

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS  
CIVIL DIVISION

Filed For Record  
Drew Co., AR  
Pat Savage Circuit Clerk

MAE HELEN KELSEY

PLAINTIFF

JUL 07 2009

v.

CASE NO. CV-2009-0151-4

10/18/10/11/12/1/2/3/4/5PM

COMPUCREDIT CORPORATION  
and VS OF ARKANSAS, LLC, d/b/a  
FIRST AMERICAN CASH ADVANCE

DEFENDANTS

COMPLAINT

Comes on now the Plaintiff, and for her Complaint hereby states as follows:

1. The Plaintiff is an adult resident of Arkansas. The Plaintiff seeks relief for damages pursuant to Article 19, Section 13, of the Arkansas Constitution and Arkansas Code Annotated § 4-88-101, *et seq.* Jurisdiction and venue are proper in this Court.
2. The Defendant, VS Financial of Arkansas, LLC, d/b/a First American Cash Advance (FACA), is a payday lender which does business at approximately twenty-seven branch locations in the State of Arkansas. VS Financial is licensed with the Arkansas State Board of Collection Agencies. VS Financial purports to engage in transactions pursuant to the Arkansas Check Cashers Act. Upon information and belief, VS Financial is owned and operated by CompuCredit Corporation. VS Financial of Arkansas, LLC is a Foreign Limited Liability Company with its principal place of business in a state other than Arkansas. VS Financial of Arkansas, LLC's Registered Agent is National Registered Agents, Inc., The Tower Building, 323 Center Street, STE 1202, Little Rock, AR 72201.
3. VS of Arkansas, LLC is a payday lender which does business at approximately twenty-seven branch locations in the State of Arkansas. Upon information and belief, VS of Arkansas is licensed with the Arkansas State Board of Collection Agencies. Upon information

and belief, VS of Arkansas is owned and operated by CompuCredit Corporation. VS of Arkansas, LLC is a Foreign Limited Liability Company with its principle place of business in a state other than Arkansas. VS of Arkansas, LLC's Registered Agent is National Registered Agents, Inc., The Tower Building, 323 Center Street, STE 1202, Little Rock, AR 72201.

4. Compucredit Corporation (hereinafter "CompuCcredit") is a foreign corporation which maintains an office at 245 Perimeter Center Parkway, Suite 600, Atlanta, Georgia, 30346.

5. In 2004, a subsidiary of CompuCredit purchased substantially all of the assets of a national payday lender operating under the name of First American Cash Advance and began what CompuCredit refers to as its "Retail Micro-Loans segment."

6. In Arkansas, CompuCredit's Retail Micro-Loan segment is conducted through CompuCredit's subsidiaries, VS Financial of Arkansas, LLC and VS of Arkansas, LLC. CompuCredit refers to its Micro-Loan Segment operations in the State of Arkansas as its "direct lending model." These transactions occur at the Defendants' branch locations which operate under the name, First American Cash Advance.

7. VS Financial of Arkansas, LLC and VS of Arkansas, LLC do business in Arkansas under the name "First American Cash Advance." These Defendants, and their corporate parent, shall hereinafter be referred to as "FACA."

8. CompuCredit, VS Financial of Arkansas, LLC and VS of Arkansas, LLC all maintain the same foreign address of 245 Perimeter CTR Parkway, Atlanta, GA 30346.

9. Based on good faith knowledge and belief, VS Financial of Arkansas, LLC and VS of Arkansas, LLC have the same managers.

10. FACA makes payday loans to customers at its approximately 27 Arkansas branch locations.

11. In a typical transaction, customers present FACA with a personal check. FACA agrees to hold the check until some point in the future, usually based upon the date of the customer's next payday. In exchange for the check, the customer is presented with a money order from FACA. The customer must then cash the money order at the same FACA location for an additional "fee."

12. In the above-described transactions, the customers are charged a 10% per annum "finance charge" in connection with the issuance of the money order. However, the customers are also charged a 10% "Check Cashing" fee. This "fee" is 10% of the face value of the money order. Because this "fee" constitutes interest under Arkansas law, it must be added to the "finance charge" in order to calculate the total interest charged to the customer in connection with these transactions. When this check cashing "fee" is added to the finance charge, it results in an annual percentage rate well in excess of 100% per annum.

