COPY

IN THE DISTRICT COURT OF EL PASO COUNTY TEXAS
41 ST JUDICIAL DISTRICT

FILED
GILBERT SANCHEZ
DISTRICT CLERK

2006 MAY 16 AM 11 16
EL PASO COUNTY, TEXAS
BY _____
DEPUTY

LESLIE PETTIJOHN, COMMISSIONER OF THE OFFICE OF CONSUMER CREDIT COMMISSIONER, and THE STATE OF TEXAS	§	
Plaintiffs	§	
v.	§	CAUSE NO. 2006 - 2429
JAGJRTX, L.L.C., a/k/a JAG TX L.L.C., d/b/a ADVANCE INTERNET and d/b/a TEXAS ADVANCE INTERNET; and JOHN A. GILL, JR., Individually,	§	
Defendants	§	

PLAINTIFFS' ORIGINAL PETITION FOR PENALTIES, RESTITUTION, TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

COME NOW COMMISSIONER PETTIJOHN and the STATE OF TEXAS, Plaintiffs, complaining of JAGJRTX, L.L.C., a/k/a JAG TX L.L.C., d/b/a ADVANCE INTERNET and d/b/a TEXAS ADVANCE INTERNET; and John A. GILL, JR., Individually, Defendants, for violating the Texas Credit Title (Title 4, Texas Finance Code) and the Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Comm. Code § 17.41 *et seq.* (Vernon 1987 & Supp. 1999) (hereafter DTPA).

Commissioner Pettijohn appears in her official capacity, represented by Greg Abbott, Attorney General of Texas.

The State of Texas, represented by Attorney General Greg Abbott, appears through the Consumer Protection Division of the Office of the Attorney General.

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

JURISDICTION AND AUTHORITY

2. Under Tex. Fin. Code § 14.101, General Duties of Commissioner,

> The commissioner shall enforce this chapter, Subtitles B and C of Title 4, and Chapter 394 in person or through an assistant commissioner, examiner, or other employee of this office.

3. Commissioner Pettijohn seeks in this lawsuit to enforce Chapters 341 and 342 of the Texas Finance Code. Chapters 341 and 342 are in Subtitle B, LOANS AND FINANCED TRANSACTIONS, under Title 4, REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS, of the Finance Code.

4. Under § 341.404, Tex. Fin. Code,

> a person may not perform an act, including advertising, or offer a service that would cause another to believe that the person is offering to make, arrange, or negotiate a loan that is subject to this subtitle [Subtitle B, Chapters 341 - 349, Tex. Fin. Code], Subtitle C, or Chapter 394 unless the person is authorized to perform the act or offer the service as:
>
> (1) a credit service organization under Chapter 393;
> (2) a pawnbroker under Chapter 371; or
> (3) an authorized lender.

5. Under § 341.405(b)(2)(B), a person who violates § 341.404 may be held liable for civil penalties assessed by the consumer credit commissioner.

6. Under Tex. Fin. Code, § 14.208(b),

> The commissioner, on relation of the attorney general at the request of the commissioner, may also bring an action in district court to enjoin the person from engaging in or continuing the violation or doing an act that furthers the violation. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

7. Under § 17.47 of the DTPA, the Consumer Protection Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

8. Under § 17.47(d) of the DTPA the Court may make such orders or judgments as are necessary to compensate identifiable persons for damages or to restore money or property acquired by means of any unlawful act or practice.

9. The State has a quasi-sovereign interest in protecting the economic well-being of its citizens. Under the State's *parens patriae* authority, the Attorney General thus seeks equitable restitution, on behalf of Texas consumers, from the Defendants based on unjust enrichment to the detriment of Texas consumers. An award of such restitution is within the equitable powers of this Court.

10. The Commissioner seeks in this lawsuit to enforce Chapters 14, 341, and 342 of the Texas Finance Code (Texas Credit Title).

VENUE

11. Venue of this suit lies in El Paso County, Texas for the following reasons:

    a. Under the DTPA § 17.47(b), venue is proper because Defendants have done business in El Paso County, Texas; and

    b. Under the DTPA § 17.47(b), venue is proper because many of the transactions complained of herein occurred in El Paso County, Texas.

PARTIES

12. Plaintiff, COMMISSIONER LESLIE PETTIJOHN, is charged with enforcing the Texas Credit Title (Title 4 of the Texas Finance Code, including Chapters 341 and 342 of the Texas Finance Code.)

