

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

**IN RE:
STEVE A. MCKENZIE
Debtor**

**CHAPTER 11
08-bk-16378-rts**

**WENDY BETTS, DONNA REUTER,
TIFFANY KELLY, and KATHERINE CORBETT,
individually and on behalf of others similarly situated,** **Plaintiffs,**

vs.

**ADVERSARY CASE NO: 09-____
CLASS ACTION**

**STEVE A. MCKENZIE
107 Bentley Park Drive
Cleveland, Tennessee 37312**

Defendant

COMPLAINT

Plaintiffs Wendy Betts ("Betts"), Donna Reuter ("Reuter"), Tiffany Kelly ("Kelly") and Katherine Corbett ("Corbett") individually, and on behalf of others similarly situated ("members of the class" or "customers"), through the undersigned counsel, complaining against the Defendant Steve A. McKenzie ("McKenzie" or "Defendant") pursuant to Title 11 of the United States Code respectfully alleges as follows:

JURISDICTION AND VENUE

1. This is an adversary proceeding brought pursuant to FRBP 7001.
2. The jurisdiction of this case is based upon 28 U.S.C. §1334 in that it arises under Title 11 U.S.C.
3. This is a core proceeding under 28 U.S.C. § 157.
4. Venue for this Complaint is proper pursuant to 28 U.S.C. § 1409.

5. This is an Adversary Complaint brought under federal bankruptcy law and Florida state law.

6. This proceeding relates to the bankruptcy case, In re Steve A. McKenzie, Case No. 08-16378, presently pending in the United States Bankruptcy Court for the Eastern District of Tennessee.

PARTIES

7. Plaintiff Wendy Betts is an individual residing in Winter Springs, Florida. Ms. Betts is one of the Plaintiffs in *Betts, et al. v. McKenzie Check Advance of Florida, LLC d/b/a National Cash Advance, Steve A. McKenzie, Brenda G. McKenzie Lawson and unknown entities and individuals*, Case No. CL-01-0320AL, Palm Beach County Circuit Court, 15th Judicial Circuit (FL).

8. Plaintiff Donna Reuter is an individual residing in West Palm Beach, Florida. Ms. Reuter is one of the Plaintiffs in *Betts, et al. v. McKenzie Check Advance of Florida, LLC d/b/a National Cash Advance, Steve A. McKenzie, Brenda G. McKenzie Lawson and unknown entities and individuals*, Case No. CL-01-0320AL, Palm Beach County Circuit Court, 15th Judicial Circuit (FL).

9. Plaintiff Tiffany Kelly is an individual residing in Fort Pierce, Florida. Ms. Kelly is one of the Plaintiffs in *Betts, et al. v. McKenzie Check Advance of Florida, LLC d/b/a National Cash Advance, Steve A. McKenzie, Brenda G. McKenzie Lawson and unknown entities and individuals*, Case No. CL-01-0320AL, Palm Beach County Circuit Court, 15th Judicial Circuit (FL).

10. Plaintiff Katherine Corbett is an individual residing in Parkland, Florida.

11. Defendant Steve A. McKenzie is an individual residing at 107 Bentley Park Drive, Cleveland, Tennessee 37312. Mr. McKenzie is a Defendant in *Betts, et al. v. McKenzie Check Advance of Florida, LLC d/b/a National Cash Advance, Steve A. McKenzie, Brenda G. McKenzie Lawson and unknown entities and individuals*, Case No. CL-01-0320AL, Palm Beach County Circuit Court, 15th Judicial Circuit (FL). Mr. McKenzie has knowingly engaged in the business of lending money to consumers at unconscionable interest rates at its business locations in Palm Beach County, and throughout Florida.

INTRODUCTION

12. Defendant, Steve A. McKenzie was the mastermind, founder, organizer, financier, officer, director and shareholder in McKenzie Check Advance Inc. (“MCA”) and McKenzie Check Advance of Florida, LLC d/b/a National Cash Advance (“NCA” or “National Cash Advance”). As one of two owners, he participated in the day-to-day operation of the business. He was instrumental in and profiting from, organizing, developing, managing, controlling, promoting, expanding and directing the unlawful activities of MCA’s and NCA’s loan sharking operation in Palm Beach County throughout the State of Florida. Other parties and Defendant in the Florida lawsuit are MCA, NCA, Brenda McKenzie Lawson and unknown entities and individuals.