13. CompuCredit's subsidiaries, both operating under the name First American Cash Advance, charge the fee which is designated by the Defendants as "interest" and the fee which is imposed by the Defendants for "cashing" the money order or voucher which is allegedly produced during the transaction.

14. The net effect of these transactions is that the customer provides a personal check which represents a promise of future payment to FACA in exchange for a lesser amount of cash. The fees paid by the customers in connection with these transactions constitute interest under Arkansas law and the amount of cash that the customer leaves the store with represents the principal amount of the loan.

15. Since December 11, 2007, the maximum legal rate of interest that can be charged in Arkansas has been 9.75% or less. As such, even the 10% charge currently on the face of the

documents being used by the Defendants is illegal in the State of Arkansas. Therefore, even if this Court determines that the additional fees charged by Defendants do not constitute interest, any charge in excess of 9.75% since December 11, 2007, entitle Plaintiff to damages in the amount of twice the amount of fees paid plus a declaration that the entire transaction is void.

16. In addition, the Defendants miscalculate their own finance charge because they base the calculation on the principle amount of the loan plus the other fees they impose in the lending transactions. Therefore, based on good faith knowledge and belief, all of the Defendants' transactions for the period described herein were usurious under Arkansas law.

17. Since 1999, Check-cashing fees have been held to constitute "interest" under Arkansas law by numerous trial courts in Arkansas. Thus, the "fees" charged by FACA, which constitute interest under Arkansas law are excessively high and FACA's actions constitute usury.

18. In November, 2008, the Arkansas Supreme Court struck down the Arkansas Check Cashers Act and held that fees charged pursuant to the Act constitute usurious interest. McGhee v. Arkansas State Bd. Of Collection Agencies, 2008 Ark. LEXIS 745 (2008).

19. Plaintiff, Mae Helen Kelsey, is an adult resident of Desha County, Arkansas. Plaintiff entered into numerous transactions with First American Cash Advance at the Defendants' branch in Drew County, Arkansas. The Plaintiff paid Defendants' fees for loans that occurred throughout a two-year period.

20. The fees charged by the Defendants in each of these transactions exceeded 100% per annum. Copies of some of the documents related to the Plaintiff's transactions are attached as **Exhibit A**. The Plaintiff does not have copies of the alleged contracts, but will seek the same through discovery.

21. FACA charges fees which are not disclosed on the attached documents. These fees are allegedly for cashing a money order.

22. All of the fees charged by FACA over and above the principal amount of the cash advance constitute interest under Arkansas law.

23. Defendants CompuCredit and VS Financial of Arkansas, LLC claim that the "check-cashing fee" collected by VS of Arkansas, LLC. is authorized in the Arkansas Check Cashers Act. The Arkansas Supreme Court has ruled that such fees are a violation of Arkansas anti-usury laws and that the Check Cashers Act provides no defense to usury or DTPA claims such as the ones set forth herein. McGhee, supra; Arkansas State Board of Collection Agencies v. McGhee, 372 Ark. 136, \_\_\_ S.W.3d \_\_\_ (2008); Staton v. Arkansas State Board of Collection Agencies, 372 Ark. 387, \_\_\_ S.W.3d \_\_\_ (2008).

24. Under the Arkansas Check Casher's Act, a check casher must provide cash in exchange for cashing a check or providing a deferred presentment agreement to a customer. FACA does not provide cash to its customer but instead provides customers with a money order. This money order can only be cashed upon the payment of an additional fee to FACA.

25. The Defendants' customers are made to believe that they are required to cash the money order or voucher at the Defendants' offices.

26. The Defendants' employees in Arkansas face the risk of reprimand or termination if they allow customers to attempt to cash the money orders or vouchers elsewhere.

27. The Defendants advise their employees that the Defendants do not make any money unless customers cash the money orders or vouchers at the Defendants' offices.

28. The Defendants have used signs in their Arkansas stores that stated: "Walk in . . . write a check . . . walk out with your cash."

29. This sort of sign and marketing is used because it is contemplated that customers must leave the store with cash—not with the money order or voucher which is produced by the Defendants as a result of the initial “loan” transaction.