13. The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the attorney general to bring enforcement actions under the DTPA.

14. Defendant JAGJRTX, L.L.C., a/k/a JAG TX L.L.C. is a Texas limited liability company, formed June 30, 2000, but which forfeited its existence for nonpayment of taxes on February 14, 2003. JAGJRTX, L.L.C., a/k/a JAG TX L.L.C. does business in El Paso County, Coryell County, Bell County and Bexar County, Texas under the names "Advance Internet" and "Texas Advance Internet." These companies purport to sell internet access services to the public. As a "rebate" to customers who buy internet access, the offices of JAGJRTX, L.L.C., a/k/a JAG TX L.L.C. offer cash advances which are in fact usurious loans. JAGJRTX, L.L.C., a/k/a JAG TX L.L.C. has engaged in unlicensed loan activity; and has contracted for, charged, or received interest greater than the amount allowed by law, using the subterfuge that it is giving "rebates" related to the amount of time of internet usage, rather than charging interest; has committed false, misleading or deceptive acts or practices; and has been unjustly enriched to the detriment of Texas consumers. JAGJRTX, L.L.C., a/k/a JAG TX L.L.C. may be served with process by serving its Registered Agent, John A. Christ, at 1518 Austin Highway, #23, San Antonio, Texas 78218.

15. Defendant JOHN A. GILL, JR. is the principal of JAGJRTX, L.L.C., a/k/a JAG TX L.L.C., and through it operates "Advance Internet" and "Texas Advance Internet" stores through

which he has engaged and continues to engage in unlicensed loan activity; has contracted for, charged, or received interest greater than the amount allowed by law, using the subterfuge that he is selling "rebates" related to the amount of time of internet usage, rather than charging interest; has conspired to commit unfair debt collection practices and false, misleading or deceptive acts or practices; and has been unjustly enriched to the detriment of Texas consumers. JOHN A. GILL, JR. does not maintain a place of regular business in Texas and has no registered agent in Texas on whom service of citation may be made. The cause of action asserted against him arose from purposeful acts committed by the Defendant in Texas. Accordingly, Defendant may be cited by serving the Secretary of State of Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044(b), provided that the citation and petition are forwarded to his home at 402 River Oak Way, Phenix City, Alabama, 36867-1305, pursuant to TEX. CIV. PRAC. & REM. CODE § 17.045.

EXHIBIT

16. The factual allegations in this pleading relating to usury and unauthorized consumer lending are supported and sworn to in an affidavit by Mr. William Thomas Purce, Administrative Review Examiner with the Office of the Consumer Credit Commissioner. The affidavit is attached as Exhibit A.

PUBLIC INTEREST

17. The Attorney General has reason to believe that Defendants have engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendants have caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas, including those which make authorized consumer loans. The Consumer Protection Division of the Office of the Attorney General believes that this action is in the public interest.

TRADE AND COMMERCE

18. Defendants have, at all time described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

19. Whenever it is alleged in this Petition that a Defendant did any act, it is meant either that the Defendant performed or participated in the act, or that the Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

SUMMARY OF THE CASE

20. Defendants are violating the Texas Credit Title by engaging in unauthorized lending and by making consumer loans at grossly usurious rates.

21. In addition, Defendants are engaging in false, misleading or deceptive acts or practices.

22. In addition, Defendants are engaging in unauthorized consumer loan activity, contracting for, charging or receiving usurious interest, and engaging in false, misleading or deceptive acts or practices.

23. Under Tex. Fin. Code, § 342.004(a), the maximum rate of interest is ten percent per year, except as otherwise fixed by law; under Tex. Fin. Code, § 342.005(a), any consumer loan providing for a rate of interest greater than ten percent per year is subject to Chapter 342. Under Tex. Fin. Code, § 342.051(a), only an authorized lender may make a loan subject to Chapter 342. Under Tex. Fin. Code, § 342.051(b), a person may not use any device, subterfuge, or pretense to evade the application of § 342.051.

24. Defendants, using a device, subterfuge, and pretense under which their customers allegedly purchase "internet access," make consumer loans at a rate of interest greater than ten

percent per year; they are not authorized to do so. Under Art. 16, §11 of the Texas Constitution, and Chapter 342, Tex. Fin. Code, such loans are usurious.

25. All contracts for usurious interest are contrary to public policy and are void. Defendants' attempts to enforce these contracts, including threats of criminal prosecution, are unlawful under Chapter 392 of the Finance Code.