13. This is a class action brought pursuant to Rule 7023 of the Federal Rules of Bankruptcy Procedure, arising out of a scheme under which the Defendant and others fraudulently charged and collected from Plaintiffs and numerous others similarly situated, unconscionable, usurious interest rates for consumer loans through systematic and flagrant violations of state consumer protection laws. Defendant, inter alia, illegally collected payment of monies from Plaintiffs and members of the class by directly and indirectly falsely threatening to

pursue collection under Florida bad check laws. Defendant, individually, and through others he directed, managed, and controlled, obtained money and extended, renewed and refinanced credit to the Plaintiffs and those similarly situated. Plaintiffs seek a denial of discharge of debts to the Plaintiffs and members of the class, litigation expenses and costs and attorneys' fees. Specifically, the Plaintiffs have brought the following causes of actions:

a. Count I of this action alleges that Defendant violated Florida's Lending Practices Act, Chapter 687, Florida Statutes.

b. Count 11 of this action alleges that Defendant violated Florida's Consumer Finance Act, Chapter 516 Florida Statutes.

c. Count III of this action alleges that Defendant violated Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Consumer Protection Part 11, Florida Statutes.

d. Count IV of this action alleges that Unknown Defendant violated Florida's Civil Remedies for Criminal Practices Act, Chapter 772 Florida Statutes.

e. Count V of this complaint alleges under 11 U.S.C. § 523(a)(2)(A) that Defendant should not be granted a discharge from the debts to the Plaintiffs and the class under §§ 727 or 1141 of the United States Bankruptcy Code.

f. Count VI of this complaint alleges under 11 U.S.C. § 523(a)(6) that Defendant should not be granted a discharge from the debts to the Plaintiffs and the class under §§ 727 or 1141 of the United States Bankruptcy Code.

g. Count VII of this complaint alleges under 11 U.S.C. § 523(a)(3)(A) and 523(a)(3)(B) that Defendant failed to list creditors and should not be granted a discharge from debts to the Plaintiffs and members of the class under §§ 727 or 1141 of the United States Bankruptcy Code.

**GENERAL ALLEGATIONS APPLICABLE TO ALL
MEMBERS OF THE CLASS**

14. Defendant through his various businesses and locations throughout the State of Florida engaged in a common course of illegal conduct by which he offered to and did loan money to consumers in exchange for a written document in the form of a personal check ("check") and an agreement to repay money in an amount larger than the borrower received within a short period of time, usually two weeks. The same loan service was offered by Defendant and accepted by Plaintiffs and members of the class through the same procedure at each of the Defendant's locations. Under the guise of what they falsely portrayed as a check cashing service, Defendant loaned money to thousands of consumers throughout Florida at usurious and exorbitant rates, over fifteen (15) times greater than permitted by law.

15. Defendant perpetrated his illegal scheme upon those who used his services through the same methods, practices and procedures, namely money lending transactions which Defendant called interchangeably "payday advances" or "deferred deposit" transactions and loan extensions or rollover transactions.

16. In each transaction, Plaintiffs and members of the class, as the borrowers, gave MCA or NCA as lender a checks made payable to MCA or NCA, and agreed to hold the check for approximately two weeks and customer agreed that the face value of the check would be paid within a short time period, usually two weeks. MCA or NCA, in exchange for the check, gave the Plaintiffs and members of the class cash in an amount less than the face value of the check. The difference between the amount of the check and the amount of cash advanced to the customer constituted interest. The Defendant knew or reasonably should have known that this business practice constitutes consumer lending under Florida law. This business practice also was extending, renewing and refinancing credit under 11 U.S.C. §523(a)(2)(A).

