

Appendix D Sample Complaint for Damages

This is a sample pleading for demonstration purposes only, and must be adapted by a competent professional to meet the circumstances of a given case and the requirements of local rules and practice.¹

Additional examples of Truth in Lending complaints for damages in both printed and electronic form include:

- Complaint seeking damages for hidden finance charge in car sale, *Consumer Class Actions*, Appx. D.3 (4th ed. 1999);
- Complaint seeking damages for untimely disclosure, *Consumer Class Actions*, Appx. D.4 (4th ed. 1999);
- Complaint asserting TIL disclosure violations, RICO and deceptive practices, *Consumer Class Actions*, Appx. D.6 (4th ed. 1999);
- Complaint seeking damages for disclosure violations, *Consumer Law Pleadings With Disk, Number One* § 7.1 (1994);
- Class complaint and individual complaint seeking damages under HOEPA, *Consumer Law Pleadings With Disk, Number Four* §§ 2.1, 2.2.1 (1998);
- Class complaint for damages involving land installment contracts, *Consumer Law Pleadings With Disk, Number Three* § 10.1 (1997).

Examples of complaints seeking damages for violations of the Consumer Leasing Act can be found in:

- Complaint seeking damages for violation of Consumer Leasing Act and deceptive practices, *Consumer Class Actions*, Appx. D.5 (4th ed. 1999);
- Complaint alleging violations of state law, *Consumer Law Pleadings With Disk, Number One* § 9.1 (1994).

In addition, NCLC also has available various pleadings seeking attorneys' fees pursuant to Truth in Lending's fee-shifting provision:

- Attorney Fees Motion with Memorandum of Law in Settled Truth in Lending Case, *Consumer Law Pleadings With Disk, Number One* § 11.1 (1994);
- Attorney's Affidavit in Support of Fees in Settled TIL Case, *Consumer Law Pleadings With Disk, Number One* § 11.2 (1994);
- Attorney Fees Petition for Successful Appeal of TIL Decision, *Consumer Law Pleadings With Disk, Number One* § 11.3 (1994);
- Affidavit in Support of Appellate Attorney Fees, *Consumer Law Pleadings With Disk, Number One* § 11.4 (1994);

¹ This complaint is solely for monetary damages pursuant to 15 U.S.C. § 1640. For a sample complaint seeking rescission of a transaction secured by a consumer's principal dwelling pursuant to 15 U.S.C. § 1635, see Appendix F, *infra*.

- Expert's Affidavit in Case Seeking Appellate Attorney Fees, *Consumer Law Pleadings With Disk, Number One* § 11.5 (1994).

UNITED STATES DISTRICT COURT
_____ DISTRICT OF _____

MOLLY CONSUMER,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. _____
)	
CREDIT-R-US, Inc.)	
)	
Defendant)	

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff institutes this action for actual damages,² statutory damages, attorneys fees, and the costs of this action against defendant Credit-R-Us for multiple violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, (hereinafter TILA), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant thereto, and for violations of the _____ Consumer Loan Act, §§ _____, as pendent claims.³

II. JURISDICTION

2. The jurisdiction of this court for the First Cause of Action is invoked pursuant to the Truth in Lending Act, 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1337.

3. Jurisdiction of this court for the pendent claims is authorized by Fed. R. Civ. P. 18(a).

III. PARTIES

4. The plaintiff, Molly Consumer, is a natural person currently residing at _____

² Under 15 U.S.C. § 1640(a), it is not necessary to allege or to prove actual damages to recover statutory damages. A prayer for actual damages should not be included unless evidence will be offered to support such a claim, though when the finance charge and APR are understated, such a claim may be appropriate. See § 8.5, *supra* for a discussion of proof of actual damages.

³ Refer to state statute under which pendent claims, if any, are brought.

5. Defendant Credit-R-U's, Inc. is a domestic corporation duly licensed under the Consumer Loan Act, Chapter _____ of the laws of the state of _____ and doing business within this state.

6. At all times relevant hereto, the defendant regularly⁴ extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments, and is the person to whom the transaction which is the subject of this action is initially payable, making defendant a creditor within the meaning of TIL, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

IV. FACTUAL ALLEGATIONS

7. On or about November 10, 1995, plaintiff made a telephone inquiry to Credit-R-U's about obtaining credit to purchase a used automobile for personal, family and household purposes.⁵

8. On or about November 10, 1995, plaintiff executed a promissory note and security agreement for that purpose, which transaction is a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2.⁶ A true and accurate copy of the combined note and security agreement is attached hereto as Exhibit A, and is hereby incorporated by reference.