26. Defendants operate a "payday loan," or "deferred presentment" loan business, and under the pretext of requiring their customers to buy "internet access" Defendants charged interest at rates of from 651% to 782%.

27. Advance Internet purports to offer the general public access to the internet. Advance Internet uses a "rebate" as an inducement. The rebate is offered in increments of one hundred dollars. The greater the rebate the greater the amount of "access" time the customer is offered to the internet (i.e., increased number of hours). In order to access the internet, the customer is obligated to go the Advance Internet store and use their computers.

28. In 2003, when a customer signed Defendants' "Internet Computer Access Rebate Purchase Application and Contract" for "internet access," $100 cash is given to the customer and $30 is withdrawn from the customer's bank account or credit card for two weeks access to the internet. The contract obligates the customer to pay for "internet access" for a one year term. The customer is obligated to repay Advance Internet $30 at the end of every two week period. The customer may "cancel" the "internet access" contract at the end of any two week period by paying a "termination fee" equal to 100% of the "rebate" amount.

29. The "internet access" charge required for a cash advance in 2003, $30.00 per $100.00, for 14 days of forbearance in withdrawing $100 from the customer's bank account or credit card, amounts to [30/ 14 X 365 = 782.14284] **782% interest per year**. Each biweekly internet access

charge is actually an interest payment at 782% percent, grossly usurious under any reading of the law.

30. At some time between November, 2003 and June, 2005, Defendants altered their operating scheme. In June, 2005, employees of the Texas Advance Internet also described the cash advance in exchange for a personal check or an authorization to debit a deposit account of the customer. The only apparent differences between the November 27, 2003, and June 6, and 7, 2005 operations of Texas Advance Internet were: (1) the descriptions of the "rebate;" and (2) the cost and number of internet access hours purchased as part of the agreement. On the November 27, 2003, operation, the "rebate" shown in the "Internet Computer Access Rebate Application and Contract" comprises of two components, which are: (1) the cash advance; and (2) the internet access fee; therefore, the cash advance is only a portion of the "rebate" amount shown above. On the June 6, and 7, 2005 operations, the "rebate" was only the actual cash advance amount given to the customers of Texas Advance Internet.

31. In 2005, Texas Advance Internet employees indicated that the internet access fee, the interest charge, would be $24.99 if the cash advance was $100.00 with a term of 14 days. Using the same information (the cash advance and the term of the loan), the maximum interest charge that Texas Advance Internet could assess, charge, and collect for a $100.00 transaction, repayable in one bi-weekly installment, would be $0.38 ($100.00 x .0002739 x 14). As can be seen above, Texas Advance Internet assessed, charged, and collected an interest charge of $24.99 for this 14-day period on a cash advance of $100.00. Therefore, the interest charges assessed, charged, and collected by Texas Advance Internet were greater than the interest charge calculated at a rate of interest equal to or less than 10% per annum. The true effective rate of the Texas Advance Internet transaction,

repayable in one bi-weekly payment, would be **651.53%**, if the $100.00 cash advance loan was entirely repaid in full in one bi-weekly installment.

FORCED WAIVER OF LEGAL RIGHTS

32. As a condition of getting the cash advance, customers were required to sign a "WAIVER OF JURY TRIAL AND ARBITRATION" agreement by which they promised, among other things, that they would waive their right to file a lawsuit and proceed in court and to have a jury resolve any dispute.

33. Advance Internet customers are also required to promise to submit any dispute to arbitration and to pay half of the arbitration fees.

34. In addition, customers are required to waive their right to participate in a class action lawsuit.

APPLICABLE LAW

35. Under Tex. Fin. Code, § 301.002 (DEFINITIONS),

(a) In this subtitle [Subtitle A - Interest],

(1) "**Contract Interest**" means interest that an obligor has paid or agreed to pay to a creditor under a written contract of the parties. The term does not include judgment interest.

(3) "**Creditor**" means a person who loans money or otherwise extends credit. The term does not include a judgment creditor.

(4) "**Interest**" means compensation for the use, forbearance, or detention of money. The term does not include time price differential, regardless of how it is denominated.

(10) "**Loan**" means an advance of money that is made to or on behalf of

an obligor, the principal amount of which the obligor has an obligation to pay the creditor. The term does not include a judgment.

(13) "**Obligor**" means a person to whom money is loaned or credit is otherwise extended. The term does not include:

(A) a judgment debtor; or

(B) a surety, guarantor, or similar person.