17. Defendant knew or reasonably should have known at the time the Plaintiffs and members of the class gave the "check" to Defendant that the document was not a check but

evidence of a debt, as a promissory note or as security for payment of the debt. Defendant knew or reasonably should have known that the Plaintiffs and members of the class borrowed money from Defendant because they did not have sufficient funds in the bank to cover the "check." In each transaction, Defendant agreed to hold the "check" until the next payday, or until the customer received his or her next social security or other government check.

18. Under the ruse of charging Plaintiffs and the members of the class "fees," Defendant in reality was charging interest for the use, forbearance or detention of the money.

19. Each check, as written, exceeded the amount of money that was given to the borrower by MCA or NCA. For example, if one of the Plaintiffs' or members of the class tendered a check to MCA or NCA for \$498.00, they would receive only \$450.00.

20. Plaintiffs and members of the class were solicited to extend their debt, or roll-over their loans with Defendant by paying "fees" which were in fact illegal interest, usually every two weeks. In each transaction, once the Plaintiffs paid the "fee" to Defendant, then Defendant would again forbear the collection of the debt.

21. At some point Defendant changed his business practice to further conceal the true nature of its loans. Defendant initially required Plaintiffs and members of the class to pay the fee every two weeks and replace their checks. In Defendant's revised procedure, Defendant required Plaintiffs to deliver principal and interest to the store clerk on each rollover, and replace the check. The clerk then kept the fee and returned the balance of the customers' money to them. At some time in 1998, for a period of time Defendant began depositing all customers' checks whether or not the loans were extended.

22. Defendant contemplated as part of its business practice that customers would defer payment of "checks" on the due date and extend the loan. After National Cash Advance changed its procedure and routinely deposited customers "checks," customers would simultaneously renew or repeat, and in reality extend the loan to allow customers to cover his "check." The "fee" on each renewal or repeat was interest for allowing Plaintiffs and members of the class to defer payment on the original extension of credit.

23. Defendant knew or reasonably should have known from the course of conduct that at the time of each transaction, customers would not have sufficient funds in their personal bank account to cover the "check" on the date scheduled for repayment.

24. Each "fee" payment for the initial transaction or for an extension of the loan or rollover transaction was unconscionable, usurious, illegal and violative of the statutes set forth in this Complaint.

25. The unconscionable rate of interest charged by Defendant, and not disclosed to Plaintiffs and members of the class, ranged upward from 270% annual percentage rate.

26. Each loan transaction was concluded in minutes and only minimal service costs were incurred by Defendant.

27. To enforce payment of Plaintiffs' and customers' debts as evidenced by the "checks," Defendant represented through standardized forms and practices that in the event Plaintiffs failed to redeem the "checks" by roll-over or payment in full within the prearranged period of repayment, Defendant would deposit Plaintiffs' "checks." At some time National Cash Advance began depositing the "checks," effectively forcing customers to borrow enough money to avoid overdrafts. If Plaintiffs' "checks" did not clear on presentment, Defendant implied and/or represented that Plaintiffs and members of the class would be faced with sanctions for violations of the Florida law governing dishonored checks, when they knew or reasonably should have known that the loan documents were not checks; that the "checks" were documentary evidence of an illegal usurious debt; that the agreement accompanying the loans, as defined by the Uniform Commercial Code, had created an extension of credit; that the loans were unconscionable, usurious and unenforceable and that Plaintiffs and members of the class were not subject to the Florida law governing dishonored checks.

28. Defendant engaged in this course of conduct for the purpose of compelling Plaintiffs and members of the class to pay the usurious interest rate for the extension of credit to them.

29. As a result of the Defendant's representations and to avoid sanctions under the bad check law, the Plaintiffs and members of the class paid illegal and usurious interest.

30. Each class member was harmed in the same way, having been induced to enter into an agreement to borrow money and pay usurious, exorbitant and illegal interest rates to his severe detriment and damage.

