

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
131-DIVISION

STATE OF ARKANSAS *ex rel.*
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO CN 2008-2746

Filed 05/01/08 09:36:41
Pat O'Brien Pulaski Circuit Clerk

CAUDLE ENTERPRISES, LLP,
D/B/A PAWN EXCHANE OF DEQUEEN,
PAWN EXCHANGE OF MENA, &
PAWN EXPRESS OF FOREMAN, AND
PHILLIP CAUDLE

DEFENDANTS

COMPLAINT

Plaintiff, State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, for its Complaint against the Defendants, 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 public 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, *Article 19, Section 13*, prohibiting usury in the State of Arkansas.

2. Defendant Caudle Enterprises, LLP (hereinafter collectively referred to as Caudle Enterprises) is an Arkansas Limited Liability Partnership. Caudle Enterprises operates under the names Pawn Exchange of DeQueen, Pawn Exchange of Mena, and Pawn Express of Foreman.

3. Defendant Phillip Caudle is the owner of Caudle Enterprises. Defendant Caudle is a resident of Arkansas. Caudle, as the owner of Caudle Enterprises personally formulated, directed, controlled, supervised, managed, participated in, had knowledge of, and acquiesced in

the practices of Caudle Enterprises (as more specifically set out below) to such a degree that Defendant Caudle is personally liable for the unconscionable and otherwise unlawful acts and practices described below. Defendant Caudle is a “controlling person” within the meaning of Ark. Code Ann. § 4-88-113(d).

4. Throughout the complaint any reference to “Defendants” or “Caudle Enterprises” shall be deemed to include Caudle Enterprises and Phillip Caudle, as Caudle, is and has been, the sole owner and in control of the operations of Caudle Enterprises.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104, and the common law of the State of Arkansas. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendants have transacted a substantial amount of business in the State of Arkansas with numerous Arkansas consumers.

BUSINESS PRACTICES OF THE DEFENDANTS

6. During the period of time starting approximately May 4, 2007, through the present, Defendants operated what are commonly termed “payday loan” businesses under the following names at the following locations:

- a. Pawn Exchange of DeQueen
103 Hwy 71 North
DeQueen, AR 71832
- b. Pawn Exchange of Mena
1301 Hwy 71 North
Mena, AR 71953
- c. Pawn Express of Foreman
806 E. 2nd Ave.
Foreman, AR 71836

7. Caudle Enterprises offered high interest, short term loans to their customers by advancing funds against present-dated checks. The amount of each advance was substantially less than the face value of the check presented. The difference between the amount advanced and the face value of the check is interest on the loan. The resulting annual percentage rates (“APR’s”) of Caudle Enterprises’ lending transactions ranged from approximately 173% to 868% depending on the terms of the individual transaction.

8. The following describes two typical initial check advancement loan transactions: The customers, a husband and wife, visited Caudle Enterprises, completed two applications, and wrote two present-dated checks to Defendants for \$288.88. Defendants provided each customer with \$250.00 in cash, and agreed to hold the customers’ checks for a period of fourteen (14) days. At the end of the fourteen (14) day period, the customers could return to Defendants, pay the Defendants \$288.88 each and retrieve their checks, or in the alternative, allow Defendants to deposit and present their checks for payment. Exhibit A, attached to this Complaint, contains a copy of the two identical lending transactions that both occurred on the same day. The Defendants listed the APR for these transactions as 405.46% each.

9. At the time Caudle Enterprises enters into lending transactions like the ones described above, both the customer and the Defendants know that the customer’s checking account does not have a balance sufficient to cover the check. On the due date, a customer typically deposits his pay check in his checking account and immediately withdraws an amount necessary to pay off the loan. A typical customer, after withdrawing the money from their bank account, proceeds directly to Caudle Enterprises. With his checking account thus depleted, the customer is now likely unable to pay one or more of his monthly bills, such as rent, mortgage payment, utilities, or groceries. Without sufficient funds to pay living expenses, the customer

then immediately writes a new check for a new loan under the same or similar terms. In the above case, on the due date of the original transaction, the husband would pay \$288.88 to 'pay-off' his loan, and immediately receive \$250.00 back. The effect is not two separate transactions, but the continuation of the initial \$250.00 transaction, renewed bi-weekly for another interest payment of \$38.88. If the husband renewed the \$250.00 contract bi-weekly for one year, which is not an uncommon situation, he would pay approximately \$1010.18 in interest on a loan of \$250.00, and still owe the \$250.00 principal at the end of the year.

