

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

ENDORSED  
FILED IN MY OFFICE THIS

NOV 08 2006

CAROLYN ANAYZ

FASTBUCKS OF ALAMOGORDO  
NEW MEXICO, LLC, et al.,

*Quanita M. Ruan*  
CLERK DISTRICT COURT

Plaintiffs,

vs.

No. D-0202 CV 2006 06317

WILLIAM J. VERANT, Director of the  
Financial Institutions Division of the  
New Mexico Regulations and Licensing  
Department,

Defendant.

CONSOLIDATED WITH

CHECK 'N GO OF NEW MEXICO, INC.,  
a New Mexico corporation, et al.,

Plaintiffs,

vs.

No. CV-2006-06370

WILLIAM J. VERANT,  
Director of the Financial Institutions Division  
of the New Mexico Regulation and Licensing Department,

Defendant.

ESZ PAYDAY LOANS OF NEW MEXICO, LLC,

Plaintiff in intervention.

**ORDER GRANTING PERMANENT  
INJUNCTION AND PARTIAL FINAL JUDGMENT**

This cause having come on for hearing upon the Plaintiffs' Applications for an injunction restraining the Defendant from making effective or enforcing Regulations by the Financial Institutions Division of the Regulation and Licensing Department, 12.18.7.1 NMAC through

12.18.7.15 NMAC (the "Regulations"), the Court having reviewed and fully considered the pleadings, briefs, affidavits, proffer of evidence, exhibits, and all other evidence and matters of record or presented to the Court by the parties at or before the hearings of August 25, 2006 and August 30, 2006, and being otherwise fully advised in the premises, **FINDS THAT:**

1. As a matter of law, irreparable injury can be shown if, as here, the allegation is one of a constitutional violation and the Court determines there was a constitutional violation. As a result, there was no need for Plaintiffs to present the testimony with respect to irreparable injury they were prepared to introduce at the hearing in this matter. A separate showing by Plaintiffs of irreparable harm is not necessary under these circumstances because as a matter of law, the Regulations violate the separation of powers clause of the New Mexico Constitution, Article III, Section I.

2. Plaintiffs have shown that the threatened injury to them outweighs any damage an injunction might cause the Defendant because, the Financial Institutions Division ("FID") will not be damaged by the granting of an injunction and the Regulations are contrary to the public interest as declared by the Legislature.

3. Plaintiffs have shown that the issuance of an injunction will not be adverse to the public interest because, the Regulations are contrary to the public interest as declared by the Legislature in the Small Loan Act.

4. As a matter of law, the Regulations violate the separation of powers clause of the New Mexico Constitution, Article III, Section I, because, the Legislature did not delegate to the FID the authority to promulgate these Regulations and the Regulations exceed the authority delegated to the FID by the Legislature.

5. There is no just reason for delay in entering a partial final judgment under NMRA 1-054B(1) and issuing a Permanent Injunction limited to the Plaintiffs' claims that the Regulations violate the separation of powers clause of the New Mexico Constitution, Article III, Section I. However, this Court expressly finds, and the parties expressly acknowledge, agree and stipulate, that this Court has neither addressed nor decided any of the remaining claims by Plaintiffs in Cause No. CV 2006 06370, including without limitation the claim that the limit on administrative fees of \$15.50 per \$100 of principal is unreasonable, arbitrary, capricious and/or in conflict with the Small Loan Act. Plaintiffs' claims other than those involving the separation of powers clause will be addressed by this Court at a later date, if necessary. Plaintiffs in Cause No. CV 2006 06317 have alleged no other claims.

6. On August 30, 2006, this Court verbally entered a Preliminary Injunction restraining the Defendant from making effective or enforcing the Regulations.

**IT IS THEREFORE ORDERED** that: (a) Plaintiffs' Applications for a Preliminary Injunction be, and the same hereby are, granted as of August 30, 2006; (b) a partial final judgment is hereby entered under NMRA 1-054B(1) in favor of Plaintiffs on their claim that the Regulations violate the separation of powers clause of the New Mexico Constitution, Article III, Section I; and (c) a Permanent Injunction is hereby issued, restraining and enjoining Defendant from making effective or enforcing, taking any action to make effective or enforce, or threatening to enforce the Regulations.

**IT IS FURTHER ORDERED** that so long as the Permanent Injunction or the Stay referred to hereinafter remains in effect, and except as expressly provided herein, the parties shall not pursue further District Court proceedings in this cause other than any possible motion to amend the Amended Complaint by the Plaintiffs, or to seek to require the Defendant to request a

stay of Santa Fe County Cause No. D-0101-CV-2006-01728 pending its appeal from the issuance of this Permanent Injunction.

**IT IS FURTHER ORDERED** that the Defendant's requests that this Court issue a stay of the Preliminary Injunction and require that Plaintiffs post a bond or security be, and the same hereby are, denied.

**IT IS FURTHER ORDERED** that, by stipulation of the parties, in the event that the New Mexico Court of Appeals or the New Mexico Supreme Court issues an opinion holding that this Court erred in granting this Permanent Injunction (the "Reversing Opinion"):

1. Within ten (10) days after the filing of the Reversing Opinion the parties shall respond to any written discovery served on them prior to December 31, 2006.

2. Within thirty (30) days after the filing of the Mandate in accordance with the Reversing Opinion or within such longer period as the parties may agree, this Court shall hear any further motion of Plaintiffs for a preliminary or a permanent injunction against the enforcement and implementation of the Regulations on any claim asserted by Plaintiffs not inconsistent with the Reversing Opinion and specifically including the claim by Plaintiffs in Cause No. CV 2006 06370 that the \$15.50 per \$100 of principal administrative fee limitation in the Regulations is unreasonable, arbitrary, capricious, and/or in conflict with the Small Loan Act.

3. After the filing of the Mandate and prior to the hearing on the injunction motion, the parties may take depositions upon not less than five (5) days' notice. The parties shall cause all witnesses within their control and all witnesses they contemplate calling at the hearing, including all employees and expert witnesses, if any, to appear for their depositions, and the parties shall fully cooperate in the scheduling and taking of such depositions in order to allow for timely preparation for the hearing on the injunction motion.

4. The Regulations shall be stayed, and the FID agrees not to make effective or enforce, take any action to make effective or enforce, until thirty (30) days after the filing of the Mandate in accordance with the Reversing Opinion or until such later date as the parties may agree. In the event of the issuance of a Reversing Opinion, the hearing and decision on the Plaintiffs' motion for injunction will occur before the Regulations become effective.

5. Nothing contained herein shall preclude any party from requesting or the Court from granting for good cause modifications of any time frames set forth herein.

6. For purposes of counting days hereunder, weekends and holidays shall be counted. However, if the last day of any period falls on a weekend or holiday, the period shall be extended to end on the next business day.

RICHARD J. KNOWLES

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RICHARD J. KNOWLES  
District Court Judge

APPROVED AS TO FORM:

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