

Navajo Couple Settles Loan Fee Class Action For \$1M

By **Andrew Westney**

Law360 (July 31, 2018, 7:14 PM EDT) -- A New Mexico couple who are members of the Navajo Nation asked a federal judge Monday to approve a deal that would provide about \$1 million to resolve a proposed class action claiming companies near the Navajo reservation preyed on consumers by charging secret fees and hiding the true interest rate for loans tied to consumers' tax refunds.

In their **July 2017 complaint**, William and Sammia DeJolie sought to represent the class of more than 1,000 who they said received tax refund anticipation loans since November 2014 from T&R Market Inc. and two companies it owns, Tancorde Finance Inc. and T&R Tax Service Inc., at a group of T&R stores in Gallup, New Mexico.

In a motion Monday, the DeJolies submitted their proposed settlement for preliminary approval from the court. The deal would provide almost \$1 million in cash to settle claims and asks the court to certify the settlement class as anyone who took out one of two kinds of loans or were charged credit check fees by the companies between Nov. 1, 2014 and July 13, 2017.

The DeJolies said that the settlement amount was about half of the almost \$2 million they might have won if they were successful in the suit, but pointed to "a number of factual and legal defenses" the companies could have raised.

Those defenses included "allegations that not all defendants were liable for the alleged wrongdoing; that certain fees were not finance charges and as such were not improperly disclosed; that standards for liability pursuant to the [New Mexico Unfair Practices Act] and other claims differed from the [Truth in Lending Act] and could be more difficult to prove; that defendants' violations were not willful and were instead the result of good faith errors; and that differing circumstances could pose a challenge for class certification," according to the motion.

"In light of these considerations, and particularly because the parties were able to reach a settlement agreement that was highly favorable to class members, plaintiffs believe that the proposed settlement agreement is in the best interests of the class," according to the motion.

In their complaint, the DeJolies said that the tax refund anticipation loans that they and others received from T&R were secured by federal tax refunds, and the companies "compounded the inherently predatory nature of tax refund anticipation loans by engaging in widespread and intentional deception of their customers," in violation of the federal Truth in Lending Act and the New Mexico Unfair Practices Act.

The DeJolies took out a loan that had a stated 264 percent annual percentage rate, but the companies' misrepresentation of fees disguised that the true interest rate on the loan was 385 percent — an approach repeated with other recipients, they said.

The companies have made tax refund anticipation loans to many northwest New Mexico residents living on or near the Navajo Nation's reservation, the couple said. Gallup, where the companies are located, is near the Arizona state line, west of Albuquerque.

The companies also illegally collected fees out of customers' tax refunds beyond what was allowed in their standard contract, according to the complaint.

The DeJolies said in Monday's motion that they had reached their deal with the companies at a settlement conference in May.

Under the settlement, almost 15,000 possible class members would divvy up the \$1 million available, with each expected to receive about 37 percent of their total possible damages following payment of various fees and costs, including \$190,000 to class counsel at Feferman Warren & Mattison.

Any funds left over after the distribution to class members would go equally to two nonprofit organizations, Equal Access to Justice Inc. and Battered Family Services Inc., under the cy pres provisions of the deal.

Representatives for the parties were not immediately available to comment Tuesday.

The DeJolies are represented by Nicholas Mattison and Richard N. Feferman of Feferman Warren & Mattison.

T&R Market Inc. and T&R Pawn LLC are represented by Dylan O'Reilly and James J. Widland of Miller Stratvert PA. Tancorde Finance is represented by Lynn Isaacson and Stephen J. Foland of Mason & Isaacson PA. T&R Tax Service is represented by Charles J. Vigil of Rodey Dickson Sloan Akin & Robb PA.

The case is DeJolie et al. v. T&R Market Inc. et al., case no. 1:17-cv-00733, in the U.S. District Court for the District of New Mexico.

--Editing by Dipti Coorg.