9. The security agreement lists as collateral the automobile purchased with the proceeds of this loan, a camera, tools, and hunting equipment.

10. Defendant did not provide a copy of the loan documents to plaintiff on November 10, 1995. On or about November 13, 1995, she received in the mail a copy of the note, security agreement, Truth in Lending disclosure statement, and a loan payment book. A true and accurate copy of the disclosure statement is attached hereto as Exhibit B, and is hereby incorporated by reference. Prior to November 13, 1995, she had not seen or received a copy of the Truth in Lending disclosure statement.

11. The Truth in Lending Disclosure statement prepared by defendant disclosed an amount financed of \$1500, a finance charge of \$420, an annual percentage rate of 24.924%, and a security interest in the automobile purchased and in household goods.

12. Included as part of the \$1500 amount financed were the following charges:

- a. \$45.00 service charge;
- b. \$75.00 attorney fee for preparation of chattel mortgage documents;
- c. \$25.00 credit report fee;
- d. \$ 8.00 nonfiling insurance;
- e. \$24.96 credit life insurance premium;

4 For a definition of "regularly," see Regulation Z § 226.2(a)(17) note 3; § 2.3.3, *supra*.

5 TILA applies solely to consumer credit transactions; § 2.2, *supra*

6 The complaint must allege all facts necessary to bring the transaction and the parties within the scope of TIL. See generally Ch. 2, *supra*. If the credit extended was not subject to a finance charge, then it must be alleged that it was payable by written agreement in more than four installments. See § 2.3.4, *supra*.

f. \$80.00 VSI property insurance.

V. FIRST CAUSE OF ACTION

13. The disclosure statement issued in conjunction with this consumer credit transaction violated the requirements of Truth in Lending and Regulation Z in the following and other respects:⁷

- a. By failing to provide the required disclosures prior to consummation of the transaction in violation of 15 U.S.C. § 1638(b) and Regulation Z § 226.17(b).⁸
- b. By failing to make required disclosures clearly and conspicuously in writing in violation of 15 U.S.C. § 1632(a) and Regulation Z § 226.17(a).⁹
- c. By failing to properly identify property subject to a security interest in violation of 15 U.S.C. § 1638(a)(9) and Regulation Z § 226.18(m).¹⁰
- d. By failing to include in the finance charge certain charges imposed by defendant payable by plaintiff incident to the extension of credit as required by 15 U.S.C. § 1605 and Regulation Z § 226.4, thus improperly disclosing the finance charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 226.18(d). Such amounts include, but are not limited to:¹¹
 - i. \$45 service charge, 15 U.S.C. § 1605(a)(2); Regulation Z § 226.4(b)(2);¹²
 - ii. \$75 attorney fee, 15 U.S.C. § 1605(a), Regulation Z § 226.4(a);¹³
 - iii. \$25 credit report fee, 15 U.S.C. § 1605(a)(4), Regulation Z § 226.4(b)(4);¹⁴

7 Only some disclosure violations create civil liability for statutory damages, § 8.6.5, *supra*. Actual damages should be available for all disclosure violations. § 8.5, *supra*.

This sample complaint does not include every possible violation of the Act and Regulation, but is merely an illustrative pleading.

The detail with which the alleged violations are spelled out varies with the practitioner's preference and local practice. Nonetheless, it is always a good idea to clearly state that any list of alleged violations is not an exclusive listing, as discovery may reveal additional violations.

8 See §§ 4.3.1, 8.6.5.3.4, *supra*.

9 See §§ 4.2.4, 8.6.5.3.2, *supra*.

10 See §§ 4.6.7, 8.6.5.2, *supra*. The alleged violation here is an "overinclusive" disclosure of the security interest, discussed in detail at § 4.6.7.4.3, *supra*.

11 See § 4.6.3, *supra*. See also § 4.6.3.2 (tolerance). Improper disclosure of the finance charge is a statutory penalty violation, § 8.6.5.2, *supra*. (See note 7, *supra* regarding pleading.)

12 See § 3.7.3, *supra*. See also § 3.7.4, *supra*.

13 The transaction at issue in this example is *not* secured by real estate nor is it a residential mortgage transaction. Thus fees for the preparation of a personal property mortgage should be considered a finance charge, if the creditor requires the services performed. §§ 3.6.2–3.6.4, *supra*. See also § 3.6.3.4, *supra*.