(17) "**Usurious interest**" means interest that exceeds the applicable maximum amount allowed by law.

36. Under Tex. Fin. Code, § 341.001(6), "**Deferred presentment transaction**" means a transaction in which:

(A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;

(B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and

(C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

37. Under §342.008. Attempt To Evade Law:

A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense for the purposes of this section.

38. Defendants advance money to their "internet" customers, the principal amount of which their customer-obligors have an obligation to repay. Under Tex. Fin. Code, § 301.002(a)(10), these cash advance transactions are therefore "loans." Additionally, the customers are required to give Defendants a personal check or authorization to debit a deposit account. The check or authorization equals the amount of the advance plus a fee and Defendants agree to not access the money until a future designated date. This makes the loan a "deferred presentment transactions" under Tex. Fin. Code, § 341.001(6).

39. Defendants require the purchase of a service in connection with a deferred presentment transaction. The characterization of the required fee is a device, subterfuge, or pretense. The fee is interest under Texas law. Tex. Fin. Code § 342.008.

40. Defendants contracted for, charged, and received from their customers in 2003 $30.00 per $100.00 advanced, and in 2005, $24.99 per $100.00 advanced, for every fourteen days the customer has use of the money. The subterfuge of "internet access" sales or "internet equipment leasing" does not change the fact that Defendants contract for, charge, and receive compensation from their customers for the customers' use, forbearance, or detention of money. Such compensation, under Tex. Fin. Code, § 301.002(a)(4), is "interest."

41. The value of the "internet access" Defendants' customers are forced to purchase as a condition of getting a cash advance is negligible. The maximum amount **allowed** by law as an interest charge on a fourteen day loan of $100.00 would be 10% per annum, or [10% X $100.00 X 14 / 365 =] **38.36¢**. Defendants contract for, charged and received $30.00 or $24.99. This charge constitutes "usurious interest" under Tex. Fin. Code, § 301.002(a)(17).

42. Under § 342.051, Tex. Fin. Code,

(a) A person must hold a license issued under this chapter [Chapter 342] to:

(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; and

(2) contract for, charge, or receive, directly or indirectly, in connection with a loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

(c) A person is not required to obtain a license under Subsection (a) if the person is:

(1) a bank, savings bank, or savings and loan association; or

(2) subject to Chapter 24, Insurance Code.

[emphasis added].

43. Under Tex. Fin. Code, § 342.005,

(a) A loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent per year;

(2) is extended primarily for personal, family, or household use;

(3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and

(4) either:

(A) is not secured by a lien on real property; or

(B) is described by § 342.001(3), § 342.301, or § 342.456 and is predominantly payable in monthly installments.

44. The loans made by Defendants are not secured by liens on real property. Sections

342.001(4), 342.301, and 342.456 describe secondary mortgage loans, which are not at issue in this case. The loans made by Defendants are therefore subject to Chapter 342.

45. Under Tex. Fin. Code, § 302.001,

(a) A creditor may contract for, charge, and receive from an obligor interest or time price differential.

(b) The maximum rate or amount of interest is 10 percent a year except as otherwise provided by law. A greater rate of interest than 10 percent a year is usurious unless otherwise provided by law. All contracts for usurious interest are contrary to public policy and subject to the appropriate penalty prescribed by Chapter 305 [applicable to Subtitle A, Interest; analogous to Chapter 349, applicable to Subtitle B, Loans and Financed Transactions].

(c) To determine the interest rate of a loan under this subtitle [Subtitle A, Interest], all interest at any time contracted for shall be aggregated and amortized using the actuarial method during the stated term of the loan.

46. Under Tex. Fin. Code, § 342.052(b),

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which loans are made, negotiated, or collected under this chapter.

47. Under Tex. Fin. Code, § 342.502(a),

(a) an authorized lender may not directly or indirectly charge, contract for, or receive an amount that is not authorized under this chapter [Chapter 342] in connection with a loan to which this chapter applies, including any fee, compensation, bonus, commission, brokerage, discount, expense, and any other

charge of any nature, whether or not listed by this subsection.

If authorized lenders are prohibited from charging, contracting for, or receiving unauthorized *amounts*, directly or indirectly, no matter what they are called, then Defendants, who are not authorized lenders, are likewise prohibited.

