," a $500.00 "administration/document fee," a $60.00 "appraisal review fee," and a $150.00 "signing fee." Plaintiffs allege that, in doing so, Preferred Creditviolated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $800.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the loan processing fee, underwriting fee, administration/document fee, appraisal review fee, and signing fee and/or other fees described above.

B. Michael and Lois Harris

In August of 1997, Plaintiffs Michael and Lois Harris obtained a $45,000.00 mortgage loan from Preferred Credit. They claim that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged Mr. and Mrs. Harris interest at a rate of 13.99 % per year. In addition, Preferred Credit charged Mr. and Mrs. Harris a $900.00 "mortgage broker fee" and a $3,275.00 "processing/administration fee," together with a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $500.00 "administration/document fee," and a $210.00 "application review/signing fee." Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the mortgage broker fee, processing/administration fee, loan processing fee, underwriting fee and/or administration/document fee described above.

C. Ted and Raye Ann Varns

In August 1997, Plaintiffs Ted and Raye Ann Varns obtained a $34,000.00 mortgage loan from Preferred Credit. The Varns claim that the loan was a "Second Mortgage Loan" within the

meaning of the MSMLA. For the loan, Preferred Credit charged the Varns interest at a rate of 12.5% per year. In addition, Preferred Credit charged the Varns a $2600.00 "loan origination fee," approximately 7.6% of the total loan amount, as well as a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $500.00 "administration/document fee," a $60.00 "appraisal review fee," and a $200.00 "signing fee." Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because: (1) the loan origination fee was greater than the $680.00 (2%) amount allowed at the time by § 408.231.1(5) RSMo. and/or (2) § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the loan processing fee, underwriting fee, administration/document fee, appraisal review fee and/or signing fee described above.

D. Leo Parvin

In June 1997, Plaintiff Leo Parvin obtained a $20,000.00 mortgage loan from Preferred Credit. Mr. Parvin claims that the loan was a "Second Mortgage Loan" within the meaning of the MSMLA. For the loan, Preferred Credit charged Mr. Parvin interest at a rate of 13.99 % per year. In addition, Preferred Credit charged Mr. Parvin a $400.00 "mortgage broker fee" and a $1,488.42 "processing/administration fee," together with a $125.00 "document preparation fee," a $395.00 "loan processing fee," a $125.00 "underwriting fee," a $190.00 "sub-escrow/UPS/application fee," and a $150.00 "signing fee" that the records show Preferred Credit kept for itself. Plaintiffs allege that, in doing so, Preferred Credit violated the MSMLA, particularly § 408.231, because § 408.231.1(3) RSMo. prohibited Preferred Credit from charging or receiving the mortgage broker fee, processing/administration fee, document preparation fee, loan processing fee, underwriting fee, sub-escrow/UPS/application fee, and/or signing fee described above.

E. The Petition and Plaintiffs' Claims

Plaintiffs Michael and Shellie Gilmor originally filed this action on June 27, 1994. The Court joined the Leo Parvin, Ted and Raye Ann Varns and Michael and Lois Harris as plaintiffs on March 6, 2002. In their Fourth Amended Petition, Plaintiffs assert claims both individually and on behalf of all other Missouri homeowners alleged to have been similarly aggrieved by Preferred Credit's acts (i.e., those Missouri borrowers charged the same type of allegedly unauthorized and/or excessive "loan origination" and other costs and fees in violation of the MSMLA and Missouri law). Among other things, Plaintiffs seek to recover the unlawful fees and costs that they were charged, as well as all of the interest they have paid on their respective second mortgage loan, and a forfeiture of any interest not yet due, a remedy that Plaintiffs claim is expressly made available to them by virtue of the MSMLA, § 408.236 RSMo. Plaintiffs seek the same relief and remedies for the proposed plaintiff class, under both the MSMLA and § 408.562.

F. The Applicable Statute of Limitations

In opposing Plaintiffs' motion to certify, Defendants have urged the Court to find that Plaintiffs' claims are governed by § 516.130(2) RSMo., a 3-year statute of limitations. Plaintiffs, on the other hand, contend that the 6-year statute of limitations contained in § 516.420 RSMo applies. The Court agrees with Plaintiffs.