10. If either the husband or wife described above did not return to Caudle Enterprises on the due date, Caudle Enterprises would deposit his or her check. If there are sufficient funds in the account, the check is honored. Of course, since the customers of Caudle Enterprises tend to be people who work hard, but who live from paycheck to paycheck, the burden of the interest charged on the loan makes it less likely that the customer will be able to maintain a sufficient balance. The result is that the customer is often forced to obtain additional payday loans from other lenders to juggle loans as they come due. As the customer takes on more payday loans, more and more of the customers' wages are devoted to interest payments to payday lenders, such as Caudle Enterprises, and less and less is available to devote to necessary living expenses. A customer who engages in a single transaction with one lender is rare. The majority, including many of the customers of Caudle Enterprises, engage in repeated back-to-back transactions with each lender, and many juggle three or more loans with different lenders at any one time. For many customers, this process continues until the customer is somehow, though some windfall income, able to extract himself from the debt cycle, or until the customer's financial situation collapses completely, often resulting in bankruptcy.

11. Two more examples of lending transactions engaged in by the Defendants are found in Exhibit B & C. The APR's found on these contracts are 372.45% and 434.48%, respectively.

VIOLATIONS OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT

12. The Plaintiff incorporates herein by reference all matters set forth in Paragraphs 1 through 11 above.

13. The business practices of the Defendants constitute the sale of "goods" or "services" within the meaning of Ark. Code Ann. § 4-88-102(6) and (7). The same business practices constitute business, commerce, or trade within the meaning of Ark. Ann. § 4-88-107.

14. The conduct engaged in by the Defendants constitutes deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited practices engaged in by the Defendants include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(1), 4-88-107(a)(8), 4-88-107(a)(10), and 4-88-108. More specifically, the Defendants violate the Arkansas Deceptive Trade Practices Act by:

(a) Charging and collecting unconscionable rates of interest on short term lending transactions. The practice of charging usurious rates of interest is unconscionable and deceptive 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.*, No. 07-129 (AR S. Ct. Jan. 17, 2008), and *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 07-53 (AR S. Ct. Feb. 21, 2008).

VIOLATIONS OF THE ARKANSAS CONSTITUTION

15. The Plaintiff incorporates herein by reference all matters set forth in Paragraphs 1 through 14 above.

16. Article 19, Section 13 of the Arkansas Constitution places a limit on the maximum interest rate that may be charged a borrower in a lending transaction:

(a) General Loans:

(i) The maximum lawful rate of interest on any contract entered into after the effective date hereof shall not exceed five percent (5%) per annum above the Federal Reserve Discount Rate at the time of the contract.

(b) Consumer Loans and Credit Sales: All contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent per annum shall be void as to principal and interest and the General Assembly shall prohibit the same.

17. During the relevant time period, the contract rate of interest permitted on loans in Arkansas varied between 7.5 % APR (current as of March 2008) to a high of 11.25% APR.

18. Defendants were engaged in the business of offering and making short term loans in amounts of typically between \$50.00 and \$350.00. The interest, charges, compensation, consideration or expense Defendants charged, contracted for and received on those loans greatly exceeded the maximum amount allowed under the Arkansas Constitution.

19. The fees charged by Defendants on the loan transaction described in Paragraph 8 above amount to an annual percentage rate of 405.46%. This is a typical lending transaction engaged in by Defendants.

20. Because Caudle Enterprises charged and received interest or other compensation in excess of 17% APR (see Arkansas Constitution, Article 19, Section 13 (b)), each loan was and is void as to principal and interest, and the Defendants should be prohibited from collecting, attempting to collect, or otherwise obtaining any money from any borrower that was charged interest rates in violation of the Arkansas Constitution. All sums, including principal and interest, collected to date, should be returned to the borrowers.

RELIEF REQUESTED

21. The acts and practices of the Defendants 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 Defendants of the practices described herein which are violations of the Arkansas Deceptive Trade Practices Act and the Arkansas Constitution, *Article 19, Section 13* . In addition to enjoining ongoing violations of Arkansas law, Plaintiff requests that the Court cancel all outstanding loan contracts together with any obligations to which 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 Defendants, together with any other damages which these consumers may have sustained. In addition, or in the alternative, the Defendants 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 by the Defendants. Plaintiff seeks civil penalties against the Defendants in the amount of \$10,000.00 for each violation of the Arkansas Deceptive Trade Practices Act. Each unconscionable lending transaction should be considered an individual 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) Forfeiture of corporate charters, licenses, permits and authorization to do business in Arkansas – Pursuant to Ark. Code Ann. § 4-88-113(b), the Plaintiff seeks the forfeiture of such charters, licenses, permits or authorizations to do business in Arkansas as may currently be enjoyed by the Defendants.

