

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

3RD DIVISION

STATE OF ARKANSAS *ex rel.*

DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

FILED 09/14/11 11:38:47

Larry Crane Pulaski Circuit Clerk

vs.

60CV CASE NO. 2011 4429

SURE ADVANCE, LLC

d/b/a SUREADVANCE.COM

DEFENDANTS

COMPLAINT

Plaintiff, State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, for its Complaint against the Defendant, states:

PARTIES

1. Plaintiff is the State of Arkansas *ex rel.* Dustin McDaniel, the duly elected Attorney General for the State of Arkansas. This is a consumer protection action. This complaint is brought in the public interest in order to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.* and the Arkansas Constitution, Amendment 89, formerly Article 19, Section 13, prohibiting usury in the State of Arkansas.

2. Defendant Sure Advance, LLC ("Sure Advance"), a Delaware limited liability company, is engaged in the business of making high interest, short-term loans, more commonly known as "payday loans" in the State of Arkansas.

3. Sure Advance purports to conduct business from 750 Shipyard, Suite 213, Wilmington, DE 19801. Its registered agent is Registered Agents Legal Services, LLC, 1220 N Market St., Suite 806, Wilmington, DE 19801.

4. Sure Advance is not registered with the Arkansas Secretary of State.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and Ark. Code Ann. § 16-4-101(B), which provides: “The courts of this state shall have personal jurisdiction of all persons, and causes of action or claims for relief, to the maximum extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.” By operating an interactive website that is continuously and systematically available to Arkansas consumers, by loaning money to Arkansas residents in Arkansas and by debiting money from Arkansas residents' bank accounts located in Arkansas, the Defendant availed itself of the benefit of conducting business in this State. Based upon its activities in the State of Arkansas, the Defendant should reasonably expect to defend itself in the courts of this State for violations of applicable laws.

6. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendant has transacted business in the State of Arkansas.

BUSINESS PRACTICES OF THE DEFENDANTS

7. Sure Advance is engaged in the business of making high interest, short term loans, more commonly known as payday loans. Defendant solicits borrowers through the use of an internet website.

8. Sure Advance operates or controls the website www.sureadvance.com.

9. Defendant offers loans of up to \$1000 to borrowers, including Arkansas consumers. Attached are screenshots from www.sureadvance.com. See Exhibit 1.

10. The Attorney General's Office has received several complaints about Sure Advance's business practices.

11. A review of several Arkansas residents' bank statements shows that for a \$400 loan, Sure Advance collects a finance charge of \$106 approximately every two weeks.

12. The resulting annual percentage for a \$400 loan with a finance charge of \$106 for a 14 day period is approximately 680.89%.

13. The Attorney General's Office has demanded that the Defendant cease making unconscionable and usurious loans in Arkansas, and cease collecting on existing unconscionable, usurious, illegal and unenforceable loans. Nonetheless, Defendant continues these prohibited activities. See Exhibit 2 for a copy of one of the demand letters sent to Defendant.

VIOLATIONS OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT

14. The business practices of Sure Advance constitute the sale of “goods” or “services” within the meaning of Ark. Code Ann. § 4-88-102(3) and (6). The same business practices constitute business, commerce, or trade within the meaning of Ark. Ann. § 4-88-107.

15. The conduct engaged in by Sure Advance constitutes deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited practices engaged in by the Defendant include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(1) and 4-88-107(a)(10). More specifically, the Defendants have violated and continue to violate the Arkansas Deceptive Trade Practices Act by:

(a) Charging and collecting unconscionable rates of interest on lending transactions. The practice of charging ultra-high usurious rates of interest is unconscionable as a matter of law. See *State of Ark. v R & A Investment Co., Inc.*, 336 Ark. 289, 785 SW 2d 299 (1999), *Arkansas Board of Collection Agencies and Old Republic Surety Company v. Mcghee, et al.*, 372 Ark. 136, 271 S.W.3d 512 (2008), *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual*

Insurance Company, 372 Ark. 387, 277 S.W.3d 190 (2008), and *McGhee v. Arkansas State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

VIOLATIONS OF THE ARKANSAS CONSTITUTION

16. Amendment 89 of the Arkansas Constitution places a limit on the maximum interest rate that may be charged a borrower in a lending transaction:

SECTION 3. All other loans having a greater rate of interest than seventeen percent (17%) per annum shall be void as to principal and interest and the General Assembly shall prohibit the same by law. The interest rate for contracts in which no rate of interest is agreed upon shall be six percent (6%) per annum.