The 6-year statute of limitations contained in § 516.420 RSMo. applies to "all" lawsuits where the claimant seeks relief (i.e., "to recover any penalty or forfeiture imposed, **or** to enforce any liability created by ... law") from and/or against a "moneyed corporation." The statute provides:

> None of the provisions of sections 516.380 to 516.420 shall apply to suits against **moneyed corporations** or against the directors or stockholders thereof, to recover any

penalty or forfeiture imposed, **or to enforce any liability created by** the act of incorporation or **any other law**; but **all** such suits shall be brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, **or by which such liability was created**.

§ 516.420 RSMo. 2000 (emphasis added).

The named Plaintiffs seek to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by Missouri law against and from Preferred Credit, a second mortgage lender, and its various assignees. Specifically, the named Plaintiffs seek to recover the unlawful fees and costs that they and the members of the putative plaintiff class were charged for their second mortgage loans, as well as (1) all of the interest that they and any class member paid on their loans, (2) a forfeiture of any interest not yet due, and (3) statutory penalties, punitive damages, and attorneys' fees. Plaintiffs seek this relief both for themselves and for the plaintiff class pursuant to the MSMLA and § 408.562 RSMo.

Because Plaintiffs are seeking to "enforce a liability" and/or to recover a "penalty or forfeiture" imposed by the MSMLA and § 408.562 against and from Preferred Credit, a "moneyed corporation," and its derivatively liable assignees, Plaintiffs' statutory claims are governed by § 516.420 RSMo. The language of the statute is crystal clear: "all" suits "to recover any penalty or forfeiture imposed, or to enforce any liability created by any ... law ... shall be brought within six years after the discovery by the aggrieved party of the facts upon which such penalty or forfeiture attached, or by which such liability was created." § 516.420 RSMo. 2000. Hence, the 6-year statute applies in this case. Cf. Nolan v. Kolar, 629 S.W.2d 661, 663 (Mo. App. 1982) (statute providing for forfeiture of 10% of amount of deed of trust for failure to timely acknowledge satisfaction of deed of trust was subject to § 516.420); Fielder v. Credit Acceptance Corporation, 19 F. Supp.2d 966, 974 (W.D. Mo. 1998) (6-year statute set out in § 516.420 applies to consumer class action against auto loan finance company brought pursuant to

§ 408.562 RSMo.).

II.

Standards for Determining Class Action

Missouri Rule of Civil Procedure 52.08 sets forth the requirements for a Class Action lawsuit. Rule 52.08(a) provides:

> (a) Prerequisite to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Once the requirements of Rule 52.08(a) are satisfied, an action may be maintained as a class action under Rule 52.08(b)(3) if:

> [T]he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:
>
> (A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
>
> (D) the difficulties likely to be encountered in the management of a class action.

III.

Class Action Analysis

The analysis required in this case is divided into two parts, which correspond to the separate requirements of Mo. Rule 52.08(a) and (b)(3).

Part I

A. Numerosity

Rule 52.08(a)(1) requires that the proponent of a class action demonstrate that "the class is so numerous that joinder of all members is impracticable." The rule does not require that joinder be impossible; rather, joinder of all members is impracticable when the procedure "would be difficult or inconvenient." Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990); Esler v. Northrop Corp., 86 F.R.D. 20, 33-34 (W.D. Mo. 1979). "A showing of strong litigational inconvenience in the prosecution of claims separately or jointly by the proposed class members is sufficient." Esler, 86 F.R.D. at 34.[1]

Rule 52.08(a) does not contain any explicit numerical limitations. See Bradford v. Agco Corp., 187 F.R.D. 600, 604 (W.D. Mo. 1999). Nor does the rule require precise enumeration of the class size before the action can proceed as a class action. Morgan v. United Parcel Service of America, Inc., 169 F.R.D. 349, 355 (E.D. Mo. 1996); see Jackson, 132 F.R.D. at 230. It is permissible to estimate class size. Fielder v. Credit Acceptance Corp., 175 F.R.D. 313 (W.D. Mo. 1997) (between 120 and 160 members). However, impracticability of joinder has generally been found where the class is composed of more than 40 persons. Esler, 86 F.R.D. at 33 ("the difficulty inherent in joining as few as 25 or 30 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of 23(a)(1) on that fact alone") (quoting H. Newberg, Class Actions § 1105b (1977 & Supp. 1978)); Senn v. Manchester Bank of St. Louis, 583 S.W.2d 119, 132-33 (Mo. banc 1979)