### USURY

29. The transactions described herein constitute credit transactions.

30. The transactions between FACA and the Plaintiff were loans.

31. The fees charged by FACA are interest.

32. Article 19, § 13 of the Arkansas Constitution limits the amount of interest on consumer transactions in Arkansas.

33. The interest charged by FACA exceeds the allowable interest under the Arkansas Constitution.

34. The fees charged by FACA are usurious.

35. The Defendants directly or indirectly receive usurious interest from their customers through the transactions described in this complaint.

36. The Defendants' documents were drafted to intentionally conceal the actual interest charged to borrowers.

37. Under Article 19, § 13, the transactions between FACA and the Plaintiff are void as to principal and interest.

38. Under Article 19, § 13, the Plaintiff is entitled to damages in the amount of equal to twice the amount of interest paid to FACA and a declaration that the loans are void as to principal and interest.

39. The Plaintiff is also entitled to judgment for reasonable attorney's fees and costs.

## DECEPTIVE TRADE PRACTICES ACT

39. The Defendants are persons governed by the Arkansas Deceptive Trade Practices Act (Ark. Code Ann. § 4-88-101, *et seq.* "DTPA").

40. Under the DTPA, persons who supervise, control and derive financial gain from any personal entity which violates the Act are also liable for damages.

41. CompuCredit is an entity which derives financial gain and which controls and supervises the actions of FACA through its wholly-owned subsidiaries, VS Financial of Arkansas, LLC and VS of Arkansas, LLC.

42. FACA's conduct as described herein is unfair and deceptive.

43. The Arkansas Supreme Court has specifically ruled that the type of lending practices utilized by FACA are, as a matter of law, a deceptive trade practice and a violation of the State Check-Cashing regulations. Staton v. Arkansas State Board of Collection Agencies, — S.W. 3d —, 372 Ark. 387 (2008). In March of 2008, the Arkansas Attorney General issued a letter ordering Arkansas payday lenders to cease and desist engaging in such practices.

44. All of the fees which FACA charges in the payday loan transactions described herein are interest under Arkansas law. This interest exceeds 100%.

45. The act of charging interest rates in excess of 100% is unconscionable as a matter of law in Arkansas.

46. At the time of the transactions described herein, the Defendants purported to comply with the Arkansas Check Cashers Act. However, the Defendants' conduct violates this Act by, *inter alia*, failing to provide cash in exchange for cashing a personal check.

47. The Plaintiff is entitled to damages for violations of the DTPA.

48. The Plaintiff is entitled to judgment against the Defendants for reasonable attorney's fees and costs incurred herein.

### **JURY DEMAND**

49. The Plaintiff reserves the right to amend this pleading as allowed by the Arkansas Rules of Civil Procedure and hereby demand a trial by jury.

50. First American's customer agreements are consumer contracts of adhesion. The agreements are one-sided, and they are drafted by FACA. The agreements also contain mandatory pre-dispute arbitration provisions which are invalid under Arkansas contract law. These arbitration provisions are illusory, lack consideration and lack mutuality of obligation which is a requirement for any contract under Arkansas law.

51. The reason that these arbitration provisions lack are illusory, lack consideration and lack mutuality of obligation is that FACA has reserved the right to sue its customers in small claims court. It is anticipated that FACA will argue that this reservation does not destroy mutuality because both parties are free to sue in small claims court. The Arkansas Supreme Court has previously found that this argument is "disingenuous" because taking into account their line of business, it is difficult to imagine what other causes of action against a borrower remain that the payday lender would be required to submit to arbitration. In other words, the Arkansas Supreme Court has recognized that payday lenders loan small amounts of money to their customers and, therefore, all of their collection claims are small enough to qualify for small claims court jurisdiction. Thus, the Court has held that the customer's promise to submit to arbitration is not enforceable, because the payday lender had the option of pursuing arbitration or bringing suit in court.



