

53504

IN THE CIRCUIT COURT
IN AND FOR CLAY COUNTY
FOURTH JUDICIAL CIRCUIT

JENNAFER LONG, on behalf of
herself and others similarly situated,

Plaintiff,

vs.

ACE CASH EXPRESS, INC.,
d/b/a ADVANCE CASH EXPRESS

Defendant.

CASE NO.:

DIVISION:

CLASS REPRESENTATION

COMPLAINT

INTRODUCTION

1. Jennafer Long (Long) on behalf of herself and others similarly situated sues the Defendant Ace Cash Express, Inc., d/b/a Advance Cash Express (ACE).
2. This is an action for damages in excess of \$25,000.00. Therefore, this Circuit Court has jurisdiction. This Circuit Court also has jurisdiction because this is a Class Action.
3. In this Complaint brought by Long against ACE, Long alleges that ACE entered into usurious contracts with Florida consumers by deceptively misrepresenting to consumers throughout the state of Florida that those consumers were entering into small loan contracts with a national banking institution that was located in the state of California. By feigning the use of a California national bank as the creditor in connection with the small loans made to its consumers, ACE improperly attempted to avoid the Florida Usury Statutes. In reality, ACE's conduct was deceptive

because, as between ACE and its affiliated California national bank, ACE was the entity that would actually own the consumer's small loan and was the entity that would be accepting the interest and principal charges from the loan consumer. ACE, at all times, was the entity that bore the risk of loss on the consumer loan in the event that the consumer defaulted. Nevertheless, notwithstanding that it was the actual owner of the consumer small loans, ACE perpetrated the misrepresentation that the consumers had entered into loan transactions with a California national bank in order to evade the Florida State Usury Laws.

NUMEROSITY [RULE 1.220(a)(1)]

4. This class consists of membership throughout the state of Florida for the time period as hereinafter defined in the Class definition.
5. The membership of this Class is so numerous that joinder is impractical. Moreover, the individual claims of each Class Member are limited in the amount of damages available to each member so that the individual members of the proposed Class would more than likely neglect to file individual actions. Furthermore, in considering the issue of numerosity: "It is proper for the Court to consider the inability of the poor or uninformed to enforce their rights and that the improbability that large numbers of Class Members would possess the initiative to litigate individually." *Chisolm v. TranSouth Financial Corp.*, 194 F.R.D. 538, 546(Va., 2000)
6. ACE's loan offices are disbursed throughout the state of Florida thereby further making the actual joinder of individual plaintiffs geographically impossible.

COMMONALITY [1.220(a),(2)]

7. Florida law prohibits usurious contracts:

Florida Statute 687.02 defines a usurious contract as: "all contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18% per annum simple interest." The foregoing contracts are declared usurious.

Florida Statute 687.03(1) declares that it is: "*unlawful* for any person . . . to *reserve, charge, or take for any loan . . .* forbearance to enforce the collection of any sum of money, or other obligation at a rate of interest greater than the equivalent of 18% per annum simple interest either, *directly or indirectly* by way of commission for advances, discounts or exchange or by any contract, *contrivance* or *device* whatever whereby the debtor is required or obligated to pay a sum of money greater than the actual principal sum received together with interest at the rate of equivalent of 18% per annum simple interest . . ." (Emphasis supplied)

8. Florida Statute 687.12 does provide for parity among lenders who are *located in the state of Florida* whether such lenders are chartered under the State of Florida or are chartered under the laws of the United States. However, any lender or creditor that is authorized to make a particular loan or extension of credit in which it is permitted to charge interest at a rate allowable to other lenders or creditors must also comply with the statutes and/or regulations governing the amount, terms and permissible charges allowable for the similar loan or extension of credit that could be made by any other comparable lender or creditor.

9. 12 U.S.C. §85 allows any nationally chartered bank to charge on any national bank loan or note or other evidence of debt interest at the rate allowed by the state where the national bank is located.
10. ACE is in the business of making small loans at the retail level to consumers. ACE is incorporated in the state of Texas. ACE does business in the state of Florida and has sixty (60) retail loan locations throughout the state of Florida.
11. Goleta National Bank (Goleta) is a national bank located in Goleta, California. Goleta has no offices located in the state of Florida.
12. In August of 1999, ACE entered into a master loan agreement with Goleta. Under the terms of the Master Loan Agreement, ACE would offer through its retail sites, located in the state of Florida, bank loans purportedly designated as Goleta bank loans. These loans would be made to consumers in an amount not exceeding \$500.00 per loan.
13. Under the Goleta Master Loan Agreement, ACE must purchase from Goleta all of the bank loans made on the previous day or previous days. Therefore, under the terms of the Agreement, both Goleta and ACE know that whenever a consumer makes a purported loan from Goleta, ACE will immediately purchase the loan from Goleta. ACE admits in its SEC filings that the loan purchases entitle ACE to "substantially all of the interest" and subjects ACE to "substantially all the risk of non-payment by the borrowers." Consequently, not only does ACE know that it will almost immediately own the small loan, ACE will be entitled to collect all of the

subsequent payments that the consumer is obligated to make under the terms of the original small loan agreement with Goleta.

