

IN THE CIRCUIT COURT OF CLARK COUNTY, ARKANSAS  
Civil Division

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Filed: 2/27/2007 8:57:59 AM  
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**BRENDA McGINNIS, individually  
and o/b/o a class of similarly situated persons**

**PLAINTIFF**

VS.

CASE NO. CV 2007-32

By: *Penny R. Ross* D.C.

**ADVANCE AMERICA SERVICING  
OF ARKANSAS, INC., d/b/a  
ADVANCE AMERICA CASH ADVANCE;  
ADVANCE AMERICA, CASH ADVANCE  
CENTERS OF ARKANSAS, Inc.; and  
ADVANCE AMERICA, CASH ADVANCE CENTERS, INC.**

**DEFENDANTS**

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**COMPLAINT  
CLASS ACTION**

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COMES NOW the Plaintiff, Brenda McGinnis, individually, and on behalf of the certified class of similarly situated persons and states:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Article 7, Section 11 of the Arkansas Constitution, Arkansas Code Annotated § 16-13-201.
2. Venue is proper in this Court pursuant to Arkansas Code Annotated § 16-60-105.

**II. PARTIES**

3. The Plaintiff, Brenda McGinnis, is an Arkansas resident and has been at all times relevant hereto.
4. Advance America Servicing of Arkansas, Inc. d/b/a Advance America, is a corporation which does business in Arkansas and has a registered agent of service identified as National Registered Agents, Inc. of AR, 323 Center Street, Suite 1202, Little Rock, Arkansas 72201. Advance America, Cash Advance Centers of Arkansas, Inc. d/b/a Advance America, is a corporation which does business in Arkansas and has a registered agent of service identified as

National Registered Agents, Inc. of AR, 323 Center Street, Suite 1202, Little Rock, Arkansas 72201. Advance America, Cash Advance Centers, Inc., d/b/a Advance America, is a publicly traded corporation which does business in Arkansas. Advance America, Cash Advance Centers, Inc. owns and/or operates Advance America Servicing of Arkansas, Inc. and Advance America, Cash Advance Centers of Arkansas, Inc. and maintains an office at 135 North Church Street, Spartanburg, SC 29306.

5. Advance America, Cash Advance Centers, Inc. maintains licenses for 20 or more offices in Arkansas which make payday loans pursuant to Arkansas Code Annotated § 23-52-101, *et seq* (the "Check Cashers Act"). Advance America has a branch office in Arkadelphia, Clark County, Arkansas. For purposes of this pleading, the Defendants shall be referred to collectively as "Advance America."

### **III. NATURE OF ACTION**

6. This is a class action brought on behalf of persons who have paid usurious rates of interest to Advance America for loans made pursuant to the Check Cashers Act originating at the Defendants' offices in the State of Arkansas since May 15, 2001.

7. Generally, Advance America offers cash loans to customers in the ordinary course of business. Customers receive cash in exchange for personal checks drawn on the customer's bank account which are presented to and held by Advance America. These transactions constitute loans which are subject to the usury limit set forth in Article 19, § 13 of the Arkansas Constitution.

8. The total amount of the customer's personal check which is exchanged for cash is comprised of (a) the amount of cash received by the customer, i.e. the principal amount of the loan, plus (b) a purported "service charge" or "finance charge." The service charge represents

interest as that term is used in Article 19, § 13 of the Arkansas Constitution. Advance America agrees not to cash the customer's check for a specified period of time which constitutes the term of the loan. The customer is instructed to return to Advance America's place of business at the end of the loan term to redeem the loan for the full-face amount of the check. In the alternative, the customer is given the option of renewing the loan by paying only the interest, or service charge, on the original loan and presenting a new check for (a) the original amount of cash received by the customer, plus (b) an additional service charge for the extended term. Advance America's service charge is as high as \$15.00 for each \$100.00 that is loaned to the customer.

9. The transactions described above constitute contracts which bear interest at rates exceeding the maximum lawful rate set forth in Article 19, § 13 of the Arkansas Constitution. These transactions constitute loans which bear interest at rates ranging from 100% to 720%.

10. Several Arkansas Circuit Courts, including the Circuit Court of Clark County, Arkansas, have held that payday loans such as the type described in this case are usurious and void.

11. Several Arkansas Circuit Courts, including the Circuit Court of Clark County, Arkansas, have ruled that the Arkansas Check Cashers Act is unconstitutional.

12. Advance America settled a class action lawsuit in the Ninth-East Judicial District for the State of Arkansas in Clark County Circuit Court in 2001. In the settlement in that case, Phyllis Garrett v. Advance America, Cash Advance Centers of Arkansas, Inc., Clark County Circuit Court Case No. CIV-99-152, Advance America agreed, *inter alia*, as follows:

Effective on or before May 15, 2001, to cease conducting Check Cashing Transactions in Arkansas pursuant to the Arkansas Check Cashers Act.

The court-approved settlement in Case No. CIV-99-152, included:

Advance America, Cash Advance Centers of Arkansas, Inc. and all of its past, present or future officers, directors, shareholders, employees, agents, representatives, attorneys, insurers, sureties, predecessors, successors, assigns, parents, and related or affiliated persons or entities.

