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Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION**



policy and legislative advocacy on credit and banking issues on behalf of consumers at both the state and national levels. CA brings this action in the interest of the general public pursuant to Business and Professions Code section 17204.

2. CA is informed and believes and thereon alleges that defendant ACE Cash Express Inc., (“ACE”) was, and is, a Texas corporation, with its principal place of business in Irving Texas. ACE is engaged in a nationwide business of marketing and providing financial services, including “short-term consumer loans” and check cashing services. Plaintiff is informed and believes and thereon alleges that ACE has at least 101 offices throughout California, including several in the City and County of San Francisco. To do business in California as a check casher, every owner of a check cashing business is required, pursuant to California Civil Code section 1789.37, to obtain a permit from the California Department of Justice.

3. CA is informed and believes and thereon alleges that at all material times, defendant Teo Cru was employed by ACE at one of its offices located in San Francisco County and engaged in the acts and conduct complained of herein.

4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend its complaint to state the true names and capacities when ascertained of said Doe defendants. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences, events, transactions and injuries alleged herein, and that plaintiff’s damages as hereinafter set forth were proximately cause by said defendants.

5. Plaintiff is informed and believes and thereon alleges that each of the defendants acted in concert with each and every other defendant, intended to and did participate in the events, acts, practices and courses of conduct alleged herein, and was a proximate cause of damage and injury thereby to plaintiff as alleged herein.

6. At all times herein mentioned, each defendant was the agent or employee of each of the other defendants and was acting within the course and scope of such agency or employment.

### **FACTUAL ALLEGATIONS**

7. ACE has been engaged in a nationwide business of marketing and providing financial services, including “short-term consumer loans” and “payday loans.” For the past several years, ACE has regularly offered, arranged, and made short-term loans, known as “Advance Cash Express,” commonly known throughout the industry as “payday loans.” A payday loan is a type of “deferred deposit” which is defined by law to mean a “transaction whereby a check casher refrains from depositing a personal check written by a customer until a specific date, pursuant to a written agreement.” *See* Civil Code § 1789.31(b).

8. Defendants offered these payday loans for amounts between \$100 and \$500, in increments of \$50, for a 14-day period. Defendants charged a fee of \$17 for every \$100 borrowed for each 14-day period. This equated to an annual percentage rate (“APR”) of 443.21%. Two-week extensions of the loan, with the borrower receiving no additional money, costs borrowers an additional \$17.00 per \$100.00, plus 5% of the principal, all payable at the end of the new 14-day period. Defendant ACE offered three or more such extensions to borrowers. This practice of extending the loans, with the borrower receiving no additional money, is commonly referred to in the industry as a “roll-over” loan. The annual interest rate on such a roll-over loan is even higher than the initial 443.21% APR.

9. Plaintiff is informed and believes, and thereon alleges that Defendant ACE entered into an arrangement with Goleta National Bank (“Goleta”). Defendant ACE represented to potential customers that the payday loan was a product provided by Goleta and that ACE was merely the agent of Goleta. This representation was an attempt to evade California’s payday lending regulations and provide a sham preemption defense to ACE. Plaintiff is informed and believes and thereon alleges that Goleta was the lender in name only of the payday loans which ACE originated, serviced and marketed and that, among other things, ACE purchased 90% to 95% of the payday loans receivable from Goleta shortly after origination.

10. Plaintiff is informed and believes, and thereon alleges that under the Defendants’ arrangement, loans were made in Goleta’s name through an account established when the consumer provided Defendant ACE with a blank check. ACE then issued a debit card so that consumers could access the loan proceeds at ACE’s store.

11. Plaintiff is informed and believes and thereon alleges that The Office of the Comptroller of the Currency has issued a consent order prohibiting ACE from entering into an agreement with Goleta or any other national bank to provide marketing, origination, servicing or collection of payday loans through Goleta or any other national bank.

12. Plaintiff is informed and believes, and thereon alleges that defendant ACE provided application processing, advertising, marketing, servicing and collection of the payday loans at its individual stores.