ALLEGATIONS RELATING TO PLAINTIFF BETTS' TRANSACTIONS

31. In August of 1997, Plaintiff Betts borrowed \$200.00 from National Cash Advance at its business location at 10376 E. Colonial Drive, Orlando, Florida, because she needed money to pay personal bills. National Cash Advance required her to negotiate paper documents in the form of a check for \$15.00 more than each \$100.00 borrowed. National Cash Advance required Betts to redeem each check for \$115.00 within two weeks. If Betts could not redeem her checks within two weeks, National Cash Advance solicited and encouraged her to renew her loan every two weeks by writing a new check and paying National Cash Advance \$15.00 every two weeks for each \$100.00 borrowed. A short time after her first loan Betts increased the amount of her loan to \$300.00. In October 1997, National Cash Advance changed its business practice and required Betts to write one check in the amount of \$338.00 every two weeks to extend her \$300.00 loan. Betts continued to extend, renew or repeat the loan through February 1999, by payment of the \$38.00 fee for each extension or rollover. Ultimately, Betts could not afford to pay the fee to extend or roll-over her loan and her check was deposited and was not honored. National Cash Advance has charged Betts with additional fees for the returned "check." National Cash Advance has not demanded payment within 30 days in writing by certified mail or registered mail.

32. National Cash Advance concealed the illegal interest charges and the nature of the transactions.

33. National Cash Advance compelled Betts to pay unconscionable usurious interest rates on her loan. National Cash Advance knew or should have known that Betts would not have sufficient funds on deposit at the time of the presentment of the check to cover the amount she

received or the amount for which the paper was written; and that the check was security for an unenforceable debt. Finally, the check was not an instrument payable upon demand and therefore, was not a check as defined or contemplated by law.

ALLEGATIONS RELATING TO PLAINTIFF REUTER'S TRANSACTIONS

34. In approximately April or May of 2000, Plaintiff Reuter borrowed money from National Cash Advance at its business location at 3165 Forest Hills Blvd., Bay #3, West Palm Beach, Florida 33406 because she needed money to help pay personal bills. Reuter recalls she was initially allowed to borrow \$300.00 and was then allowed to increase the amount of the loan to \$500.00. National Cash Advance required her to negotiate a paper document in the form of a check in an amount approximately 10% larger than the principal sum she borrowed. For instance, to the best of her recollection, Reuter wrote a check in the face amount of \$338.00 and she received \$300.00 from Defendant. National Cash Advance required Reuter to redeem the check for the larger amount within two weeks. Later when she increased the amount of her loan, she wrote a check in the face amount of \$560.00 and received \$500.00 from Defendant. Reuter continued to extend, renew or repeat the loan through September 2000, by payment of the fee for each extension or rollover. Ultimately, Reuter could not afford to pay the fee to extend or roll-over her loan and her check was deposited and not honored. National Cash Advance has charged Reuter with additional fees for the returned "check." National Cash Advance has not demanded payment within 30 days in writing by certified mail or registered mail.

35. National Cash Advance concealed the illegal interest charges and the true nature of the transactions.

36. National Cash Advance compelled Reuter to pay an unconscionable usurious interest rate on her loan. National Cash Advance knew or should have known that Reuter would not have sufficient funds on deposit at the time of the presentment of the check to cover the

amount she received or the amount for which the paper was written; that the check was not payable on demand; and that the check was being used as security for an unenforceable debt.

ALLEGATIONS RELATING TO PLAINTIFF KELLY'S TRANSACTIONS

37. In early 1999, Plaintiff Kelly believes and avers without having records to refresh her recollection that she borrowed money from National Cash Advance at its business location at Sable Palm Plaza, Fort Pierce, Florida, because she needed money to pay personal bills. After a period of time the principal amount of her loan reached \$500.00. National Cash Advance required her to negotiate paper documents in the form of a check for \$55.00 more than each \$500.00 borrowed. National Cash Advance required Kelly to redeem each check for \$555.00 within two weeks. If Kelly could not redeem the check within two weeks, National Cash Advance solicited and encouraged her to renew her loan every two weeks by writing a new check and paying National Cash Advance \$55.00 every two weeks for each \$500.00 borrowed. Kelly continued to renew or repeat the loan from National Cash Advance, and its successor, Advance America of Florida, up to October 1, 2001.