52. FACA's arbitration provisions are also unenforceable because they are substantively unconscionable. The terms of these provisions are commercially unreasonable and unfair. These provisions have the purpose and effect of attempting to allow FACA to violate clear Arkansas law free from concerns of class-wide liability and are drafted in such a way to eviscerate Arkansas' clear public policy against the charging of usurious rates of interest in this State. FACA knows that it can reap enormous profits through its operations in throughout Arkansas so long as it cannot be held liable on a class-wide basis. These arbitration provisions are grossly unfair, one-sided and unreasonably favorable to FACA, while precluding a meaningful choice for FACA's customers.

53. These arbitration provisions are also unenforceable because they are procedurally unconscionable. Obviously, FACA has far superior bargaining strength and sophistication or it would not be able to induce Plaintiff and others to pay six digit interest rates for small loans. Due to the financial strain on Plaintiff and the other members of the class, they are not able to accept or decline the terms demanded by FACA.

54. Moreover, FACA's attempt to prohibit joinder of claims and prohibit class actions is also unenforceable and unconscionable. FACA's aim by creating a one-sided mandatory arbitration clause in its adhesion contracts is to prevent the possibility of facing a class-wide claim in a court of law. The Plaintiff alleges that the members of the putative class will be deprived of a viable, legal remedy if forced to individually arbitrate their claims. Meanwhile, FACA reserves the right to sue their customers in a court of law, instead of imposing on themselves the remedy of arbitration.

55. Plaintiff reserves the right to fully brief these issues should FACA attempt to enforce these unenforceable arbitration provisions.

WHEREFORE, the Plaintiff, prays for the relief set forth herein, for judgment equal to twice the amount of fees paid to the Defendants , for judgment against the Defendants for damages under the DTPA, for judgment for attorney's fees and costs incurred herein, for judgment for exemplary damages as may be determined by a jury, for total judgment for actual damages, exemplary damages, fees and costs in an amount less than \$75,000.00 and that the transactions between FACA and the Plaintiff be declared void pursuant to Arkansas Constitution, and for any and all other just and proper relief to which Plaintiff may be entitled.

Respectfully Submitted,

By

  
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Dan Turner (ARBIN 97179)

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ATTORNEYS FOR PLAINTIFF



VS Financial of Arkansas, LLC  
dba First American Cash Advance

101 North Park Dr.  
Monticello, AR 71655  
Phone: 870-367-1757

**Friday, April 25, 2008**

Dear Ms. MAE HELEN KELSEY,

We were expecting you in our office on APRIL 21, 2008 to pay on your obligation with us. You have not been by the office yet and we have been unable to contact you at any of the numbers you provided us. Please call us or stop by the office as soon as possible so that we may continue to service your financial needs.

In accordance with the fair and accurate credit transactions act of 2003, Regulation V, we are obligated to inform you that we may report to a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

Sincerely,  
KIM WASHINGTON  
Sales Manager





**VS Financial of Arkansas, LLC  
dba First American Cash Advance**

101 North Park Dr.  
Monticello, AR 71655  
Phone: 870-367-1757

**Wednesday, May 21, 2008**

Dear Ms. MAE KELSEY,

As you will recall, you signed a financial agreement with us on or about 04/21/2008 (the "Agreement"). Our records indicate you failed to pay the amount owing on or before the Due Date and your account remains delinquent. You have ignored our previous requests to pay the amount owing under the Agreement. You must immediately deliver cash, a money order or a certified check for the sum of all amounts due to us at the above address.

You may have seen recent news coverage regarding the Arkansas Attorney General's actions against payday lenders operating pursuant to the Arkansas Check Cashers Act. You are hereby noticed that VS Financial of Arkansas, LLC does not operate under this statute. Consequently the Attorney General's office has taken no action against our company. Your loan with us is not governed by this act and is valid, legal and enforceable under Arkansas state law. You are still obligated to repay any current and/or past due balances on those amounts of money lent to you by VS Financial of Arkansas, LLC. For this reason, please be advised that normal applicable late fees and other charges will apply to your past due amounts.

You may contact us at the number above to discuss the matter further.

In accordance with the fair and accurate credit transactions act of 2003, Regulation V, we are obligated to inform you that we may report to a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

**PLEASE CONDUCT YOURSELF ACCORDINGLY.**

Sincerely,  
GEORGIA NICHOLAS  
Sales Associate