If the transaction is secured by real estate or is a residential mortgage transaction, an attorney fee may be included in the amount financed provided it meets certain requirements. § 3.9.5.2.4, *supra*.

14 The transaction at issue in this example is *not* secured by real estate nor is it a residential mortgage transaction. Thus credit report fees are a finance charge. § 3.7.5, *supra*.

- iv. \$8 nonfiling fee, which, upon information and belief, was not used to purchase insurance in lieu of perfecting a security interest, 15 U.S.C. § 1605(d)(2), Regulation Z § 226.4(e)(2);¹⁵
- v. \$24.96 credit life insurance premium, for which disclosures required as a precondition to exclusion from the finance charge were not properly made, 15 U.S.C. § 1605(b), Regulation Z § 226.4(d)(1);¹⁶
- vi. \$80 VSI property insurance, for which, upon information and belief, the insurer failed to waive all right of subrogation against the consumer, Regulation Z § 226.4(d)(2) note 5.¹⁷
- e. By improperly including certain charges in the amount financed which are finance charges, including but not limited to those itemized in ¶ 13(d) herein, defendant improperly disclosed the amount financed in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z § 226.18(b).¹⁸
- f. By calculating the annual percentage rate (APR) based upon improperly calculated and disclosed finance charges and amount financed, 15 U.S.C. § 1606, Regulation Z § 226.22, the defendant understated the disclosed annual

percentage rate in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c).¹⁹

14. By reason of the aforesaid violations of the Act and Regulation Z, defendant is liable to plaintiff in the amount of twice the finance charge,²⁰ actual damages to be established at trial,²¹ and attorneys fees and costs in accordance with 15 U.S.C. § 1640.

VI. SECOND CAUSE OF ACTION

15. *[Insert other applicable claims, such as violation of a regulated loan act or unfair and deceptive acts and practices statute.]*²²

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court:

1. Assume jurisdiction of this case;
2. Award actual damages to be established at trial pursuant to 15 U.S.C. § 1640(a)(1);
3. Award statutory damages in the amount of twice the finance charge not to exceed \$1000 in accordance with 15 U.S.C. § 1640(a)(2);
4. Award plaintiff costs and reasonable attorneys fees in accordance with 15 U.S.C. § 1640;
5. *[Include a prayer for other relief which may be authorized under other causes of action.]*
6. Award such other relief as the court deems appropriate.

Dated this [date].²³

Attorney for Plaintiff

If the transaction is secured by real estate or is a residential mortgage transaction, credit report fees might be included in the amount financed provided they are bona fide and reasonable. § 3.9.5.2.5, *supra*.

- 15 Nonfiling insurance premiums may be excluded from the finance charge only if they are for insurance which protects against risks caused by not perfecting a security interest and if the creditor actually purchases such insurance, rather than self-insuring. § 3.9.6.3, *supra*.
- 16 Credit life insurance premiums may be excluded from the finance charge only if the purchase is voluntary and if proper disclosures are made. § 3.9.4.5, *supra*. If the consumer is alleging that the purchase of insurance was required by the creditor, the factual allegations should reflect that. *See* §§ 3.9.4.5.1, 3.9.4.5.2, *supra*.
- 17 VSI property insurance may be excluded only if the consumer has a choice of providers, all proper disclosures are met pursuant to § 226.4(d)(2), and the insurer waives all rights of subrogation against the consumer. § 3.9.4.8, *supra*.
- 18 *See* §§ 4.6.2, 8.6.5.2, *supra*.

- 19 *See* §§ 3.2.2, 4.6.4, (especially § 4.6.4.3); 8.6.5.2, *supra*. Note that TIL permits inaccurate disclosures within certain allowable tolerances. §§ 4.6.3.2, 4.6.4.5, *supra*.
- 20 The violations alleged in ¶ 13a–f are all ones giving rise to a claim for statutory penalties. § 8.6.5.2, *supra*.
- 21 *See* § 8.5 *supra* on calculation of actual damages.
- 22 *See* National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges*, Appendix E (1995).
- 23 Affirmative actions for damages must be brought within one year of the violation. § 7.2, *supra*. Claims may be raised by way of recoupment or setoff after one year, unless prohibited by state law. § 7.2.4, *supra*.