38. National Cash Advance concealed the illegal interest charges and the nature of the transactions.

39. National Cash Advance compelled Kelly to pay unconscionable usurious interest rates on her loan. National Cash Advance knew or should have known that Kelly would not have sufficient funds on deposit at the time of the presentment of the check to cover the amount she received or the amount for which the paper was written; and that the check was security for an unenforceable debt. Finally, the check was not an instrument payable upon demand and therefore, was not a check as defined or contemplated by law.

ALLEGATIONS RELATING TO PLAINTIFF CORBETT'S TRANSACTIONS

40. Plaintiff Corbett believes and avers without having records to refresh her recollection that she entered into deferred deposit agreements with National Cash Advance at its business location at 2402 N State Road 7, Margate, Florida 33063, throughout 1999, and specifically between March 1, 1999, and October 15, 1999. She needed money to pay personal bills. After an initial loan, she was unable to pay the debt in two weeks and extended debt by rollover of the loan. National Cash Advance required her to negotiate paper documents in the form of a check for more than the amount of money borrowed. National Cash Advance required Corbett to redeem each check within two weeks. If Corbett could not redeem the check within two weeks, National Cash Advance solicited and encouraged her to renew her loan every two weeks by writing a new check and paying National Cash Advance a "fee" every two weeks for each loan. Corbett continued to renew or repeat the loan from National Cash Advance, and its successor, Advance America of Florida.

41. National Cash Advance concealed the illegal interest charges and the nature of the transactions.

42. National Cash Advance compelled Corbett to pay unconscionable usurious interest rates on her loan. National Cash Advance knew or should have known that Corbett would not have sufficient funds on deposit at the time of the presentment of the check to cover the amount she received or the amount for which the paper was written; and that the check was security for an unenforceable debt. Finally, the check was not an instrument payable upon demand and therefore, was not a check as defined or contemplated by law.

CLASS REPRESENTATION ALLEGATIONS

43. Plaintiffs bring this class action under Rule 7023 of the Federal Rules of Bankruptcy Procedures on behalf of a class of potentially thousands of consumers who were victimized by the Defendant's illegal course of conduct in the State of Florida. Plaintiffs and all class members were subjected to the same money lending scheme, were harmed in the same manner, and now seek to enforce the same rights and remedies under the same legal theories.

44. The purposed class consists of all persons who received cash in exchange for a personal check from the Defendant as part of his business in Florida from four years before the filing of this suit until October 1, 2001, or alternatively October 15, 1999, when Defendant McKenzie Check Advance, LLC was acquired by Advance America, Cash Advance Centers, Inc.

45. The class, which includes thousands of persons, is so numerous that joinder of all members is impracticable.

46. There are questions of law and fact common to the class as a whole, which predominate over any questions affecting individual class members. The common questions of law are:

- a. Whether Defendant's businesses were actually loan operations and the fees charged and collected were interest;
- b. Whether Defendant failed to disclose all material and necessary information to Plaintiffs and members of the class;
- c. Whether Defendant' collection of interest in excess of two hundred seventy percent per annum was unconscionable and violated the Florida lawful rate of interest, as set forth in Florida Statutes 516.01 et seq.;
- d. Whether Defendant were properly licensed to engage in the consumer credit business pursuant to Florida Statutes 516.01 et seq.;

- e. Whether Defendant coerced payment of unlawful debts by direct and implied threats of prosecution through standardized practices, procedures and forms;
- f. Whether Defendant violated the Florida Usury Statute, Florida Statutes, 687.03;
- g. Whether Defendant violated the Florida Criminal Usury Statutes, 687.071;
- h. Whether Defendant's practices would constitute actual fraud in obtaining money by extending, renewing and refinancing credit;
- i. Whether Defendant notified Plaintiffs and members of the class of the filing of his bankruptcy;
- j. Whether Defendant's practices constituted willful and malicious injury to the Plaintiffs and the members of the class.

47. The claims of Betts, Reuter, Kelly and Corbett are typical of the claims of the class, which all arise from the same operative facts and are based on the same remedial or legal theories.

