NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

EBONY POTTER, HILDA JOSEPH, *et al.*, on behalf of themselves and all others similarly situated,	)	
Plaintiffs	)	
v.	)	CIVIL NO. 1999/116
CITICORP and CITIBANK, N.A.,	)	
Defendants	)	

APPEARANCES:

Claudette V. Ferron, Esq.
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Attorney for the Defendants

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on Plaintiffs' motion to certify the class of plaintiffs in order that they may bring this lawsuit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. For the reasons expressed herein, Plaintiffs' motion will be denied.

I. Factual Background

Plaintiffs Ebony Potter and Hilda Joseph represent the class of Plaintiffs in this action seeking redress for their injuries resulting from the alleged fraudulent and misleading loan practices of Defendant Citibank.[1] Plaintiffs allege that Citibank defrauded its automobile loan customers in connection with its financing of automobile purchases in St. Thomas, U.S. Virgin Islands by requiring borrowers to acquire a specific type of credit insurance called Vendor's Single Interest ("VSI") insurance. VSI insurance--Citibank's prerequisite to obtaining an automobile loan--was designed solely to protect Citibank's interest in the financed vehicles. Plaintiffs allege that Citibank's sale of VSI insurance was fraudulent in that Citibank (1) sold VSI insurance at excessively high premiums; (2) misrepresented the nature and benefits of VSI insurance to its customers by representing that VSI insurance protected the borrower from loss or damage to the financed vehicle in the event of an accident; and (3) concealed the true interest rates of its automobile loans by improperly excluding VSI insurance premiums from the loan finance charge, thereby understating the customers' costs while significantly increasing their debt loads.

Class representative Ebony Potter alleges the following facts regarding her individual loan transaction. On or about October 28, 1997, Potter, whose net monthly income was less than eight hundred dollars, was told by a Citibank employee that she was ineligible for a loan from Citibank. Nevertheless, the employee instructed Potter to speak with a Citibank loan officer

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[1]Citibank, N.A. is a national bank organized and existing under the laws of the United States. Citicorp, Inc. is a bank holding company organized and existing under the laws of the state of Delaware. According to Plaintiffs' Complaint, Citibank is a wholly-owned subsidiary of Citicorp, and Citicorp is sued in its parent capacity for the alleged actions of Citibank. For the purposes of this motion, Defendants shall be collectively referred to as Citibank.

named Terrence Grosvenor about obtaining an automobile and a loan. Grosvenor informed Potter that she would be able to obtain a loan from Citibank if she purchased a vehicle from Ron Patrick, a car salesman with whom Grosvenor and Citibank had a special business relationship. Potter then completed a credit application ("Credit Application") and paid a down payment of $14,255 for her car, leaving $20,500 to be financed by Citibank.

After Potter signed the Credit Application, Grosvenor instructed her to sign an Automobile Loan Note ("Loan Note"). As security for the Loan Note and at Grosvenor's request, Potter also executed a security agreement ("Security Agreement") giving Citibank a security interest in any other property that Potter owned in the case that the financed automobile became damaged, stolen, lost or destroyed. The Loan Note contained a section captioned "Insurance," which provided in part:

> I understand that I must maintain property insurance on the property covered by the Security Agreement for its full insurable value, but I can buy this insurance through a person of my own choosing.
>
> I understand further that I am required to provide Vendor's Single Interest insurance coverage on this property until the due date of the last installment, and I may obtain insurance through a broker or agent of my own choice. Citibank offers such insurance at a cost of $4,354.00.

The Loan Note did not contain an explanation of the terms, purpose or coverage of VSI insurance and did not disclose any other brokers or agents who provide VSI insurance in the Virgin Islands. Nor did the Loan Note disclose the name of the insurer through which Citibank obtained the VSI insurance. Grosvenor told Potter that purchasing VSI insurance was a condition of obtaining the loan, and that VSI insurance protected the borrower in the case of loss or damage to the financed vehicle in an accident. Grosvenor further told Potter that VSI

insurance "provided liability and/or comprehensive insurance on the vehicle and that the loan 'came with insurance' for the vehicle." (First Amended Complaint at 6.)