17. Defendant is in the business of offering and making short term loans of up to \$1000.00 to Arkansas consumers. The interest, including fees or other charges imposed in connection with and as a condition of the loan, Defendant has charged, contracted for, and collected on those loans greatly exceeds the maximum amount allowed under the Arkansas Constitution.

18. Defendant is charging triple digit interest rates to Arkansas residents in violation of the Arkansas Constitution.

19. Because Defendant has charged and received interest or other compensation in excess of 17%, each such loan is void as to principal and interest, and the Defendant should be prohibited from collecting, attempting to collect, or otherwise obtaining any money from any Arkansas borrower who was charged interest at a rate in violation of the Arkansas Constitution. All sums, including principal and interest collected to date, should be returned to the borrower or otherwise forfeited by the Defendant.

RELIEF REQUESTED

20. The acts and practices of the Defendant constituting violations of the Arkansas Deceptive Trade Practices Act and the Arkansas Constitution warrant, and the Plaintiff hereby seeks, the following relief:

(a) Injunction – Pursuant to Ark. Code Ann. § 4-88-113(a)(1), the Court should enter such orders or judgments as may be necessary to prevent the use or employment by the Defendant of the practices described herein which are violations of the Arkansas Deceptive Trade Practices Act and the Arkansas Constitution, Amendment 89, formerly *Article 19, Section 13* . In addition to enjoining ongoing violations of Arkansas law, Plaintiff prays that this Court cancel all outstanding loan contracts together with any obligations to which any consumers may be arguably be subject based upon such contracts.

(b) Restitution – Pursuant to Ark. Code Ann. § 4-88-113(a)(2), this Court should enter such orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use of prohibited practices any monies which may have been acquired by the Defendant, together with any other damages which these consumers may have sustained. All payments made by any affected Arkansas consumer, whether demoninated as principal or interest, or otherwise, should be restored to the borrower. In addition, or in the alternative, the Defendant should be ordered to disgorge all funds received from borrowers in these unconscionable lending transactions.

(c) Civil Penalties – Pursuant to Ark. Code Ann. § 4-88-113(a)(3), the Plaintiff seeks the imposition of civil penalties to be paid to the State. Plaintiff seeks civil penalties against the Defendant in the amount of \$10,000.00 for each violation of the Arkansas Deceptive Trade Practices Act. Each unconscionable lending transaction is a violation of the Arkansas Deceptive Trade Practices Act. The total recovery sought by

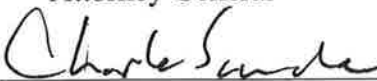
the Plaintiff for restitution, disgorgement, and civil penalties is in an amount in excess of that required for federal court jurisdiction in diversity of citizenship cases.

(d) Attorneys fees and costs – Pursuant to Ark. Code Ann. § 4-88-113(e), the Plaintiff seeks the reimbursement of all expenses reasonably incurred in the investigation and prosecution of this matter, together with attorneys fees and costs.

WHEREFORE, Plaintiff requests that this Court permanently restrain and enjoin Sure Advance, LLC from engaging in acts which constitute violations of the Arkansas Deceptive Trade Practices Act and are prohibited by the Arkansas Constitution; that all outstanding loans be voided; that the Defendant be barred from taking any action to enforce or otherwise collect any lending agreement; that the Defendant be ordered to pay restitution to all affected Arkansas consumers consisting of all payments made by such consumers, together with any other damages sustained by such consumers; alternatively, or in addition, that the Defendant be ordered to disgorge all payments received from Arkansas consumers; that the Defendant be assessed civil penalties; that the Plaintiff be awarded from the Defendant reimbursement for all expenses reasonably incurred in the investigation and prosecution of this matter, together with reasonable attorneys fees and costs, and for all other relief to which the Plaintiff may be entitled.

Respectfully submitted,

DUSTIN MCDANIEL,
Attorney General

By: 

Charles Saunders
Assistant Attorney General
Arkansas Bar No. 03117
Assistant Attorney General
500 Catlett-Prien Tower Building
323 Center Street
Little Rock, Arkansas 72201-2610
501-683-1501

Exhibit 1

Cash Advances & Payday Loan: Sure Advance - Terms and Conditions - Windows Internet Explorer

https://www.sureadvance.com/Terms.aspx Identified by VeriSign Google

Cash Advances & Payday Loan: Sure Advance - T...

