

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT OF BANKING, )

Plaintiff, )

vs. ) No.

NCAS OF DELAWARE, LLC, d/b/a )  
ADVANCE AMERICA CASH )  
ADVANCE CENTERS, )

Defendant. )

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PA (PHILA)  
2006 SEP 27 A 9:03

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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Harrisburg, Pennsylvania 17101  
(717) 232-0581  
and  
Public Services and Lawyers Referral Committee,  
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Harrisburg, Pennsylvania 17101  
(717) 232-7536

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1. Plaintiff Pennsylvania Department of Banking (“the Department”) is an executive agency within the Executive Department of the Commonwealth government pursuant to Section 201 of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 61.

2. The General Assembly has vested the Department with the jurisdiction and power to administer various laws of the Commonwealth of Pennsylvania, including the Consumer Discount Company Act, Act of April 8, 1937, P.L. 262, as amended, 7 P.S. §§ 6201-6219, and the Loan Interest and Protection Law, Act of January 30, 1974, P.L. 13, as amended, 41 P.S. §§ 101-605.

3. The General Assembly, in Section 503.C of the Department of Banking Code, Act of May 15, 1933, P.L. 565, as amended by Act No. 2002-209, § 16, 71 P.S. § 733-503.C (supp.

2006), also has empowered the Department to maintain actions in this Court for injunctive and other relief for the purpose of restraining or preventing violations of any statute that the Department has jurisdiction to administer or enforce.

4. Defendant NCAS of Delaware, LLC is a Delaware limited liability company engaged in the lending business throughout the Commonwealth of Pennsylvania under the fictitious name Advance America Cash Advance Centers (“Advance America”). Defendant is a wholly owned subsidiary of Advance America, Cash Advance Centers, Inc. (“AA”), and AA has also operated in Pennsylvania through another subsidiary using the “Advance America” brand (“Subsidiary”).

5. AA describes itself and its subsidiaries, including Advance America, in filings with the United States Securities and Exchange Commission and in the Investor Relations section of the Advance America website as “the country’s leading provider of payday cash advance services.”

6. Payday cash advance is a form of consumer lending that involves offering consumers high-rate, short term loans secured by either a post-dated check or a debit authorization from a bank account, both of which are executed at the end of the loan term, usually two weeks, which usually coincides with the consumer’s payday.

7. Until March 27, 2006, AA operated in Pennsylvania through the Subsidiary that had registered as a loan broker under the Credit Services Act, Act No. 1992-150, 73 P.S. §§ 2181-2192, in which capacity AA described itself as having operated “as marketing, processing, and servicing agent for a Federal Deposit Insurance Corporation (“FDIC”) supervised institution

that offered payday cash advances and installment loans.” (Quoting from AA Form 8-K, filed with United States Securities and Exchange Commission June 19, 2006).

8. The FDIC-supervised institution described in paragraph 7, above, was a bank located outside the Commonwealth of Pennsylvania, and AA operated in the above-described manner on the theory that the out-of-state location of the bank would permit the Subsidiary to broker payday loans with interest rates determined by the laws of a state other than the Commonwealth of Pennsylvania pursuant to federal law and to avoid interest rate and fee caps imposed by Pennsylvania law on payday loans that the Subsidiary offered to Pennsylvania residents using this method.

9. As reported in the AA Form 10-Q (Quarterly Report) filed with the United States Securities and Exchange Commission for the period ended March 31, 2006, “[i]n February 2006, the FDIC instructed the lending bank for Pennsylvania . . . to discontinue offering payday cash advances and alternative credit products if they could not adequately address the FDIC’s concerns. In response to the FDIC’s instructions, the lending bank for Pennsylvania ceased its payday cash advance and installment loan originations as of the close of business on March 27, 2006.”

10. On June 20, 2006, Advance America began offering in Pennsylvania a new line of credit product, not in partnership with a bank, in place of its prior payday loan products.

11. Under Advance America’s new line of credit product, Advance America provides a \$500 credit line to qualifying Pennsylvania borrowers. Advance America charges interest on these advances in the form of simple interest at a daily periodic rate that corresponds to an

annual percentage rate of 5.98%. In addition, Advance America charges borrowers a “Monthly Participation Fee” of \$149.95 per month.

12. The General Assembly, in Section 3.A of the Consumer Discount Company Act, Act of April 8, 1937, P.L. 262, as amended, 7 P.S. § 6203.A (supp. 2006), prohibits, with respect to loans or advances of money or credit of \$25,000 or less, any business that has not obtained a license from the Commonwealth’s Secretary of Banking under the Consumer Discount Company Act from charging, collecting, contracting for or receiving interest, fees, charges or other consideration which aggregate in excess of the maximum allowable interest rate that an unlicensed lender otherwise would be permitted to charge under Pennsylvania law on the amount loaned or advanced.

13. The line of credit product offered by Advance America is a loan or advance of money or credit within the meaning of Section 3.A of the Consumer Discount Company Act, Act of April 8, 1937, P.L. 262, as amended, 7 P.S. § 6203.A (supp. 2006).

14. Advance America has not obtained a license from the Secretary of Banking pursuant to the Consumer Discount Company Act.

15. No other Pennsylvania or federal law applicable to Advance America authorizes Advance America to charge a “Monthly Participation Fee” of \$149.50 together with an interest rate of approximately 5.98% to consumers for a line of credit product.

16. Because Advance America is not licensed pursuant to the Consumer Discount Company Act, Advance America is prohibited from charging for its line of credit product interest, fees, charges or other consideration which aggregate in excess of the annual interest rate

of 6 per cent under Section 201 of the Loan Interest and Protection Law, Act of January 30, 1974, P.L. 13, 41 P.S. § 201.

17. The “Monthly Participation Fee” that Advance America charges, when aggregated with the line of credit product interest rate as required by Section 3.A of the Consumer Discount Company Act, Act of April 8, 1937, P.L. 262, as amended, 7 P.S. § 6203.A (supp. 2006), results in Advance America charging fees and interest that aggregate in excess of 6 per cent annually on the amount advanced, in violation of both the Consumer Discount Company Act and the Loan Interest and Protection Law.

18. Furthermore, the “Monthly Participation Fee” is a sham, the true nature of which is illegal, usurious interest in violation of the maximum allowable annual interest rate under Section 201 of the Loan Interest and Protection Law, Act of January 30, 1974, P.L. 13, 41 P.S. § 201.

19. According to the Form 10-Q that AA filed with the United States Securities and Exchange Commission for the quarterly period ended June 30, 2006, Advance America had 100 loan centers in the Commonwealth of Pennsylvania as of June 30, 2006.

20. Advance America continues to do business at loan centers throughout the Commonwealth of Pennsylvania.

21. There is no adequate remedy at law to redress Advance America’s illegal conduct.

WHEREFORE, the Department requests this Court to grant the following relief:

A. A declaratory judgment that Advance America's "Monthly Participation Fee" is not authorized by Pennsylvania law and violates the Consumer Discount Company Act and the Loan Interest and Protection Law;

B. A permanent injunction enjoining Advance America from charging Pennsylvania consumers "Monthly Participation Fees" and from engaging in any other business practice that violates the maximum interest rate or fee limitations under Pennsylvania law; and

C. Such other, further and supplemental relief as is appropriate.



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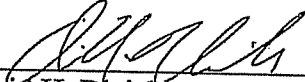
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September 27, 2006

**VERIFICATION**

I verify, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the facts averred in the foregoing Complaint are true, based upon knowledge or information and belief.



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David H. Bleicken  
Director, Bureau of Licensing,  
Investigation and Consumer Services