Some time after signing each the Credit Application, the Loan Note and the Security Agreement based on Grosvenor's representations, Potter sought to cancel her VSI insurance to obtain cheaper automobile insurance. Citibank informed Potter that the VSI insurance could not be cancelled.

Based on the above facts and similar facts alleged by the other named Plaintiffs in this matter, Plaintiffs allege, on behalf of themselves as individuals and on behalf of the proposed class as a whole, the following claims against Citibank: Count I–violation of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601 et. seq; Count II–fraud and misrepresentation in inducing Plaintiffs to enter into consumer credit contracts; Count III–negligent misrepresentation; Count IV–breach of the duty to disclose; Count V–breach of the implied duty of good faith and fair dealing; Count VI–breach of fiduciary duty; Count VII–unconscionability; Count VIII–violation of the Virgin Islands Unfair and Deceptive Trade Practices Act, 12A V.I.C. §§ 101 et. seq., entitling Plaintiffs to declaratory and injunctive relief; and Count IX–Plaintiff Ebony Potter's claim for misuse of collateral.[2] By the instant motion, Plaintiffs move for certification of the following class pursuant to Fed. R. Civ. P. 23:

> All persons who (a) executed, in the Virgin Islands, a standard form Automobile Loan Note with Citibank in which they were charged a premium for Vendors Single Interest insurance and (b) executed, in the Virgin Islands, a standard form Security Agreement with

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[2]Plaintiffs do not seek class certification for Count IX, Ebony Potter's individual claim against Citibank for misuse of her collateral.

> Citibank.

(Pls.' Second Amended Complaint at 13.) Plaintiffs also seek to certify the following sub-class:

> All Class members who executed a consumer credit contract with Citibank for the purchase of a motor vehicle for their personal, family, or household use and whose consumer credit contract with Citibank was for an amount less than $25,000.

Id.[3]

II. Rule 23 Class Certification

The question of whether a civil action with multiple plaintiffs should be treated as a class action is governed by Fed. R. Civ. P. 23.[4] Rule 23(a) states the four prerequisites that a group of plaintiffs must possess in order to bring a class action. Where the 23(a) prerequisites have been met, Rule 23(b) provides the circumstances that must be present for a class action to be "maintainable." To obtain class certification, Plaintiffs must satisfy all four requirements of Rule 23(a) and come within one provision of Rule 23(b). Georgine v. Amchem Products, Inc., 83 F.3d 610, 624 (3rd Cir. 1996), *aff'd*, Amchem Products Inc. v. Windsor, 521 U.S. 591 (1997).

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[3] The definitions of Plaintiffs' proposed class and subclass as stated in their Second Amended Complaint have changed somewhat from the original class definitions and those set forth in the motion to certify the class. (See Pls.' Motion to Certify at 3.) The Court relies on the definition in the Second Amended Complaint.

[4] In opposing class certification, Citibank raises several arguments separate and apart from the requirements of Rule 23, including issues of standing and statutes of limitations. In considering class certification, however, the Court must not inquire into the merits of the underlying claims but must accept as true the allegations in the complaint. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974). Thus, Citibank's arguments are not relevant to the Court's Rule 23 analysis.

The four requirements of Rule 23(a), stated more fully in the rule, are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.[5] See id. The Rule 23(b) provision that Plaintiffs rely upon in this case is 23(b)(3), which requires a showing of both "predominance" ("that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members"), and "superiority" ("that a class action is superior to other available methods for the fair and efficient adjudication of the controversy").[6] Fed. R. Civ. P. 23(b)(3). Thus, in order for the Court to certify the class in this case, the following six requirements must be met: numerosity, commonality, typicality, adequacy

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[5]In full, Rule 23(a) provides:

> (a) Prerequisites 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 interests of the class.

[6]Rule 23(b)(3), the subsection relied upon by Plaintiffs in this case, provides:

> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
> . . . .
>
> (3) the 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 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.

of representation, predominance and superiority.