The parties in Case No. CIV-99-152 agreed to submit to the jurisdiction of the Court for purposes of "enforcing" the settlement and the Clark County Circuit Court retained jurisdiction to enforce the terms of the settlement.

#### IV. BRENDA MCGINNIS

13. On or around November 3, 2006, Plaintiff Brenda McGinnis received a cash loan from Advance America at the Defendant's branch office in Jonesboro, Arkansas. Plaintiff provided a \$278.83 check, which Advance America promised to hold until Plaintiff's next payday, in exchange for \$250.00 cash. **Exhibit A.** The terms of this loan resulted in an effective annual percentage rate in the minimum amount of 150.32% which the Defendants charged to the Plaintiff.

14. The transaction described herein between Advance America and Plaintiff is typical of the transactions between the Defendants and its other customers in Arkansas.

15. **Exhibit A** demonstrates that Advance America was, and is, "operating under the Check-cashers Act, A.C.A. § 23-52-101, *et seq.*" and the fees it charged to the Plaintiff were "in accordance with" the Act. Advance America's conduct constitutes a violation of its settlement agreement in Clark County Case No. CIV-99-152.

#### V. USURY

16. Under Article 19, § 13 of the Arkansas Constitution and Arkansas Code Annotated § 4-57-101, *et seq.* the Plaintiff and her class are entitled to twice the amount of interest paid to the Defendants, plus attorneys fees and costs.

**VI. VIOLATION OF ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

17. The Defendants violated one or more provisions of the Arkansas Deceptive Trade Practices Act ("DTPA"), Arkansas Code Annotated §4-88-101, *et seq.* by engaging in conduct which was deceptive, oppressive and unconscionable.

18. Advance America, Cash Advance Centers, Inc. is a controlling or supervising person over the other Defendants in this case as defined in the DTPA. As a controlling and supervising person, Advance America is liable for the damages caused by the Defendants.

19. The Arkansas Supreme Court has held that charging interest rates in excess of 100% per annum is unconscionable as a matter of law.

20. The Plaintiffs are entitled to judgment pursuant to the DTPA for their actual damages plus judgment for their reasonable attorneys fees and costs incurred herein.

**VII. CLASS ACTION ALLEGATIONS**

21. Upon information and belief, the class of persons on whose behalf Plaintiffs have brought this Class Action is so numerous that joinder of all members is impracticable.

22. The proposed class is defined as persons who have taken out cash loans from Advance America at its offices in the State of Arkansas at interest rates exceeding the maximum lawful rate set forth in Article 19, § 13 of the Arkansas Constitution. The proposed class includes persons who have paid usurious interest rates to Advance America for transactions at its Arkansas locations at any time from May 15, 2001 up to and including an entry of judgment in this case.

23. There are questions of law or fact common to the members of the class and these common questions predominate over any questions affecting only the individual members. The common questions include, but are not limited to, (a) whether Defendants' transactions with its

customers as described herein constitute contracts within the meaning of Article 19, § 13 of the Arkansas Constitution; (b) whether Defendants' contracts with class members bear interest at a rate exceeding the maximum lawful rate set forth in Article 19, § 13 of the Arkansas Constitution; (c) whether the Defendants' transactions violate the DTPA; and (d) whether the Defendants' transactions violate the Defendants' settlement agreement in Clark County Circuit Court Case No. CIV- 99-152.

24. The claims of the Plaintiff are typical of the claims of the other members of the class. Plaintiff is interested in the outcome of this lawsuit and understands the importance of adequately representing every member of the class. Therefore, Plaintiff will be an adequate representative of the class.

25. Plaintiff asserts that she will fairly and adequately protect the interests of the class and any subclasses to which these proceedings are applicable.

26. A class action is superior to other available methods for the fair and efficient adjudication of this matter and a class should be certified under Rule 23 of the Arkansas Rules of Civil Procedure.

27. Numerous cases with facts identical to the facts in the instant case have been certified as class actions and the class certifications have been affirmed by the Arkansas Supreme Court.

#### **VIII. DEMAND FOR A JURY TRIAL**

28. Plaintiff demands a trial by jury on all issues so triable.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court permit this action to be maintained as a class action, that she be appointed representative of the class, and respectfully requests, on behalf

of herself and all others similarly situated, judgment against the Defendants for (a) twice the amount of interest paid by each member of the class, (b) a declaration that the contracts described herein are null and void, (c) an Order for appropriate relief and to enforce the terms of the Settlement Agreement in Clark County Circuit Court Case No. CIV-99-152, (d) reasonable attorneys fees, and (e) the costs of this action, the costs of notifying the class members of this action, and the costs of any disbursements to the class members.

**X. DEMAND FOR A JURY TRIAL**

29. Plaintiff demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED,

BRENDA McGINNIS,  
*Individually, and o/b/o a class of similarly  
situated persons*

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AVERITT, PLC**  
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and

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By:   
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