48. The Plaintiffs will fairly and adequately protect the interests of the class. The Plaintiffs have common interests with unknown members of the class and intend to vigorously prosecute the interests of the class through qualified counsel. Plaintiffs have retained counsel who are experienced in handling class actions and consumer protection cases. Neither Plaintiffs nor Plaintiffs' counsel have any interests which might cause them not to vigorously pursue this action.

49. A class action is a superior method for the fair and efficient adjudication of this controversy. Most of the class members were and still may be unaware of the wrongs perpetrated against them, of their right to legal redress for those wrongs; or the filing and deadlines of this bankruptcy. Although the practices complained of are directed against financially desperate persons unable to protect their rights because individual litigation for such

small claims is not economically feasible, Defendant derives large aggregate profits from the complained of violations, making a class action essential.

50. Pursuant to FR.Civ.P. Rule 23(a) as applied by Rule 7023 of the Federal Rules of Bankruptcy Procedures, the questions of law and fact common to the claims of the representative party and the claims of each member of the class predominate over any questions of law or fact affecting only individual members. All potential class members are easily identifiable through appropriate discovery and should have been listed as creditors on Schedule F, Unsecured Creditors.

51. After determinations of the legality of the Defendant' conduct, the Court can utilize a simple method of accounting to resolve all potential claims of the Plaintiffs and to resolve all potential claims of members of the class.

52. Not only is a class action superior to other available methods for the fair and efficient adjudication of this controversy, but failure to utilize a class action could result in literally thousands of adversaries being filed in this bankruptcy action.

COUNT I
VIOLATION OF FLORIDA'S LENDING PRACTICES STATUTES,
CHAPTER 687

53. Plaintiffs incorporate all paragraphs one through fifty-two.

54. Defendant has made consumer loans to the Plaintiffs and class members in amounts less than \$25,000.00.

55. Defendant has charged and collected exorbitant, unconscionable and usurious interest for the use of money, contrary to law.

56. Upon information and belief, Defendant was not licensed to engage business of providing consumer credit.

57. Defendant was at all relevant times in fact engaged in the business of making consumer loans and imposing and collecting loan charges which were interest.

58. Since National Cash Advance and McKenzie Check Advance were not licensed at the time of the transactions of Plaintiffs and members of the class, it was operating in violation of the law. The legal annual rate of interest that Defendant can charge and collect on loans was 18%. The interest charged by Defendant was in excess of 270% per annum.

59. Defendant engaged in unconscionable conduct by taking interest and loan charges in excess of the limitation fixed by 687.02, 687.03, 687.04 and 687.071, Florida Statutes.

60. By the willful and knowing, making and renewing of loans of money to Plaintiffs and members of the class and the willful and knowing charging and receiving interest at a rate exceeding 45% per annum, Defendant were committing acts of loan sharking or shylocking contrary to Florida Statute 687.071.

61. Defendant is liable to Plaintiffs and members of the class in the sum of double the amount of interest reserved, taken or exacted, a refund of all principal payments made to Defendant, and Defendant must forfeit all unpaid interest and principal.

COUNT II
VIOLATION OF THE FLORIDA CONSUMER FINANCE ACT

62. Plaintiffs incorporates all paragraphs one through fifty-two.

63. Defendant engaged in the business of making consumer loans in an amount less than \$25,000.00 at a rate of interest greater than the rate of interest permitted by law contrary to Florida Statutes, 516.001 et seq.

64. On information and belief, Defendant was not qualified and was not licensed by the Department of Banking and Finance of the State of Florida to make loans in an amount less than \$25,000.00 as required by Florida Statutes, 516.02.

65. Defendant, his agents and employees, did directly and indirectly, by the devices, subterfuge and pretenses heretofore described, charge, contract for and receive a greater rate of interest than provided for by statute for loans in an amount of less than \$25,000.00 against the public policy of the State of Florida.

66. Defendant misrepresented and concealed the rate of interest and misrepresented and concealed to Plaintiffs and class members that the transactions were not loans contrary to Florida Statute 516.07(e).