The burden is on Plaintiffs, as the proponents of class certification, to show that the proposed class satisfies the above requirements and should be certified. Baby Neal v. Casey, 43 F.3d 48, 55 (3rd Cir. 1994). It is not necessary, however, for Plaintiffs to establish the merits of their case at the class certification stage. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-178 (1974). In determining whether a class will be certified, the substantive allegations of the complaint must be taken as true. Id. Yet, courts must look beyond the pleadings, analyzing relevant facts and substantive law, in order to determine whether class certification is appropriate. Castano v. American Tobacco Co., 84 F.3d 734, 744 (5th Cir. 1996). District courts have broad discretion to grant or deny class certification. Eisenberg v. Gagnon, 766 F.2d 770, 785 (3rd Cir. 1985), cert. denied, 474 U.S. 946 (1985). Courts, however, may approve class actions only after a rigorous analysis ensuring compliance with Rule 23. In re Life USA Holding, Inc., Insurance Litigation.190 F.R.D. 359, 364 (E.D. Pa. 2000) (*citing* Snider v. Upjohn Co., 115 F.R.D. 536, 538 (E.D. Pa.1987)). In a doubtful case, "any error, if there is to be one, should be committed in favor of allowing a class action." Eisenberg, 766 F.2d at 785.

A. Rule 23(a)(1) – Numerosity

The "numerosity" requirement of Rule 23 states that a lawsuit may be brought as a class action only if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Impracticability, in the context of class actions, "does not mean impossibility but only the difficulty or inconvenience of joining all members of the class." In re Life USA Holding, Inc.,

Insurance Litigation, 190 F.R.D. 359, 365 (E.D. Pa. 2000) (*quoting* W.P. v. Poritz, 931 F. Supp. 1187, 1193 (D.N.J. 1996); Zinberg v. Washington Bancorp, Inc., 138 F.R.D. 397, 406 (D.N.J. 1990)). No bright-line number rule applies in determining whether the numerosity requirement has been met. The following commentary, however, is applicable as a general guideline:

> While the attitude taken towards a given number may vary, each opinion reflects a practical judgment on the particular facts of the case. Thus no hard and fast number rule can or should be stated, since "numerosity" is tied to "impracticability" of joinder under the specific circumstances. Nevertheless, some general tendencies can be observed. While there are exceptions, numbers under twenty-one have generally been held to be too few. Numbers between twenty-one and forty have evoked mixed responses and again, while there are exceptions, numbers in excess of forty, particularly those exceeding one hundred or one thousand, have sustained the requirement.

Weiss v. York Hospital, 745 F.2d 786, 808 (3rd Cir. 1984) (*quoting* 3B J. Moore, MOORE'S FEDERAL PRACTICE ¶ 23.05[1], at 23-150 (2d ed. 1982)); see also Stewart v. Abraham, 275 F.3d 220, 226 (3rd Cir. 2001) (stating that generally, if the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met).

Furthermore, "[p]recise enumeration of the members of a class is not necessary for the action to proceed as a class action." Zinberg, 138 F.R.D. at 405 (*citing* Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE, Civil 2d section 1762 (1982)). Class size may be estimated. Id. However, a party seeking class certification may not rely on speculation or mere allegations of numerosity. Evans v. U.S. Pipe & Foundry Co., 696 F.2d 925, 930 (11th Cir. 1983).

In the instant case Plaintiffs do not specifically enumerate the class members, but instead attempt to make a permissible estimation of class size. The named Plaintiffs total twenty, and

Plaintiffs assert that at least one hundred individuals fall within the definitions of the proposed class and subclass. As support for their assertion, Plaintiffs offer only the signed affirmation of their attorney, which states in pertinent part:

> I have personal knowledge of at least one hundred (100) persons who satisfy the definitions of the class based on documents provided by Citibank. The proposed class of at least one hundred members is so numerous that joinder of all members is impracticable.

(Affirm. of Claudette Ferron at 1.) Plaintiffs do not, however, identify the documents on which Attorney Ferron bases her affirmation, make such documents available to the Court, describe how the documents indicate that certain individuals fall within the stated classes, or identify any of the purported class plaintiffs. Nor have Plaintiffs set forth any reason that joinder of the potential plaintiffs would be impracticable, difficult, or inconvenient, or offered any other proof that the numerosity requirement has been met. Plaintiffs simply argue that numerosity is satisfied because Citibank used standard forms in its loan transactions, (Pls.' Mem. at 6), and because Citibank has entered into at least 130 automobile loan transactions. (Pls.' Reply Mem. at 17.) Those arguments are largely unsupported.