14. Any consumer desirous of a small loan purportedly made by Goleta must obtain access to the small loan proceeds through a debit card which bears the ACE d/b/a of "Advance Cash Express." (Exhibit 1) The debit card may be used at various ATM machines located in the ACE retail loan sites or, with an additional charge, the debit card may be used at other retail sites. ACE is responsible under its agreement with Goleta for all third party claims regarding the bank loans other than claims that would result solely from Goleta's misconduct. In other words, ACE bears the total liability for the loan product itself, according to the Agreement between ACE and Goleta.
15. ACE is also responsible for reimbursing Goleta for any processing fees associated with the loans allegedly from Goleta that Goleta may incur in connection with those loans purportedly originating with Goleta. Furthermore, ACE owns the controlling interest in "ePacific" which is the company providing the electronic fund transfer machines and processing services used by ACE in its retail loan outlets located in the state of Florida.
16. The real purpose of the agreement between ACE and Goleta is to allow ACE to evade Florida (and other states) usury laws by allowing ACE to utilize Goleta's name and national bank standing. The ACE small loans are not actually Goleta National Bank loans. Goleta never carried the Ace-originated loans on its account book as a receivable.

17. Therefore, in actual fact, with the exception of the fictitious originating services provided by Goleta, ACE is always the true owner of the retail loan agreements and the loan proceeds purportedly originated by Goleta.
18. Notwithstanding that ACE in connection to the artificial Goleta loans:
 - A. Solicits consumers from its retail outlets in Florida;
 - B. Interviews consumers for loan eligibility;
 - C. Selects the credit scoring system and other loan eligibility requirements;
 - D. Knows that it must immediately purchase the loan from Goleta Bank;
 - E. Ultimately bears the risk of loss;
 - F. Is responsible for the payment of any processing fees;
 - G. Accept all loan payments from Florida loan customers at ACE's Florida retail outlets;
 - H. Will ultimately have the right to debit the consumer's bank account through the presentation of a debit entry against the consumer's bank account via the automated clearing house system.

ACE always presents each consumer with a disclosure statement, promissory note and advance cash express cardholder information sheet (Exhibit 2) which gives to the consumer the false impression that the consumer is entering into a loan agreement with Goleta National Bank through such statements as "I promise to pay to Goleta National Bank . . ."; "I authorize the bank to debit the account to fully or partially cure this note . . ."; the "account" at Goleta National Bank . . . will be held for my benefit by the bank.

19. Because ACE actually owns the consumer loans, and actually collects the payment due under the terms of the consumer loans, and because of ACE's other indicia of ownership as stated in Paragraph 18, the ACE loans to the consumers made pursuant to its master agreement with Goleta Bank are not a national bank loans.
20. ACE's conduct with respect to the consumer loans made pursuant to the ACE/Goleta master loan agreement was deceptive because:
 - A. ACE withheld from the consumers ACE's knowledge that ACE would actually own the consumer loans and would actually have the right to collect the future loan payments under the terms of the master loan agreement with Goleta Bank. ACE also withheld from its consumers all of the other foregoing indicia of ownership as stated in Paragraph Number 18 (with the exception of the locality of the transaction);
 - B. The documents presented to the consumers in connection with the ACE consumer loan transactions represented by Exhibit 2 were intended to convey the false impression that those consumer loans would be owned by Goleta. In this manner, ACE's conduct with respect to the consumer loans represented by Exhibit 2 were intentionally deceptive.
 - C. In all respects, ACE intended that its consumers were entering into loans represented by Exhibit 2 would rely upon:
 - (1) ACE's withholding of the true ownership and nature of the purported Goleta consumer loans; and

(2) ACE's affirmative statements to the consumers as contained in the standard consumer loan documents presented to the consumers (Exhibit 2) as an apparent national bank loan.