48. Under Tex. Fin. Code, § 342.553, GENERAL INVESTIGATION,

(a) To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including an authorized lender, who the commissioner has reasonable cause to believe is violating this chapter regardless of whether the person claims to not be subject to this chapter.

(b) For the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a loan with a cash advance less than or equal to the amount computed under Subchapter C, Chapter 341[1], using the reference base amount of $2,500 is presumed to be engaged in the business described by § 342.051.

Defendants advertise throughout Texas that customers can obtain "Advance Internet, $100 - $1,000." The advertisements say, "NOT A LOAN," but the transaction *is* a loan under Texas law. Accordingly, the Commissioner is entitled to examine all Advance Internet records to the extent they pertain to businesses regulated under Chapter 342, namely consumer loans in the form of cash

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[1] Pursuant to Subchapter C, Chapter 341, the Commissioner publishes an annual notice of rate ceilings and rate bracket adjustments. See Texas Credit Letter, published March 9, 1999, Vol. 18, No. 36: "The amounts of brackets in Tex. Rev. Civ. Stat. Ann. art. 5069-3A.301(a) (Vernon's 1997) are changed to $1,410.00 and $11,750.00 respectively." The $2,500.00 reference amount in art. 5069-3A.301(a)(1) [repealed], analogous to Tex. Fin. Code, § 342.201(a)(2), changes to **$11,750.00.**

advances.

49. Defendants, by requiring purchase of bogus "internet access" as a condition to obtaining a cash advance, are squarely in violation of Tex. Fin. Code, 342.051 (b), which states,

> (b) **A person may not use any device, subterfuge, or pretense to evade the application of this article.**

50. To calculate the effective rate of interest contracted for, charged, or received on a consumer loan, one must first look to Tex. Fin. Code § 342.002 to see which computation method to use. The two methods which are statutorily authorized are the scheduled installment earnings method and the true daily earnings method. Defendants, unlicensed to do any kind of consumer finance, charge 782% interest for their cash advances.

51. Subchapters E, F, and G of Chapter 342, Tex. Fin. Code, authorize alternative rates for certain consumer loans, but these rates apply only to authorized lenders and, in any case, do not approach 782%, the rate charged by Defendants.

52. Under Tex. Fin. Code, § 341.404,

> a person may not perform an act, including advertising, or offer a service that would cause another to believe that the person is offering to make, arrange, or negotiate a loan that is subject to this subtitle [Subtitle B, Chapters 341 - 349, Tex. Fin. Code], Subtitle C, or Chapter 394 unless the person is authorized to perform the act or offer the service as:
>
> (1) a credit service organization under Chapter 393;
>
> (2) a pawnbroker under Chapter 371; or
>
> (3) an authorized lender.

53. Under § 341.405(b)(2)(B), a person who violates § 341.404 may be held liable for civil penalties assessed by the consumer credit commissioner.

VIOLATIONS

54. By engaging in the above described conduct, Defendants have violated and are continuing to violate the following laws:

(a) § 342.051(a)(1), Tex. Fin. Code, by making cash advance loans for more than 10% interest without being an authorized lender;

(b) § 342.051(a)(2), Tex. Fin. Code, by making loans for greater than 10% interest;

(c) § 342.051(b), Tex. Fin. Code, for using the misleading pretense of "sale" of "internet access" to disguise the fact that they are making loans at usurious interest rates;

(d) § 17.46(b)(5) of the DTPA, by representing that the cash advances made to Advance Internet customers are not loans and are therefore not subject to usury and other consumer credit laws;

(e) § 17.46(b)(5) of the DTPA, by representing that fees charged Advance Internet customers are for the purchase of internet access when in fact the charge is for the use of money advanced, and for forbearance by Advance Internet in depositing the customers' checks;

(f) § 17.46(b)(5) of the DTPA, by representing, directly or by implication, that they are authorized to engage in the business of making consumer loans when in fact they are not so authorized, and thereby representing that they have sponsorship, approval, status, affiliation or connection which they do not have;

(g) § 17.46(b)(12) of the DTPA by representing that the cash advances made to Advance Internet customers are not loans and are therefore not subject to usury and other consumer credit laws;

(h) § 17.46(b)(12) of the DTPA by representing that the loan contracts Advance Internet makes with its customers are valid, enforceable agreements when in fact they are not;

(i) § 17.46(b)(23) of the DTPA by failing to disclose that the void usurious loan contracts Advance Internet makes with its customers, under which the customers are forced to waive valuable legal rights, are unenforceable as against public policy;

(j) § 17.46(b)(23) of the DTPA by failing to disclose that the cash advance loans made by Advance Internet have an effective annual interest rate of 782%; and

(k) § 341.404, Tex. Fin. Code, by performing acts, including advertising and offering a service that causes others to believe that Defendants are offering to make, arrange, or negotiate a loan subject to Subtitle B, Title 4, Tex. Fin. Code, when Defendants are not authorized to perform those acts or offer those services as authorized lenders.