Where it is well established that conclusive allegations are insufficient to establish numerosity under Rule 23(a), Plaintiffs may not sidestep that rule by simply setting forth such conclusive allegations in an affidavit of class counsel. See Michigan v. Art Capital Corp., 612 F. Supp. 1421, 1432 (S.D.N.Y. 1985) (speculative assertion in counsel's affidavit was insufficient to meet the numerosity requirement); Pecere v. Empire Blue Cross and Blue Shield, 194 F.R.D. 66, 70 (E.D.N.Y. 2000) (vague hearsay statements in plaintiffs' counsel's affidavit were

insufficient to satisfy the numerosity requirement); Narwick v. Wesler, 901 F. Supp. 1275, 1278-79 (N.D. Ill. 1995) (attorney's affidavit was insufficient to prove numerosity). In the present case, while recognizing that "precise enumeration" of the class plaintiffs is not required, the Court finds that the lack of evidence on numerosity demonstrates that counsel's affirmation is a "mere allegation" rather than a permissible "estimation" of numerosity. See Zinberg v. Washington Bancorp, Inc., 138 F.R.D. 397, 405 (D.N.J. 1990); Evans v. U.S. Pipe & Foundry Co., 696 F.2d 925, 930 (11th Cir. 1983). Without more, it is not possible to conclude that Plaintiffs have satisfied their burden of demonstrating numerosity. Plaintiffs' statements that 130 people have obtained VSI insurance and that Citibank used standardized forms in its loan contracts do not add substantially to the numerosity analysis where Plaintiffs have failed to make the circumstances of such transactions available to the Court.[7] No information exists on which the Court may base a determination of whether individuals who purchased VSI insurance, even using standardized forms, fall within any other defining characteristics of the proposed class or subclass. Plaintiffs provide no evidence that the misrepresentations alleged by the named Plaintiffs occurred with

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[7] Plaintiffs rely on Swiggett v. Watson, 441 F. Supp. 254, 256 (D. Del. 1977), in arguing: "the fact that Citibank used standard form documents itself indicates that the numerosity requirement is satisfied." (Pls.' Mem. at 6.) In Swiggett, the court considered defendant's use of special forms as a factor in determining the potential number of plaintiffs where the actual number could not be ascertained. The court noted, however, that the special forms were applicable only to certain transactions effected under a particular statute relevant to the class definition. Id. As such, the forms may have been indicative of the ultimate number of class plaintiffs.

In the present case, conversely, Citibank disputes that the named Plaintiffs all received the same form disclosures, and Plaintiffs give the Court no basis as to how such forms relate to class membership. Plaintiffs do not clarify, for example, whether the alleged standard forms were used for all loan transactions at Citibank or for only those loans to individuals falling within the proposed classes such as individuals purchasing VSI insurance. Accordingly, the Swiggett analysis cannot apply.

respect to the putative class members. Moreover, aside from counsel's affirmation that Plaintiffs rely on information in "documents provided by Citibank," the Court has no information as to the basis or methodology of Plaintiffs conclusions regarding the number of individuals who may fall within the proposed classes. See Pecere v. Empire Blue Cross and Blue Shield, 194 F.R.D. 66, 70 (E.D.N.Y. 2000). Therefore, Plaintiffs assertion does not suffice to establish a reasonable estimate of numerosity. See id.

Furthermore, even if Plaintiffs' proposed number of potential class members were found to be accurate, the number ("at least 100") is not so large as to eliminate consideration of whether joinder of the potential plaintiffs is impracticable--the ultimate concern underlying the numerosity analysis. "While the Plaintiffs need not show that joinder of all class members would be impossible, they must show that it would be difficult." In re Hartford Sales Practices Litigation, 192 F.R.D. 592, 602 (D. Minn. 1999). The absolute number of class plaintiffs is only part of that analysis. Where the proposed class is relatively small--as in this case, allegedly about 100--"[c]ourts generally evaluate impracticability of joinder by considering three separate factors: 1) the size of the putative class; 2) the geographic location of the members of the proposed class; and 3) the relative ease or difficulty in identifying members of the class for joinder purposes." Calhoun v. Horn, 1997 WL 633682, at *2 (E.D. Pa. Oct. 8, 1997) (*citing* Ardrey v. Federal Kemper Ins. Co., 142 F.R.D. 105, 110 (E.D. Pa.1992)).[8]