[1] Mo.R.Civ.P. 52.08 is identical to Federal Rule 23. Consequently, Missouri courts consider interpretations of Rule 23 in interpreting Rule 52.08. Ralph v. American Family Mut. Ins. Co., 809 S.W.2d 173, 174 (Mo.App. WD 1991).

overruled on other grounds, Harman v. Davis, 651 S.W.2d 134, 136 (Mo. 1983) (trial court property permitted cause to proceed as class action with class comprised of approximately 80 members); Paxton v. Union Nat. Bank, 688 F.2d 552 (8th Cir. 1982) (16 members); Bradford, 187 F.R.D. at 600 (W.D. Mo. 1999) (65 members); Morgan, 169 F.R.D. 349 (possibly 19 members).[2]

The Court may also consider a number of additional factors when determining impracticability of joinder, including the nature of the action, the inconvenience of trying individual suits, geographical distribution, the size of the claims of the individual class members, the ability of individual litigants to institute an action on their own behalf "and any other factor relevant to the practicability of joining all the putative class members. Paxton, 688 F.2d at 559-60;. Esler, 86 F.R.D. at 33. The fact that all class members are located in the same state does not defeat certification. In fact, having all the plaintiffs in close proximity actually substantiates the need for certification. Bradford, 187 F.R.D. at 604 ("If the same witnesses traveled to the same courthouse to testify about the same [facts] in multiple cases, then judicial resources would be wasted").

Rule 52.08(a)(1) is Satisfied

The Court finds as a fact that Preferred Credit has made no less than 416 "high interest" second mortgage home loans secured by Missouri real estate since June 1994. The Court also finds that as to the 41 borrowers from whom Plaintiffs received loan documents, as to all 41 loans Preferred Credit charged a "loan origination" or other fees and costs that appear to have either exceeded the lawful permissible amount allowed by § 408.232.1(5) or to be fees and

[2] Though a specific number is not required, Professor Newberg's survey of court rulings on the numerosity issue concludes that any class consisting of 40 or more members presumptively fulfills the numerosity requirements. Newberg on Class Actions § 3.05 (3d Ed. 2001).

charges not mentioned by § 408.232.1(3). These 416 loans may also pertain to property in a number of counties throughout the state of Missouri, making joinder of all class members in a single action more problematic and costly. Despite the number of loans, however, the parties and the Court can identify the particular members of the Class by name and address and in fact the Plaintiffs have obtained that information through a county by county search. Under the above facts, the Court concludes that the numerosity requirement of Mo. Rule 52.08(a) is satisfied.

B. Commonality

Mo. Rule 52.08(a)(2) requires a showing of the existence of "questions of law or fact common to the class." This threshold of "commonality" is not high. Winkler v. DTE, Inc., 205 F.R.D. 235, 240 (D. Ariz. 2001) ("[t]he standard for commonality is minimal because 'all that is required is a common issue of law or fact'"). This prong of the rule is satisfied when the "legal question 'linking the class members is substantially related to the resolution of the litigation.'" Fielder v. Credit Acceptance Corp., 175 F.R.D. 313, 319-20 (W.D. Mo. 1997) (quoting Paxton, 688 F.2d at 561); see Senn, 583 S.W.2d at 132 (commonality existed where legal theory and underlying agreements were the same).

Rule 52.08(a)(1) is Satisfied

The causes of action stated in the Second Amended Petition allege claims common to the members of the Class. These claims raise questions of law or fact common to the Class because they all pertain to each member's loan and the application of the MSMLA to such loans. The Court further finds that the class issues sufficiently predominate so as to justify use of a class action in this case under Mo. Rule. 52.08.

It is not for the Court to determine on certification whether the common questions guarantee a determination of liability. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178, 94 S.Ct. 2140 (1974).

The question, instead, is whether the legal issues and the factual underpinnings of any decision are common to all members of the class. Id.; Jackson v. Rapps, 132 F.R.D. 226, 230 (W.D. Mo. 1990) ("The Court may go beyond the pleadings in determining whether class action prerequisites have been met, but may not review the sufficiency or substantive merits of [the plaintiff's claims and factual] allegations"). Here, both the liability and the damages issues presented by Plaintiffs' claims have a common nucleus.