HOME REQUIREMENTS FAQS APPLY NOW CONTACT US

SureAdvance

Email Address: Last 4 SSN: Log In

Terms and Conditions

Should you apply and be approved for a loan, you will be asked to electronically sign a loan agreement and related documents which will govern your relationship with Sure Advance.


All loans are made by Sure Advance. Call 1-877-886-3063

Copyright 2008 Sure Advance™ [Terms & Conditions](#) [Privacy Policy](#)

Loans are funded by Sure Advance™

A payday loan is not intended to meet long-term financial needs.

Loans may not be available in all states



ABOUT SSL CERTIFICATES

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Cash Advances & Payday Loan: Sure Advance - FAQs - Windows Internet Explorer

https://www.sureadvance.com/FAQs.aspx

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Google

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Frequently Asked Questions

Q: When will the loan be due?
A: Generally, on your following payday or you may pay the finance charge and extend the loan until your next payday.

Q: How much can I borrow?
A: Up to \$1,000. (Contingent upon income level and various underwriting criteria.)

Q: When will I receive my loan?
A: If all information is received by 1:00 p.m. and can be verified, you will generally receive your money on the next business day.

Q: When will I hear from you?
A: You will hear from us within one (1) business day or sooner upon receiving the necessary information. We will contact you with a loan offer or email you for missing information. We are closed on weekends and holidays.

Q: How will I know if I'm approved?
A: We will contact you with a loan offer. If denied, you will receive a notice by email.

Q: Can I extend the loan?
A: Yes, after 4 renewals you will be required to pay down a portion of your loan plus any finance charges.

Q: Once paid off, when can I get another loan?
A: You must wait three (3) business days. We may ask you to prove that the previous loan has been actually paid in full by providing us a bank statement showing proof of a non-pending payment.

Q: If I don't fax in all the necessary information, will the application be processed?
A: The application will be considered incomplete and we will call or email you for the missing information.

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Exhibit 2



THE ATTORNEY GENERAL
STATE OF ARKANSAS
DUSTIN McDANIEL

Thursday, March 03, 2011

Sure Advance
VIA FACSIMILE: 877-886-3064

RE: Consumer Complaints-87222, Ms.

To Whom It May Concern:

"Payday" lending in the State of Arkansas is illegal. "Payday" lending violates the Arkansas Constitution, Article 9, Section 13, and the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq.* See *State of Ark. v R & A Investment Co., Inc.*, 336 Ark. 289, 785 SW 2d 299 (1999); *Arkansas Board of Collection Agencies and Old Republic Surety Company v. McGhee, et al.*, 372 Ark. 136, 271 S.W.3d 512 (2008); *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, 372 Ark. 387, 277 S.W.3d 190 (2008); and *McGhee v. Arkansas State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

For the purposes of this letter, "payday" lending means the practice of extending short-term loans at high annual percentage rates; including loans made over or facilitated by the use of internet websites. While a payday lender may be located outside Arkansas, the Attorney General's Office may exercise its authority where money has been loaned to a consumer located in Arkansas. See *Quick Payday, Inc. v. M. Stork*, 549 F.3d 1302 (2008) and *Cash America Net of Nevada, LLC v. Commonwealth of Pennsylvania*, 978 A.2d 1028 (2009).


The enclosed complaint shows that your company has transacted business in the State of Arkansas. The Attorney General demands that you cease engaging in payday lending transactions with Arkansas consumers and cancel all outstanding payday lending transactions where the annual percentage rate is greater than 17% per annum.

It has also come to our attention that a number of online payday lenders are attempting to use pre-judgment "wage assignment" clauses in their form contracts as a method of collecting on

these illegal debts. Please be advised that pre-judgment wage garnishments are not enforceable in Arkansas. To the extent that this consumer has purportedly agreed to such terms, you should consider this letter as a revocation of such an agreement.

We require a **written response** from you regarding the Attorney General's demand that you cease offering illegal payday loans in Arkansas, as well as addressing the complainant's allegations within ten (10) business days of your receipt of this letter. Please feel free to attach any documents you think are relevant in supporting or explaining your position. Thank you for your prompt attention to this matter. If you have questions concerning this matter please contact Investigator Katherine Rogers at 501-682-2007

Sincerely,



Charles Saunders
Assistant Attorney General
Consumer Protection Division