21. Since the purported Goleta loans were made by ACE through its Florida retail locations were not national bank loans, applicable state law determines whether or not the consumer loans represented by Exhibit 2 were usurious.
22. The State of California does not bear a normal relationship to the ACE/consumer loans represented by Exhibit 2 and made pursuant to the ACE/Goleta Master Loan Agreement.
23. Only the State of Florida has a normal relationship to those loans entered into pursuant to the ACE/Goleta Master Loan Agreement. The consumers entering into loans originating because of the master loan agreement executed the loan contracts at ACE's offices in the state of Florida. ACE knew that it would own those consumer loans. ACE solicited the consumer loan contracts from its retail outlets in Florida. ACE interviewed consumers for loan eligibility in the state of Florida and selected a scoring system for use on the consumer loans in the state of Florida. All loan payments from the consumers to ACE that were entered into in the state of Florida were also to be made in the state of Florida and, ultimately, ACE debited its Florida consumer loans in the state of Florida. Florida is the state that bears the normal relationship in connection with the loans of money from ACE to its Florida consumers.

24. ACE's national percentage rate of 391.078 charged to its consumers in connection with the consumer loans represented by Exhibit 2 were criminally usurious. ACE is not able to claim parity through another type of lender who is located in the state of Florida and who would be authorized by statute to make a loan for extensions of credit in the same amount of interest rate charged to its consumers by ACE pursuant to its master loan agreement.
25. At all times, ACE had the corrupt intent with respect to the loans made pursuant to the master loan agreement to charge criminally usurious interest.

TYPICALITY [Rule 1.220(a), (3)]

26. The claim of Long, as the representative party of the Class is typical of the claim of each member of the Class.
27. On May 1, 2000, Long entered into a disclosure statement and promissory note together with an authorization for electronic debit and bank loan authorization and an advance cash express agreement and authorization (collectively: Exhibit 2) purporting to be a loan between Long and Goleta.
28. In reality:
- A. ACE solicited the Long consumer loan from ACE's retail outlet in Florida.
 - B. ACE interviewed Long for consumer loan eligibility at Orange Park, Florida.
 - C. ACE utilized its selected scoring system and other loan eligibility requirements at Orange Park, Florida to determine Long's eligibility for the loan.

- D. ACE knew, before Long executed the loan documents represented by Exhibit No. 2 that ACE was required to immediately repurchase the Long consumer loan from Goleta.
 - E. ACE knew, at the time that Long executed her consumer loan documents were represented by Exhibit No. 2, that ACE would be responsible and bear the risk of loss if Long did not repay her consumer loan.
 - F. ACE knew prior to the time that Long executed her consumer loan documents that ACE would be responsible for the payment of any processing fees incurred by Goleta.
 - G. ACE knew, before Long executed her consumer loan documents that all of Long's consumer loan payments were required to be made at the ACE retail offices located in Orange Park, Florida.
 - H. ACE knew that prior to the time that Long executed her consumer loan documents represented by Exhibit No. 2 that ACE would ultimately have the right to debit Long's bank account through the presentation of a debit entry against Long's bank account via the automated clearing house system utilized by ACE. In fact, ACE ultimately, in attempting to impose extra charges against Long's account, debited Long's banking account via the automated clearing house system. ACE collected the moneys debited against Long's bank account.
29. Because ACE actually owned the Long consumer loan, and actually collected the payments due under the terms of the Long consumer loan, and because of ACE's

other indicia of ownership (as stated in the preceding paragraph) the loan to Long was not actually a national bank loan.

30. ACE's conduct with respect to the Long consumer was deceptive because:
- A. ACE withheld from Long its knowledge that ACE would actually own the Long consumer loan and would actually have the right to collect the future loan payments under the terms of the Long consumer loan. ACE withheld from Long all of the other foregoing indicia of ownership stated in paragraph number 18 (with the exception of the locality of the transaction);
 - B. The documents presented to Long in connection with the ACE consumer loan transaction represented by Exhibit No. 2 were intended to convey the false impression that the Long consumer loan would be owned by Goleta. In this manner, ACE's conduct with respect to the Long consumer loan was intentionally deceptive.
 - C. In all respects, ACE intended that Long rely upon (1) ACE's withholding of the true ownership and nature of the Long consumer loan; and (2) ACE's affirmative statements to Long as contained in the consumer loan documents presented to her (Exhibit 2) were an apparent national bank loan.
 - D. Since the loan to Long through ACE's Florida retail location was not a national bank loan, applicable state law determines whether or not the consumer loan to Long was usurious.
 - E. The state of California does not bear a normal relationship to the ACE/Long loan contract.