67. Defendant used unreasonable collection practices and false, deceptive and misleading advertising in connection with the operation of its business to make consumer loans in violation of Florida Statute 516.07(e).

68. Plaintiffs and members of the class were injured as a result of Defendant's violations. Defendant's loans are not enforceable; Plaintiffs and members of the class are entitled to a full refund of all loans collected by Defendant.

COUNT III
VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE
PRACTICES ACT

69. Plaintiffs incorporates all paragraphs one through fifty-two.

70. Defendant engaged in false, misleading and deceptive advertising by statements that it engaged in a check cashing service for a fee when it was in fact lending money to consumers at an exorbitant rate of interest.

71. Defendant violated Florida Statutes, Chapter 501, Part II known as the Florida Deceptive and Unfair Trade Practices Act by intentionally and in bad faith misrepresenting to Plaintiffs and other class members that its money lending business was a check cashing business; specifically these representations include the following:

a. Misrepresenting that cash advances were check cashing transactions rather than loans;

b. Misrepresenting that its consumer transactions involved the Florida bad check laws, which they did not;

c. Misrepresenting that the usurious interest charges to borrowers were merely check cashing fees.

72. Defendant charged usurious rates in excess of fifteen (15) times the rate permitted. Defendant' business practices contemplated that Plaintiffs and members of the class would not

have sufficient funds to cover the principal and interest when due. Defendant expressly and impliedly threatened to prosecute under the bad check law if Plaintiffs and members of the class failed to pay the principal debt and the deferral fee and his checks did not clear on presentment for payment. These acts were unconscionable and unfair trade practices in violation of the Florida Deceptive and Unfair Trade Practices Act.

73. By engaging in specific conduct alleged in the preceding counts of Plaintiffs' Complaint, Defendant committed unfair and deceptive acts and practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes 501.202 et seq., including but not limited to:

- a. causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval and/or certification of service;
- b. causing likelihood of confusion or of misunderstanding as to the affiliation, connection, association with or certification by another;
- c. using deceptive representations in connection with services;
- d. representing that services have approval, characteristics, uses and/or benefits that they do not have;
- e. representing that services are of a particular standard and quality when they are not;
- f. advertising services with intent not to provide as advertised;
- g. engaging in fraudulent conduct which creates the likelihood of confusion or of misunderstanding;
- h. engaging in conduct which had the intended effect of misleading Plaintiffs and members of the class regarding the nature of services.

74. Defendant is liable for actual damages sustained for each consumer transaction, injunctive relief, attorneys' fees and costs by Florida Statute 501.211 for his willful, malicious, intentional and/or wrongful acts.

COUNT IV
VIOLATIONS OF FLORIDA CIVIL REMEDIES FOR CRIMINAL
PRACTICES ACT

75. Plaintiffs incorporate all paragraphs one through fifty-two.

76. McKenzie Check Advance of Florida, LLC, and National Cash Advance were “enterprises” as that term is defined in Florida Statutes §772.102 (3).

77. From January 1996 to October 1, 2001 (the “relevant period”), Defendant engaged in the collection of unlawful debt by lending money to Plaintiffs and other class members at a usurious rate under Florida law, which usurious rate was more than twice the enforceable rate.

78. The collection or attempt to collect the unlawful debt from Plaintiffs and other class members was incurred in connection with the enterprises’ business of lending money and was unenforceable in whole or in part under Florida laws.

79. Defendant, received income derived from prior unlawful debt collections (based on a usurious rate more than twice the enforceable rate under Florida Statute §687.071) and used or invested the income, directly or indirectly, to establish, operate and expand the unlawful lending business of the enterprises which engaged in activities in violation of Florida law.

80. Defendant, has associated with the enterprises and participated directly or indirectly in the collection of unlawful debt from the Plaintiffs and other class members in violation of Florida Statute § 772.103(1)-(4).