13. Plaintiff is informed and believes, and thereon alleges that Defendants have engaged in an advertising campaign on radio and other media presently unknown to plaintiff. Upon discovery of such media outlets, plaintiff reserves the right to amend its complaint to describe such media advertising campaign and its legal consequences.

14. Defendants are licensed as check cashers under California Civil Code § 1789.37, which requires every owner of a check casher's business obtain a permit from the California Department of Justice. Licensed check cashers who offer payday loans must comply with California Civil Code § 1789.30, *et. seq.* Civil Code section 1789.30 *et. seq.* was amended in 1996, initiating regulation of the payday lending industry. California law provides that the face amount of the check must not exceed \$300. *See* Civil Code § 1789.33(a). Defendant ACE has provided payday loans in excess of \$300, in increments of \$50, up to \$500. Said practice constitutes a violation of section 1789.33(a) of the California Civil Code, and is therefore unlawful.

15. California Civil Code section 1789.35(d) prohibits payday lenders from charging interest or "fees" in excess of 15% of the face value of the check, for example no more than \$15 per \$100 borrowed. Defendant ACE has charged a fee of \$17 per every \$100 a customer borrows for each fourteen day loan period. Said practice is a violation constitutes a violation of section 1789.35(d) of the California Civil Code, and is therefore unlawful.

16. The practice of Defendant ACE offering "roll-over" loans, as described above, constitutes a violation of sections 1789.33(a) and 1789.35(d) of the California Civil Code, and is therefore unlawful.

**FIRST CAUSE OF ACTION**

**(Violation of California Business and Professions Code § 17500, et seq.;  
Asserted on Behalf of All Affected Members of the General Public)**

17. Plaintiff realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 16, above, as if fully alleged herein.

18. Plaintiff brings this Cause of Action acting as private attorneys general on behalf of the public to challenge defendants' advertising practices. California Business and Professions Code section 17500 prohibits untrue or misleading advertising. A court may order injunctive relief and restitution to affected members of the general public as remedies for any violations of Business and Professions Code section 17500.

19. At all times material herein defendants have engaged in advertising to the public, and offering to the public "Advance Cash Express," a payday loan, marketed as "A BETTER WAY TO BORROW," and "a better and safer short-term loan solution," indicated boldly in its loan application.

20. Defendants engaged in the advertising herein alleged with the intent to induce members of the general public to obtain payday loans and/or roll-over loans.

21. Defendants advertising was untrue or misleading and likely to deceive the public in that ACE represented and advertised that its payday and roll-over loans through them were "a better and safer" way to borrow a small amount of money.

22. Defendants also made false representations and misleading statements to customers that its payday and roll-over loans were provided by Goleta. However, plaintiff is informed and believes that all of the origination, servicing and collection of the payday and roll-over loans were conducted by defendants.

23. In making and disseminating the statements herein alleged, defendants knew, or by the exercise of reasonable care should have known, that the statements were and are untrue or misleading and so acted in violation of California Business and Professions Code section 17500.

24. Pursuant to California Business and Professions Code section 17535, plaintiff hereby requests preliminary and permanent injunctive relief prohibiting defendants from

engaging in such practices in the future. Plaintiff also seeks such other orders as may be necessary to restore to any person interest, any money or property, real or personal, which defendants may have acquired by means of its unlawful, unfair or fraudulent business practices, and to disgorge all profits defendants have earned thereby. Plaintiff also seeks and is entitled to recover its reasonable attorney's fees, costs and expenses incurred in bringing this action, pursuant to California Civil Code section 1789.35(k) and California Code of Civil Procedure section 1021.5.

## **SECOND CAUSE OF ACTION**

### **(Violation of California Business and Professions Code § 17200, *et seq.*, Asserted on Behalf of All Affected Members of the General Public)**

25. Plaintiff realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 24, above, as if fully alleged herein.

26. Plaintiff brings this cause of action as a private attorney general on behalf of the public, pursuant to California Business and Professions Code § 17200, *et seq.*, the Unfair Competition Law ("UCL"), to challenge defendants' unlawful, unfair and fraudulent business acts and practices as described hereinabove.