(e) Attorneys fees and costs – Pursuant to Ark. Code Ann. § 4-88-113(e), the Plaintiff seeks compensation for its services, 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 preliminarily and permanently restrain and enjoin the Defendants from engaging in acts which constitute violations of the Arkansas Deceptive Trade Practices Act and the Arkansas Constitution; that the Defendants be ordered to pay restitution to all affected Arkansas consumers; alternatively, or in addition, that the Defendants be ordered to disgorge all payments received from Arkansas consumers; that the Defendants be assessed civil penalties; that any corporate charter, license, permit, or authorization to do business in the State of Arkansas and currently enjoyed by the Defendants be revoked; that the Plaintiff be awarded from the Defendants reimbursement for all expenses reasonably incurred in the investigation and prosecution of this matter, together with reasonable attorneys fees and cost, and for all other relief to which the Plaintiff may be entitled.

Respectfully submitted,

DUSTIN MCDANIEL,
Attorney General

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EXHIBIT A

ARKANSAS FERRED PRESENTMENT AGREEMENT

Transaction No. 206506

Transaction Date: 01/09/2008

Payment Due Date 01/23/2008

Licensee:

Pawn Exchange
103 Hwy 71 N
Dequeen, Ar 71832
(870) 642-5420

Customer:

Social Security Number:

FEDERAL TRUTH-IN-LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate.</small>	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	AMOUNT FINANCED <small>The amount of credit provided to you on your behalf.</small>	TOTAL OF PAYMENTS <small>The amount you will have paid after you have made all all payments as scheduled.</small>
405.46 %	\$ 38.88	\$ 250.00	\$ 288.88

PAYMENT SCHEDULE

One payment in the amount of \$ 288.88 due on 01/23/2008
 PREPAYMENT: There will be no rebate of the Finance Charge if this Agreement is prepaid before the Payment Due Date.
 See the rest of this Agreement for additional information about the method of payment, our rights in the event of nonpayment, and any required repayment before the scheduled date and prepayment refunds and penalties.

Itemization of the Amount Financed

1. Amount Financed \$ 250.00	2. Amount Paid Directly to You: \$ 288.88
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THE ABOVE DISCLOSURES ARE REQUIRED BY THE FEDERAL TRUTH-IN-LENDING ACT. THE AMOUNT STATED IN THE AMOUNT FINANCED BOX ABOVE CONSISTS SOLELY OF THE AMOUNT OF CASH THE CUSTOMER WAS GIVEN IN EXCHANGE FOR THE CUSTOMER'S CHECK. WE DO NOT HAVE ANY RIGHTS AGAINST YOU EXCEPT TO THE EXTENT WE HOLD YOUR CHECK OR AS PROVIDED IN THE ARKANSAS CHECK CASHING ACT.

We, the Licensee show above, are licensed check casher in Arkansas. You, the Customer, have asked us to purchase Check your Check # 4318 and we have agreed to do so for a fee. You have also asked us to Delay Depositing or deferring Presentment of your pursuant to this Agreement and we have agreed to do so for an additional fee to be paid by you.

BEFORE YOU ASK US TO DELAY DEPOSITING YOUR CHECK, PLEASE CAREFULLY CONSIDER THE FOLLOWING DISCLOSURE OF THE DOLLAR (\$) AND PERCENTAGE (%) COSTS OF THIS DELAYED DEPOSIT TO YOU.

The Amount of your Check	\$ 288.88
Less our Check Cashing Fee.....	\$ 28.88
Less our Deffered Presentment Fee.....	\$ 10.00 (not to exceed \$10.00)
We Pay to You	\$ 250.00

IF YOU PAY THIS FEE, WE WILL HOLD YOUR CHECK AND NOT PRESENT IT TO YOUR BANK FOR DEPOSIT UNTIL 01/23/2008
 YOU HAVE THE OPTION TO REPURCHASE YOUR CHECK FROM US BY PAYING US THE FACE AMOUNT OF THE CHECK PRIOR TO THE PAYMENT DUE DATE. WE WILL THEN DELIVER YOUR CHECK TO YOU.

Check #	Date on Check	Amount of Check	Total Fees Charged	We Gave You	Deposit Date
4318	01/09/2008	\$ 288.88	\$ 38.88	\$ 250.00	01/23/2008

By signing below, I the customer, acknowledge that is agreement was completely filled in before I signed it, that I read, understand, and agree to all of the terms and conditions on this agreement, and that I have received a complete copy of this agreement. I also certify that the account on which the check is drawn is a legitimate and open account. I understand that I have no obligation to you, except as evidenced by the check you have purchased from me.

X _____
 Customer's Signature Date 1-9-08

NOTICE:
 SEE ADDITIONAL TERMS ON ADDITIONAL PAGE

Cario Callaway 1-9-08
 Licensee's Agent's Signature Date

DISPOSITION:
 Cash from Customer: Date 1/23/08 \$ 288.88 Signature _____
 Check Deposited on Date _____ Licensee's Agent _____

EXHIBIT B

EXHIBIT C