81. Plaintiffs and class members have been injured as a result of the actions of the Defendant.

82. Plaintiffs and members of the class are entitled to treble damages from Defendant, plus costs and attorneys’ fees.

COUNT V
11 U.S.C. § 523(a)(2)(A)

83. Plaintiffs incorporates all paragraphs one through fifty-two.

84. At all relevant times the Defendant through others whom he directed, managed and controlled, obtained money and extended, renewed and refinanced credit to the Plaintiffs and those similarly situated.

85. Defendant engaged in false, misleading and deceptive advertising by statements that he engaged in a check cashing service for a fee when in fact he was lending money to the Plaintiffs and members of the class at an exorbitant rate of interest.

86. The check tendered by Plaintiffs was not an instrument payable on demand and therefore not a check as defined by Florida's Uniform Commercial Code, Florida Statutes §673.104(6). Defendant misrepresented that his company was a check cashing business and that the Plaintiffs' checks were enforceable under the Florida check cashing laws.

87. The Defendant or his company did not hold a Florida banking license to give loans to the public as a financial institution.

88. The Defendant through false pretenses, false representation and actual fraud against the Plaintiffs and members of the class obtained money and extended, renewed and refinanced credit.

89. Pursuant to 11 U.S.C. §523(a)(2)(A), the Defendant committed fraud against the Plaintiffs and the class members and therefore should not be discharged from the debts to the Plaintiffs and the class under 11 U.S.C. §§ 727 or 1141.

COUNT VI
11 U.S.C. § 523(a)(6)

90. Plaintiffs incorporate all paragraphs one through fifty-two.

91. The Defendant committed willful and malicious injury on the Plaintiffs inducing them to repeatedly engage in the transactions knowing that the funds were not available to cover checks written to Advance America Florida and churning fees or loan interest for his own

benefit. Upon information and belief, the Defendant received a salary or some type of financial incentive from his company, Advance America Florida.

92. Defendant's business practices contemplated that Plaintiffs and members of the class would not have sufficient funds to cover the checks or principal and interest when due.

93. The Defendant's business practices are a willful and malicious disregard for the Plaintiffs and members of the class violates 11 U.S.C §523(a)(6) and he should not be discharged from the debts to the Plaintiffs and the class under 11 U.S.C. §§ 727 or 1141.

COUNT VII
11 U.S.C. § 523(a)(3)(A) and (B)

94. Plaintiffs incorporate all paragraphs one through fifty-two.

95. The Defendant failed to schedule under 11 U.S.C §521 the Plaintiffs and members of the class in time to permit the timely filing of a proof of claim and timely request for determination of discharge ability.

96. Pursuant to 11 U.S.C §523(a)(3)(A) and (B) Defendant should not be discharged from the debts to the Plaintiffs and the members of the class under 11 U.S.C. §§ 727 or 1141.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court issue the following relief:

a) That the Court make a determination as soon as practicable certifying that this action may proceed as a class action and that the named Plaintiffs may represent the class;

b) Pursuant to Florida Statutes Chapter 687 and Chapter 516, the transactions between Plaintiffs and members of the class and Defendant be declared void and Plaintiffs and members of the class be awarded all sums paid to Defendant, including but not limited to principal, double interest, and any other fees for each and every transaction.

c) Pursuant to the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes, Chapter 501, Part II, that Plaintiffs and members of the class be awarded actual damages, attorney fees and costs;

d) Pursuant to CRCPA, Florida Statutes, Chapter 772, Plaintiffs and members of the class receive treble the damages, costs and attorneys' fees from the unknown defendant;

e) That these debts to Plaintiffs and members of the class be declared non-dischargeable under 11 U.S.C. §523(a)(2)(A).

f) That these debts to Plaintiffs and members of the class be declared non-dischargeable under 11 U.S.C. §523(a)(6).

g) That these debts to Plaintiffs and members of the class be declared non-dischargeable under 11 U.S.C. §523(a)(3).

h) The Plaintiffs and members of the class be awarded attorneys' fees, expenses, costs, pre-judgment and post-judgment interest;

i) Plaintiffs and members of the class be granted any other relief as the Court may deem appropriate.

Respectfully submitted

/s/ John O. Morgan, Jr.
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