The MSMLA claims advanced by Plaintiffs are statutorily based, thus providing common questions of law with respect to the interpretation of the statute. Violation of the statute grants specific remedies and carries specific penalties. Neither the interpretation of the statute, which the parties dispute, nor the methodology for application of the statutory remedy will vary between class members. Should there be a finding of liability, each class member may receive a different amount based upon his or her loan, but the *method* of determining the amount will not vary. Plaintiffs have alleged that it was a common procedure of Preferred Creditto charge the same type of "loan origination" and other fees and costs to all its borrowers, thus further reducing the prospect of differences among class members' claims. Plaintiffs' claims are based upon a common interpretation of the limits imposed on such fees by the MSMLA. The determination of that issue will effect the named and unnamed class members alike. If, as alleged, Preferred Credit employed a common practice with respect to the subject fees and costs it charged its many borrowers, the question of whether those fees violated the MSMLA will be common to all class members.

The Court has also carefully considered the issue of damages in this action. As many courts recognize, when a plaintiff establishes an issue of law common to all class members, the possibility of individualized damages cannot bar class certification. In re Visa Check/Master

Money Antitrust Litigation, 280 F.3d 124, 139 (2nd Cir. 2001); Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 298 (5th Cir. 2001); Blackie v. Barrack, 524 F.2d 891, 905 (9th Cir. 1975); Gold Strike Stamp Co. v. Christensen, 436 F.2d 791, 796,798 (10th Cir. 1970). The issue of damages, therefore, must be considered in the context of whether the common issues of law or fact predominate over any collateral issue as to individualized damages. Id. Thus, individualized issues of damages are relegated to secondary status in making the decision on whether or not common issues predominate. To the extent that each borrower may have a claim for a different amount depending on the amount of his or her loan, or whether or not the loan has been repaid, these distinctions are not sufficient to outweigh the predominance of the common elements of the damage issues; nor will the calculation of those damages pose an insurmountable problem for the management of this action as a class action.

Based upon the foregoing, the Court finds as a fact and concludes as a matter of law that a "class" within the meaning of Mo. Rule 52.08 exists and that there likewise exist common issues of law and fact with respect to that Class. The Court further concludes as a matter of law that the class issues sufficiently predominate to justify use of a class action in this case under Mo. Rule 52.08.

C. Typicality

Rule 52.08(a)(3) requires that the claims of the class representatives be "typical of the claims ... of the class." The threshold for establishing typicality is also low. DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (8th Cir. 1995). "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." Id. Typicality does not require that the claims of the class members be identical. Id.; Fielder, 175 F.R.D. at 320. Typicality is frequently demonstrated by showing that the plaintiff has the same

or similar grievances as the other members of the class. Paxton, 688 F.2d at 562; Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir.), cert. denied, 434 U.S. 856 (1977)). "The court must be shown that the representative is not alone." Paxton, 688 F.2d at 562.

Rule 52.08(a)(3) is Satisfied

The action also satisfies the typicality requirement. The named Plaintiffs' claims arise out of the same course of conduct as the Class claims; Plaintiffs have no conflict of interest; and their claims are based upon the same legal theories, which will apply to the Class in general. The named Plaintiffs' claims also arise out of the same course of conduct, i.e., the alleged violation of § 408.233.1, and are based on the same legal theories as those of the members of the Class. Plaintiffs, like the members of the Class, allege that they were aggrieved in the first instance by the conduct of the same and single mortgage lender, Preferred Credit, in precisely the same way -- they were all charged unauthorized and/or excessive fees and costs in connection with their second mortgage loans. This is true of the Gilmors, whose claims are not "atypical" simply because they paid off their loan. Nor does the Court find at this time that the Gilmors are "atypical" because of their bankruptcy and they shall remain in this case as plaintiffs. Thus, the Court concludes that the typicality requirement of Rule 52.08(a) is also met.

D. Adequacy of Representation

The requirement of Rule 52.08(a)(4) is satisfied if it appears that (1) the named plaintiffs' interests are not antagonistic to those of the class they seek to represent and (2) the named plaintiffs' attorneys are qualified, experienced and generally able to conduct the litigation. Paxton, 688 F.2d at 562-63; Bradford, 187 F.R.D. at 605; Fielder, 175 F.R.D. at 320. The existence of these elements is to be presumed, absent proof to the contrary. See Morgan, supra, 169 F.R.D. at 357. As the court explained in Cook v. Rockwell Int'l Corp., 151 F.R.D. 378 (D.

