

FEB 13 2013

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
THIRD DIVISION

CASE #:

STATE OF ARKANSAS *ex rel.*  
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO. 60CV-2011-4429

SURE ADVANCE, LLC  
d/b/a SUREADVANCE.COM

DEFENDANT

**CONSENT JUDGMENT**

The State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, filed this action in order to redress and restrain alleged violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 116, and the Arkansas Constitution, *Article 19, Section 13*, prohibiting usury in the State of Arkansas.

The Attorney General and Sure Advance, LLC, a Delaware limited liability company (“Sure Advance” or “Defendant”), wish to resolve this action and recognize that this Consent Judgment has been negotiated in good faith, and that this Judgment is fair, reasonable, and in the public interest. Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

**I. Definitions**

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101 through 116.

**II. Jurisdiction**

2. The Attorney General brought this enforcement action pursuant to the Arkansas Deceptive Trade Practices Act. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104, the common law of the State of Arkansas, and under the Arkansas

Constitutional provisions for usury, as set forth in Ark. Const. Art. 19 § 13 and *State ex rel. Bryant v. R & A Inv. Co., Inc.*, 336 Ark. 289, 985 S.W.2d 299 (1999).

3. For purposes of this Consent Judgment, the Defendant waives all objections and defenses that it may have to the jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court's jurisdiction in any subsequent action to enforce the terms of this Consent Judgment. The Defendant reserves the right to object to jurisdiction or venue in any other unrelated subsequent action filed against it by the Attorney General.

### **III. Parties Bound**

4. This Consent Judgment applies to and is binding upon the Attorney General and Sure Advance.

5. Any change in ownership or status of Sure Advance, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Sure Advance's responsibilities under this Consent Judgment.

### **IV. The Attorney General's Position**

6. Defendant is engaged in the business of making short term loans, more commonly known as payday loans, under the trade name Sure Advance, LLC. Sure Advance owns and operates the interactive website [www.sureadvance.com](http://www.sureadvance.com), by which it has marketed loans to consumers nationwide, including to those in Arkansas.

7. In order to fund loans to Arkansas consumers, Defendant obtains access to those consumers' Arkansas-based bank accounts. Loans are electronically funded by crediting a borrower's account. Defendant thereafter electronically debits that same account in order to collect on the loan.

8. Defendant has offered loans of up to \$1000 to Arkansas consumers. The annual percentage rate of Defendant's loans often exceeds 600% per annum.

9. Defendant charged Arkansas consumers triple-digit interest rates on short term loans; the practice of charging such ultra-high usurious rates of interest is unconscionable as a matter of Arkansas law. See *State of Ark. v R & A Investment Co., Inc.*, 336 Ark. 289, 785 S.W. 2d 299 (1999), *Ark Bd. of Collection Agencies & Old Republic Surety Co. v. McGhee, et al.*, 372 Ark. 136, 271 S.W.3d 512 (2008), *Staton v Ark Bd. of Collection Agencies & American Manufactures Mutual Insurance Co.*, 372 Ark. 387, 277 S.W.3d 190 (2008), and *McGhee v. Ark State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

10. The Attorney General specifically denies the assertions of the Defendant set forth in the Defendant's position in this Consent Judgment.

#### **V. The Defendant's Position**

11. The Defendant denies the legal and factual assertions contained in Section IV above, entitled "The Attorney General's Position."

12. The Defendant has vigorously denied and continues to vigorously deny each and all of the claims and contentions alleged by the Attorney General in this Consent Judgment and otherwise, including all claims concerning the Defendant's alleged conduct, as well as the contentions that such alleged conduct constitutes wrongdoing or gives rise to legal liability. The Defendant also has vigorously denied and continues to vigorously to deny, *inter alia*, the allegations that Arkansas consumers have suffered any legally cognizable harm as a result of the Defendant's alleged activities. The Defendant denies that, but for its consent to such jurisdiction solely for the purposes of executing this Consent Judgment, this Court would have *in personam*

jurisdiction over it. If this matter were to proceed further without the settlement contemplated hereby, the Defendant would have other defenses available to it.

## **VI. Relief**

13. This Consent Judgment is intended to preclude Sure Advance from directly or indirectly engaging in any type of lending transaction in violation of Arkansas' prohibition against usury. Accordingly, Sure Advance shall hereafter be permanently restrained and enjoined from offering, funding, or collecting upon any loan with an interest rate in excess of the then-applicable maximum rate set out in the Arkansas Constitution, where such offer or subsequent loan is made to any resident of Arkansas.

14. More specifically, Sure Advance is permanently restrained and enjoined from using any plan, device, model, mechanism, or other sham, to avoid the terms of this Consent Judgment. Prohibited practices shall include, but are not limited to, internet-originated lending with residents of the State of Arkansas where the annual percentage rate exceeds that allowed by the Arkansas Constitution, regardless of the purported location of the lender, and regardless of any contractual term providing that the contract be interpreted or controlled by the laws of any other jurisdiction. If Sure Advance believes that there has occurred a change in federal law subsequent to the entry of this Consent Judgment that has the effect of pre-empting the application of Arkansas law to lending transactions prohibited by this agreement and present Arkansas law, then Sure Advance may petition this Court for appropriate relief from the injunctive provisions of this Consent Judgment. However, prior to petitioning for such relief Sure Advance agrees to provide written notice to the Attorney General thirty (30) days prior to any such petition filed with this Court.