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[8] Other factors courts have considered in analyzing impracticability of joinder include: (1) judicial economy, (2) the geographic dispersion of class members, (3) class members' financial resources, (4) the ability of claimants to institute individual lawsuits, (5) knowledge of the names and existence of the potential class members, and (6) requests for prospective injunctive relief that would involve future class members. Pecere v. Empire Blue Cross and Blue Shield, 194 F.R.D. 66, 70-71 (E.D.N.Y. 2000). Plaintiffs argue that because they are of meager means, they will

Plaintiffs in this case fail to present evidence on the issues of geographic location or difficulty of identification.[9] The Second Amended Complaint simply states: "The Class is sufficiently numerous that joinder of all members is impractical. Plaintiffs are aware of at least 100 other members of the Class and Subclass." (Second Amended Complaint at 13). As support, Plaintiffs provide only the affirmation of their counsel that: "The proposed class of at least one hundred members is so numerous that joinder of all members is impracticable." (Affirm. of Claudette Ferron at 1.) Plaintiffs' briefs contain similar cursory allegations. (See Pls.' Reply Mem. at 17.) Such conclusions of impracticability of joinder are insufficient.

Upon independent analysis it appears to the Court to be likely that the potential class members reside or spend substantial time in the Virgin Islands. The class by definition consists of individuals who executed, *in the Virgin Islands*, a standard form Automobile Loan Note and Security Agreement with Citibank for the purchase of an automobile *in the Virgin Islands*. (Pls.' Second Amended Complaint at 13.) It further appears that identification of potential plaintiffs will not be difficult, as such individuals should be readily identifiable by the very "Citibank documents" upon which Plaintiffs' counsel bases her affirmation in support of numerosity. (See Affirm. of Pls.' Counsel at 1.)

In accordance with the foregoing analysis, where Plaintiffs have set forth little more than a simple allegation of the potential number of class plaintiffs, the Court cannot find that numerosity

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have difficulty instituting individual lawsuits. However Plaintiffs have provided no evidentiary support for that assertion. See id. at 70, FN2.

[9]Plaintiffs also fail to estimate the amount of the purported plaintiffs' claims so that the Court may judge whether such claims are small enough that they are unlikely to be brought as individual lawsuits. See Gilkey v. Central Clearing Co., 202 F.R.D. 515, 527 (E.D. Mich. 2001).

is satisfied by the alleged number of potential plaintiffs alone. Furthermore, where Plaintiffs have offered no proof of impracticability or difficulty of joinder, the numerosity requirement is not satisfied. See Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65, 74 (D.N.J. 1993) (concluding numerosity is not satisfied where 123 potential class members exist because (1) all members are readily identifiable and easily located, (2) all members live in New Jersey, and (3) all members are capable of protecting their own interests); see also Spectrum Financial Cos. v. Marconsult, Inc., 608 F.2d 377 (9th Cir. 1979) (class of ninety-two members failed to satisfy numerosity requirement). Accordingly, Plaintiffs' motion for class certification will be denied for failure to meet the numerosity requirement.

B. Rule 23(a)(4) – Adequacy of Representation[10]

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The analysis under the 23(a)(4) requirement, called the "adequacy of representation" requirement, involves a two-pronged inquiry designed to ensure that the absentee plaintiffs' interests are fully pursued. The two-pronged inquiry requires: (1) that class counsel must be qualified and must serve the interests of the entire class; and (2) that the interests of the named plaintiffs must be sufficiently aligned with and not antagonistic to those

[10] Because the issues of numerosity and adequacy of representation are determinative of Plaintiffs' motion in this case, the Court limits its discussion to those issues. This is not to say that such requirements are superior to the others or that the other requirements for Rule 23 have been satisfied. It appears to the Court that Plaintiffs have also likely failed, for lack of evidence, to establish (1) that a class action is superior to any other available method for fair and efficient adjudication of this matter, and (2) that common questions predominate, as required by Rule 23(b)(3).

of the class. Georgine v. Amchem Products, Inc., 83 F.3d 610, 630 (3rd Cir. 1996); Stephenson v. Bell Atlantic Corp., 177 F.R.D. 297, 286 (D.N.J. 1997).