27. Defendants' business acts and practices, as described above, constitute an unfair business practice in violation of the UCL for the reasons set forth above, including without limitation:

a. By wilfully providing payday loans in excess of \$300, charging fees in excess of 15% of the face value of the payday loan, and making roll-over loans whose time period exceeds the statutory 30 day maximum, Defendants have violated Civil Code §§ 1789.33(a) and 1789.35(d);

b. The conduct of the defendants was not motivated by any business or economic need or rationale other than to provide ACE with immediate windfall profits. The harm and adverse impact of defendants' conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications or motives of ACE;

c. Defendants' conduct was substantially injurious to consumers in that they have been forced to pay ACE substantial sums in the form of usurious interest charges and fees

which were not authorized. Defendants' conduct was also offensive to established California public policy.

28. In addition, the business acts and practices of defendants as described in this complaint constitute a fraudulent business practice in violation of the UCL in that such acts and practices are likely to deceive California consumers as to their legal rights and obligations with respect to payday loans with defendants.

29. Pursuant to California Business and Professions Code § 17203, plaintiff seeks to enjoin these acts and practices, to obtain restitution of all funds appropriated from the excessive loan proceeds and fees and to disgorge all profits obtained by defendants through the use of such unlawful, unfair and fraudulent acts and practices. Pursuant to California Business and Professions Code § 17203, plaintiff, on behalf of all members of the general public who are, have been or may be, subjected to these unlawful, unfair, and fraudulent business acts and practices of defendants, hereby request preliminary and permanent injunctive relief prohibiting such practices in the future, and such other orders as may be necessary to restore to all persons in interest, any money or property, real or personal, which may have been taken from them by means of such unlawful, unfair and fraudulent business practices, and to disgorge all profits defendants have earned thereby. In addition, pursuant to California Civil Code section 1789.35(k) and California Code of Civil Procedure § 1021.5, plaintiff is entitled to recover its reasonable attorney's fees, costs and expenses incurred in bringing this action.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully prays as follows:

1. That this Court find and declare that the defendants' acts and practices as described herein are unlawful, unfair and fraudulent, and in violation of Civil Code sections 1789.33(a), 1789.35(d), Business and Professions Codes section 17500 *et seq.* and Business and Profession Code section 17200, *et seq.*;

2. That defendants be preliminarily and permanently enjoined from engaging in the statutory violations and the unlawful, unfair and fraudulent acts and practices alleged herein;

3. That defendants be ordered to make restitution to all affected members of the general public and to disgorge all profits earned by defendants from these practices;

4. That plaintiff be awarded attorneys' fees and costs pursuant to California Civil Code section 1789.35(k), Code of Civil Procedure section 1021.5, and/or other provisions of law;

5. For costs of suit herein incurred; and

6. For such other and further relief as the Court may deem just and proper.

DATED: May \_\_, 2003

Respectfully submitted,

THE STURDEVANT LAW FIRM, P.C.

LAW OFFICES OF SHELDON V. BURMAN, P.C.

By: \_\_\_\_\_  
JAMES C. STURDEVANT  
Attorneys for Plaintiff

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## PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 475 Sansome Street, Suite 1750, San Francisco, California 94111.

On May \_\_, 2003, I served the within **Complaint for Damages and Injunctive Relief Based Upon Violations of Civil Code Sections 1789.33(a), 1789.35(d), 17500, et seq. and for Injunctive Relief and Restitution Based Upon Violations of Business & Professions Code Sections 17500, et seq. and 17200, et seq.** on the parties listed below in this action by placing a true and correct copy thereof in a sealed envelope, with postage thereon fully prepaid, and depositing same in the United States mail, at San Francisco, California, addressed as follows:

I declare under penalty of perjury that the foregoing is true and correct. Executed on the date first written above at San Francisco, California.

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Cyndee Saucedo