15. All current, delinquent, defaulted, charged-off, or outstanding lending transactions which the Defendant entered into with Arkansas residents are, hereafter, cancelled. For purposes of this Consent Judgment, the term “Arkansas resident” is defined as a consumer borrower that was physically located and domiciled in Arkansas at the time he (or she) applied for or accepted an offer for a loan. The Defendant will undertake no efforts to collect on these transactions. Furthermore, the Defendant shall take no action, formal or informal, to attempt to enforce any such obligation against any Arkansas resident. Specifically, the Defendant shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. The Defendant shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer any obligations arguably due based upon these transactions. The Defendant shall make no negative reports to any credit bureau, check clearinghouse, or other related service with respect to any of these transactions. If the Defendant has made any negative reports to any credit bureau, check clearinghouse, or other related service with respect to an Arkansas resident, it shall, within thirty (30) days of the entry of this Order, request that those negative references to be removed.

16. Defendant shall clearly and conspicuously notify all visitors to its website, [www.sureadvance.com](http://www.sureadvance.com), or any other website that it may own, operate, or control now or in the future, through which it offers consumer loans, that it does not make or service loans to consumers residing in the State of Arkansas. Any loan application made by a consumer providing an Arkansas home address shall be rejected. To the extent an applicant lists a work address in the State of Arkansas, the application will be further scrutinized to determine if the applicant’s place of residence is in the State of Arkansas or has an Arkansas driver’s license. No

information provided in any application received shall be used to market any product or service to such applicant, nor sold or provided to any third party for any marketing purpose.

17. Contemporaneously with the execution of this document, the Defendant shall pay the sum of \$50,000 to the Attorney General. These sums shall be held by the Attorney General and deposited in the Consumer Education and Enforcement Fund and shall be held in trust there to be used by the Attorney General in his discretion to further efforts to investigate and prosecute consumer protection, environmental, public utilities, and antitrust matters, and to educate consumers regarding such matters. The funds will be distributed in accordance with the Attorney General's settlement funds policy dated October 11, 2011. All monies shall be delivered to the Chief Financial Officer of the Attorney General's office and shall be made payable to the Office of the Attorney General. A copy of all checks shall be delivered to Charles Saunders, Assistant Attorney General. All checks will be delivered to Carol Thompson, Chief Financial Officer, Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201.

18. In addition to the \$50,000 payment, Sure Advance, LLC agrees to be contingently liable for the payment of an additional \$50,000. However, the imposition of the additional \$50,000 sum will be suspended for a period of five years. The payment of said additional sum shall be contingent upon a specific finding by this Court that Sure Advance has materially breached, intentionally or otherwise, a substantive term of this Consent Judgment within said five-year period, commencing on the date this Consent Judgment is entered. A material violation of a substantive provision of this Consent Judgment shall cause the sum to be immediately due and payable. After the expiration of five years from the entry of this Consent Judgment, this contingent liability shall expire and the contingent payment of \$50,000 shall no longer be

collectable by the Attorney General. However, neither the suspension of such payment nor the expiration of such contingency shall prevent the Attorney General from pursuing any and all actions and claims available to the Attorney General for any conduct occurring after the entry of this Consent Judgment, and the injunctive provisions of this Consent Judgment shall remain in effect unless and until modified by this Court upon the petition of either party.

19. This Consent Judgment constitutes the entire agreement of the Attorney General and Sure Advance. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment, and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

20. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against Sure Advance, its agents, owners, employees and officers, for those practices alleged within its Complaint in this action. Only those persons or entities identified herein are covered by the state's release. The release inures to the benefit of no other entities or persons. This release shall not in any way limit the authority of the Attorney General to conduct such investigations as he deems advisable or to bring any enforcement action regarding alleged violations of law unrelated to its Complaint or occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek enforcement of any and all sections of this Consent Judgment by appropriate petition to this Court.

21. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a

signatory hereto. This Consent Judgment does not constitute an admission by Sure Advance of any fact or the existence or application of any law, regulation or legal principle. This Consent Judgment represents solely a compromise of disputed claims within the meaning of Rule 408 of the Federal and Arkansas Rules of Evidence. The Consent Judgment is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. This Consent Judgment and all actions of the parties pursuant to this Consent Judgment are intended by the parties to be exclusively a compromise and resolution of existing and disputed claims.


22. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendant, past, current, or future; Sure Advance shall make no representations to the contrary.

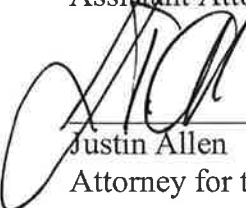
23. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

## VII. Signatories

24. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

25. This Consent Judgment is made and entered into by and between the parties hereto and on this 11<sup>th</sup> day of February, 2013.

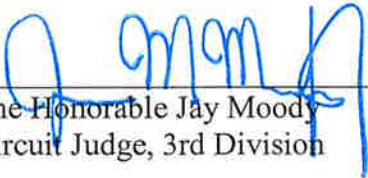
  
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Charles Saunders  
Assistant Attorney General

  
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Justin Allen  
Attorney for the Defendant



**SO ORDERED:**

Dated: February 13, 2013.

  
The Honorable Jay Moody  
Circuit Judge, 3rd Division

**PREPARED BY:**

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