F. Only the state of Florida has a normal relationship to the Long loan contract. Long entered into the loan contract through ACE's offices in the state of Florida. ACE knew that it would own the consumer loan contract. ACE solicited the consumer loan contract from its retail outlet in Florida. ACE interviewed Long for loan eligibility in the state of Florida and selected a scoring system for use on the Long consumer loan in the state of Florida. All loan payments from Long to ACE were to be made in the state of Florida and ultimately, ACE debited Long's checking account in the state of Florida. Florida bears the normal relationship in connection with the loan of money from ACE to Long.

31. ACE's annual percentage rate of 391.078 charged to Long in connection with the consumer loan represented by Exhibit No. 2 was criminally usurious. ACE is not able to claim parity through another type of lender who is located in the state of Florida and who would be authorized by statute to make a loan for extension of credit with the same amount of interest rate charged to Long by ACE.
32. In connection with the Long consumer loan from ACE, ACE possessed the requisite corrupt intent to charge criminally usurious interest.

FAIR REPRESENTATION [Rule 1.330(a)(4)]

33. Long, as the representative party can fairly and adequately represent the interests of each Member of the Class.
34. Long as no interests antagonistic to the other Class Membership.

35. Long seeks redress for the same type of grievance suffered by all the Members of this Class.

36. Long's selected attorneys can adequately represent her as the Class Representative. Long's selected attorneys have experience in class actions. The selected attorneys have succeeded in obtaining class certification in other consumer law cases. Additionally, the selected attorneys are experienced in consumer law. Both selected attorneys maintain continuing legal education systems with respect to consumer law, and have given and attended consumer law lectures relating to predatory lending.

CLAIMS AND DEFENSES MAINTAINABLE [Rule 1.220(b)]

37. The Class Representative is proceeding with her claim under Rule 1.220(b)(3). The claims of Long and the Class Membership predominate over any question of law or fact affecting only individual members of the Class, and Class Representation is superior to other available methods for the fair and efficient adjudication of the controversy raised through this Complaint.

38. There are common questions of law and fact involving:

- A. The underlying agreement between ACE and Goleta National Bank
- B. ACE's common utilization of the loan documents in connection with retail loans to consumers pursuant to the agreement between ACE and Goleta whereby ACE would be the real owner of the loan agreement.
- C. ACE's uniform deception of retail consumer loan customers by misrepresenting a loan as a national bank loan and uniform concealment of ACE's actual involvement and ownership of the retail consumer loans.

- D. ACE's uniform charge to consumers of criminal usury in connection with the retail loans.
- E. ACE's uniform practice and procedures with respect to the uniform consumer loans made by ACE to the Class Membership.

CLASS DEFINITION/NUMBER

- 39. The Membership of this Class consists of all individuals in the state of Florida who, since August of 1999 have entered into loan agreements, of the type exemplified by Exhibit 2, and that are encompassed within the terms of the *Master Loan Agency Agreement* that had been entered into between ACE and Goleta.
- 40. The Plaintiff estimates that the number of this Class to be approximately 24,600.

INDIVIDUAL CAUSES OF ACTION

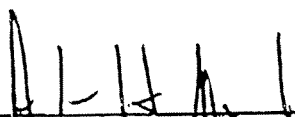
COUNT ONE (USURY)


- 41. This is an action by Long against ACE based upon usury.
- 42. Long realleges the allegations contained in Paragraphs 7 through 32.
- 43. Florida Statute 687.04 requires a forfeiture of interest charged when any person willfully violates the provisions of Florida Statute 687.03 relating to usury. In this respect, the actions of ACE as previously stated was willful.
- 44. As a consequence of ACE's actions in charging usurious interest, Long was damaged in the amount of interest so charged.
- 45. The loan documents allow ACE to access attorney's fees against the obligor. Accordingly, Long is entitled to an award of attorneys' fees under the reciprocal provisions of 57.105(5).

46. Accordingly, with respect to this Count, Long requests an award of damages, interest on the damages, attorneys' fees and Court costs.

COUNT TWO (DECEPTIVE PRACTICES)

1. This is an action by Long against ACE based upon Florida Statutory Law relating to unfair and deceptive acts in the conduct of a trade or commerce.
2. Long realleges the allegations contained in Paragraphs 7 through 32 inclusive.
3. Florida Statute 501.204(1) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.
4. The actions of ACE, as stated in the preceding paragraphs were:
 - A. Unconscionable;
 - B. Unfair; and
 - C. Deceptive
5. As a consequence of ACE's actions in charging usurious interest, Long was damaged in the amount of interest so charged.
6. Long is entitled to an award of attorneys' fees under Florida Statute 501.2105.
7. Accordingly, Long requests an award of damages, interest on those damages, Court costs and attorneys' fees.


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