EQUITABLE RELIEF

55. Commissioner Pettijohn asks that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from making consumer loans, as defined by Texas law, without being licensed as authorized lenders.

56. Commissioner Pettijohn further asks that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from making consumer loans, as defined by Texas law, at any rate of interest that is usurious.

57. Commissioner Pettijohn further asks that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from advertising or offering services that would cause people to believe that Defendants are offering to make, arrange, or negotiate a loan as defined by Texas law, unless and until Defendants are authorized lenders.

58. Commissioner Pettijohn further asks that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from advertising their "internet access" sales with the word "rebate," when in fact the service is a loan as defined by Texas law.

59. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from misrepresenting their customers' "debts" as enforceable.

60. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from collecting, or attempting to collect, by whatever manner or means, including the filing of civil claims, on any obligation arising from the advance of money or a consumer loan made by Defendants while they were not authorized lenders or not licensed to make consumer loans.

61. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from collecting or attempting to collect, by whatever manner or means, including the filing of civil claims, or criminal charges or complaints, on a dishonored check already in Defendants' possession, custody, or control, obtained by Defendants in return for making a cash advance, a consumer loan, or in furtherance of Defendants' alleged sale of "internet access" where purchase of the internet access was a condition of a customer's receipt of a cash advance.

62. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from representing, directly or by implication, that Defendants are authorized to make advances of money or consumer loans in Texas, for more than ten percent interest as defined by Texas law, unless and until Defendants are licensed to make consumer loans in Texas.

63. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from misrepresenting their business by claiming that they do not make loans and do not charge interest.

64. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from asking any customer to sign any agreement which purports to waive rights a customer has under the Texas Finance Code.

65. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from asking any customer to sign any agreement which purports to waive rights a customer has under any other law.

66. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from charging, receiving, or contracting for any money that is in any way related to a cash advance or to any transaction defined under Texas law as a "loan" until and unless any such defendant obtains a license to be an authorized lender.

67. The State of Texas asks further that the Court temporarily restrain, and after notice temporarily and permanently enjoin Defendants from failing to disclose the effective annual interest rate charged on any loan made by Defendants to any Texas consumer.

68. Commissioner Pettijohn and the State of Texas further ask that the Court, under its equity powers, and under a plan approved by the Court, to order Defendants to make restitution and

disgorge all money wrongfully received from customers of Defendants who paid money to Defendants under contracts which are unauthorized, usurious loan agreements.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

69. Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendants' assets to preserve and protect such assets from dissipation so the victims of Defendants' actions can receive the restitution to which they are entitled. Defendants' assets are subject to dissipation for the reason that Defendants misrepresent their business as being an internet access provider or lessor of office equipment, when it is in fact a payday loan operation. Defendants reside outside of Texas and collect large sums of money from Texas consumers without being legally entitled to do so. As a result, all of the money received by Defendants under the guise of being an internet access provider or lessor of office equipment is contraband.

OTHER RELIEF

70. The State of Texas asks the Court to order Defendants to compensate all Advance Internet customers for actual damages, and to restore any money or property which may have been acquired by means of any unlawful act or practice.

71. The State of Texas asks the Court to order each of Defendants to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of $20,000.00 per violation of the Deceptive Trade Practices Act.

72. The State of Texas asks the Court to order each of Defendants to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of $10,000.00 per violation of the Texas Finance Code, § 341.404.

73. The State of Texas asks the Court to issue a declaratory judgment that Defendants are engaged in unlawful consumer lending because they are not authorized lenders, and because they are contracting for, charging, and receiving usurious interest rates on the loans they make to their "internet access" customers.

74. The State of Texas asks the Court to order Defendants to pay reasonable attorney fees, pursuant to § 402.006, Tex. Govt. Code.

DATED this 16th day of May, 2006.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Assistant Attorney General
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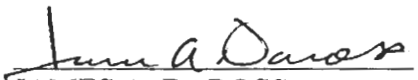

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