With respect to the first prong, Plaintiffs' counsel has filed her professional biography and an affirmation stating that she has "considerable litigation experience and has experience in consumer class actions." (Affirmation of Claudette Ferron at 2; see also Professional Biography of Claudette Ferron, Ex. A.) Citibank does not dispute, and the Court has no doubt, that Plaintiffs' counsel is qualified to serve the interests of the class.

Prong two, the "sufficient alignment of interests" prong, serves to uncover conflicts of interest between named parties and the class they seek to represent. Amchem Products, Inc. v. Windsor, 521 U.S. 591, 625 (1997) (*citing* General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157-158 (1982)). To satisfy this prong of the adequacy of representation inquiry, "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." Id. at 626 (*citing* East Texas Motor Freight System, Inc. v. Rodriguez, 431 U.S. 395, 403 (1977)). The interests of the class representative and the absentee class members need not be identical, but must not be antagonistic. See Kamen v. Kemper Financial Services, Inc., 908 F.2d 1338, 1349-50 (7th Cir. 1990), *rev'd on other grounds*, 500 U.S. 90 (1991); see also Cannon v. Cherry Hill Toyota, Inc., 184 F.R.D. 540, 545 (D.N.J. 1999).

In the instant case Plaintiffs assert that prong two is satisfied because the interests of the named Plaintiffs coincide with those of the class in that all parties seek money damages as a result of Citibank's conduct. Plaintiffs state that no antagonism or conflict exists between the representatives and the class. The Court finds, however, that there is simply insufficient

information in the record to determine whether the absentee class members suffered injuries sufficiently similar to those alleged by the named Plaintiffs, or whether the named Plaintiffs' and absentee plaintiffs' claims are antagonistic. Plaintiffs provide little and vague information as to the claims of the absentee plaintiffs. For example, as noted by Citibank, the Court lacks information as to whether the absentee plaintiffs will seek to rescind their VSI insurance contracts as will the named Plaintiffs, or whether class members will seek only damages. The Court does not know the amount of the purported class members' claims, a defining characteristic of subclass membership under the class definition. Further, it is unclear whether class plaintiffs will allege that Citibank personnel engaged in material misrepresentations as alleged by the named Plaintiffs, or whether the sole basis of the class claims will be Citibank's use of standard form documents. Faced with this lack of information, the Court cannot conclude that the interests of the named Plaintiffs are not antagonistic to those of the class, or that the named Plaintiffs will adequately represent the interests of the class. Accordingly, Plaintiffs' motion to certify the class must be denied.

III. Conclusion

Because the Court finds the issues of numerosity and adequacy of representation determinative of Plaintiffs' motion, discussion shall be limited to those requirements. See Narwick v. Wexler, 901 F. Supp. 1275, 1278 (N.D. Ill. 1995). In accordance with the foregoing analysis, Plaintiffs' motion to certify the class will be denied.[11] An appropriate Order is attached.

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[11] In so stating, the Court reiterates it's consideration of the standard directing that any error as to certification should be committed in Plaintiffs' favor. Plaintiffs' simply have not met their burden of proving the Rule 23 requirements in this case.

ENTER:

Dated: April ___, 2002

_____
RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Claudette V. Ferron, Esq.
Carlos M. Sires, Esq.
Marie E. Thomas, Esq.
Honorable Geoffrey W. Barnard, U.S. Magistrate Judge

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

EBONY POTTER, HILDA JOSEPH, *et. al*, on behalf of themselves and all others similarly situated,	)	
Plaintiffs	)	CIVIL NO. 1999-116
v.	)	
CITICORP and CITIBANK, N.A.,	)	
Defendants	)	

ORDER

This matter having come before the Court on Plaintiffs' Motion to Certify the Class, and in accordance with the reasons set forth in the attached Memorandum Opinion, it is hereby

ORDERED that Plaintiffs' motion is **DENIED**.

ENTER:

Dated: April ___, 2002

_____
RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Claudette V. Ferron, Esq.
Carlos M. Sires, Esq.
Marie E. Thomas, Esq.
Honorable Geoffrey W. Barnard, U.S. Magistrate Judge