Colo. 1993):

> [A]dequate representation presumptions are usually invoked in the absence of contrary evidence by the party opposing the class. On the issue of no conflict with the class, one of the tests for adequate representation, the presumption fairly arises because of the difficulty of proving negative facts. On the issue of professional competence of counsel for the class representative, the presumption fairly arises that all members of the bar in good standing are competent. Finally, on the issue of intent to prosecute the action vigorously, the favorable presumption arises because the test involves future conduct of persons, which cannot fairly be prejudged adversely.

Id. at 386 (quoting from Newberg on Class Actions, § 7.24 at 7-80)

Rule 52.08(a)(4) is Satisfied

The named Plaintiffs in this action seek money damages and injunctive relief from Preferred Credit and its assignees as a result of its unlawful acts. Given this identity of claims, there is no potential for conflicting interests in this action. The named Plaintiffs seek the same relief as the Class based on the same legal theories.

The overwhelming focus of Defendants' effort to oppose certification has been to attack the adequacy of Class counsel. This attack does not go to the competency or experience of counsel but is limited to the allegation that they are inadequate for allegedly having unethically solicited class representatives. The Court has considered those facts and the legal authorities presented by both sides on this issue, both in this and the other second mortgage cases pending before it, and finds that Class counsel is more than adequate as the allegation of unethical solicitation is factually unfounded and legally deficient. There is simply no evidence that Brian Thomas, consulting expert for Plaintiffs, was paid to refer potential class representatives to either Walters Bender Strohbehn & Vaughan or Lawson & Fields (n/k/a Lawson, Fields, McCue, Lee & Campbell) or that Mr. Thomas has any financial interest in the outcome of this lawsuit. The Court also incorporates and restates herein its findings and conclusions as expressed with regard

to the issue of adequacy on December 11, 2002 in Couch v. SMC Lending, Case No. CV100-4332CC.

As in Couch, the Court notes with approval the authorities cited by Plaintiffs, which instruct that the purpose behind the ethical cannons is subverted when used as a weapon by adversaries. See Terre Du Lac Property Owners Ass'n, Inc. v. Shrum, 661 S.W.2d 45, 48 (Mo. App. E.D. 1983); Smith v. Kansas City Southern Railway Co., 2002 WL 1393697 (Mo. App. W.D. June 28, 2002, mot. for reh'g and/or transfer to Sup. Ct. denied, as modified, Oct. 1, 2002) at *8 n. 8; State ex rel. Wallace v. Munton, 989 S.W.2d 641, 645 (Mo. App. S.D.1999). Indeed, as it held in Couch, the Court believes that this forum is not the proper place to assert an ethical complaint as the alleged ethical violation has nothing to do with the competence and experience of class counsel and their corresponding ability to fairly and adequately represent the class. Rather, any such complaint is more properly placed before the authority with jurisdiction to investigate and determine such matters, i.e. the Office of Chief Disciplinary Counsel of the Missouri Bar.

Additionally, the cases relied upon by Defendants on the issue of solicitation of class plaintiffs are obsolete. Based on protections under the First Amendment and the general evolution of the standards relating to solicitation of clients, attorneys today may directly solicit potential class representatives. Mo. Rules 4-7.1-7.3(a)(eff. 1/1/86) (permitting direct solicitation with persons known to need legal services of the kind provided by the lawyer) and 4-1.8(e)(eff. 1/1/86) (permitting a lawyer to advance court costs and expenses of litigation); see also Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 647, 105 S.Ct. 2265, 85 L.Ed 2d 652 (1985); Kennedy v. United HealthCare of Ohio, Inc., 206 F.R.D. 191 (S.D. Ohio 2002); Rand v. Monsanto Co., 926 F.2d 596, 600 (7th Cir. 1991).

The Court also rejects any contention by Defendants that a conflict of interest exists between Class counsel and the class given the agreement by counsel to pay the costs and expenses associated with the litigation. See Mo. Rule 4-1.8(e) ("a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter"); Rand, 926 F.2d at 600 (the then recently adopted "Model Rule 1.8(e) allows a lawyer [in a class action lawsuit] to pick up the tab for costs if the suit is unsuccessful"); Moye v. Credit Acceptance Corp., 2001 WL 589101, at *4 (Conn. 2001) (in light of Model Rule 1.8(e), "plaintiffs' arrangement with their [class] counsel whereby their counsel will advance the costs of litigation does not demonstrate inadequacy").

Defendants also claim that the named Plaintiffs are not adequate to represent the Class because they are not familiar with their claims and have abdicated control of the case to counsel. The Court rejects these arguments as well. The law does not require that a class representative know every detail of their claim or be familiar with the facts of the other class members' claims. Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 366, 86 S.Ct. 845, 847-48, 15 L.Ed.2d 807 (1966); Lewis v. Curtis, 671 F.2d 779, 789 (3rd Cir. 1982). All that is required is that the Class plaintiffs have a fundamental understanding of their claims and a willingness to vigorously pursue the Defendants and rely on counsel's expertise. Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 61-62 (2nd Cir.2000). A review of the testimony of the named class representatives reveals that each understands their claims and their responsibility to the other Class members, and that each has and intends to continue to pursue such claims vigorously. Nor have these Class representatives abdicated control of the litigation to their counsel. They are appropriately relying on counsel to prepare and present their claims, as is typical in class actions and, indeed, in litigation in general; but the Court has seen nothing to indicate that any of the

representatives are anything but committed to pursing their claims. Bradford v. AGCO Corp., 187 F.R.D. 600, 605 (W.D. Mo. 1999); Nathan Gordon Trust v. Northgage Exploration, Ltd., 148 F.R.D. 105, 107 (S.D.N.Y. 1993).

Defendants also claim that the Class representatives are "inadequate" because they either do not have the ability and/or financial willingness to pursue the class action. While this was a valid point of contention in class action litigation at one time, it is no longer valid given Mo. Rule 4-1.8(e), which allows counsel to agree to be responsible for all costs, which is in fact what has happened in this case.

In sum, the Court finds that both the named Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

Part II

Having determined that the requirements of Mo. Rule 52.08(a) are met, the Court must determine whether, in its discretion, a class action procedure constitutes a superior method for adjudicating the Plaintiffs' claims pursuant to Mo. Rule 52.08(b)(3).[3]

A. Rule 52.08(b)(3)

The Court finds as a fact and concludes as a matter of law that the class action mechanism is the superior method for adjudication of the claims in this case. In making this determination, the Court, in the exercise of its discretion, reaffirms its conclusions above that there are common issues of fact and law which predominate in this action and that Plaintiffs are adequate class representatives. These two factors substantially support the superiority of adjudication as a class action. The Court also finds that the useful purposes of class actions in

[3] Plaintiffs initially sought certification under Rule 52.08(b)(2) in the alternative. That no longer is the case as Plaintiffs now seek certification only under Rule 52.08(b)(3).

preventing multiplicity of lawsuits and inconsistent verdicts is served in this instance. See Dublin v. UCR, Inc., 115 N.C. App. 209, 444 S.E.2d 455 (1994).

The Court has also considered the nature of the damages in this case. They are not nominal. Should Plaintiffs prevail they stand to recover all of the illegal fees and interest they have thus far paid on the loans obtained from Preferred Credit, together with a forfeiture of any future interest owed. §§ 408.236, 408.562 RSMo. The fees and interest could total millions of dollars. Statutory penalties including attorneys' fees and punitive damages could also increase that amount. § 408.562 RSMo. The damages are significant in amount and significant to Plaintiffs and the class of homeowners they will represent since their home mortgages could be affected. It is therefore likely that class members would make claims.

Next, the Court has considered whether there are any individualized issues that adversely impact the superiority of the class mechanism. The Court finds no such issues based upon its understanding of Plaintiffs' claims. Were such issues to exist, however, the Court would be required to give them little weight. When there has been established an issue of law common to all class members, as is the case here, the fact that there will be individualized damages is a collateral matter and no bar to certification. In re Visa Check/Master Money Antitrust Litigation, 280 F.3d at 139-140.

A class action will foster economies of time and effort and expense, and uniformity of decisions will be ensured. The only alternative to a class action is for Plaintiffs and the members of the Class to file no less than 416 individual claims. To do so would be time consuming and redundant, as each claimant would be required to conduct discovery into Defendants' business practices to prove exactly the same allegations and proffer exactly the same evidence. Each claimant would then be required to brief and argue the same questions of law. Moreover, the