

**IN THE CIRCUIT COURT  
OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

WENDY BETTS, DONNA REUTER, and TIFFANY  
KELLY, individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

MCKENZIE CHECK ADVANCE OF  
FLORIDA, LLC, d/b/a NATIONAL CASH  
ADVANCE; STEVE A. MCKENZIE; BRENDA G.  
MCKENZIE; and unknown entities and individuals,

Defendants.

CASE NO. CL 01-0320 AI

DONNA REUTER and GERALD BETTS,  
individually and on behalf of others similarly situated,

Plaintiffs,

vs.

ADVANCE AMERICA, CASH ADVANCE CENTERS  
OF FLORIDA, INC., a Florida Corporation; ADVANCE  
AMERICA, CASH ADVANCE CENTERS, INC., a  
Delaware Corporation; STEVE A. MCKENZIE;  
BRENDA MCKENZIE; GEORGE D. JOHNSON, JR;  
WILLIAM W. WEBSTER, IV; JAMES W. WHATLEY;  
DAVID GALLEN; MONICA L. ALLEY; AND  
WAYNE W. HALL,

Defendants.

CASE NO. 2004 CA 008164 MB

**ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter having come before the Court on the Plaintiffs' Unopposed Motion For Preliminary Approval of Settlement ("Unopposed Motion"), filed by Plaintiffs Wendy Betts and Gerald Betts ("Plaintiffs"), and the Court having reviewed the Unopposed Motion, the Memorandum of Law filed by the Plaintiffs in support thereof, the Class Action Settlement Agreement entered into by Plaintiffs and Defendants McKenzie Check Advance of Florida, LLC,

d/b/a National Cash Advance; Advance America, Cash Advance Centers of Florida, Inc.; and Advance America, Cash Advance Centers, Inc. (collectively “Defendants”<sup>1</sup>), including the exhibits appended thereto (“Agreement”), the Court file, and the Court being otherwise fully advised in the premises, hereby finds for settlement purposes only:

A. For purposes of this Order Granting Preliminary Approval of Class Action Settlement, the Court adopts and incorporates herein by reference all defined terms set forth in the Agreement.<sup>2</sup>

B. Defendants conducted deferred presentment transactions with its customers, whereby one of the Defendants agreed to hold a customer's check for a short period of time (e.g. two weeks) in exchange for a fee. Plaintiffs have alleged that the transactions violated Florida usury laws. Defendants contend they complied with guidance and regulations of the Florida Department of Banking, the transactions were legal and have denied all liability.

C. Approximately 18,000 customers engaged in approximately 128,000 deferred presentment transactions during the Class Period at Defendants’ company-owned stores.

D. Plaintiffs have vigorously pursued their claims against Defendants on behalf of themselves and others similarly situated. Defendants have vigorously defended the claims.

E. Plaintiffs are represented by counsel experienced in the prosecution of complex consumer class action litigation.

F. There are no similar actions presently pending against Defendants in Florida.

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<sup>1</sup> The Action, as defined in the Parties’ Settlement Agreement, includes individual defendants Steve A. McKenzie; Brenda McKenzie Lawson (as defined in the Class Action Settlement Agreement); George D. Johnson, Jr; William W. Webster, IV; James W. Whatley; David Gallen; Monica L. Allie; and Wayne W. Hall. These individuals are also Released Parties and will be dismissed with prejudice along with Defendants.

<sup>2</sup> All capitalized terms used in this Agreement, unless otherwise defined herein, shall have the meanings used in the Agreement. Any conflict as to the meaning of a term herein and in the Agreement shall be resolved by referring to the Agreement.

G. The amount in controversy with respect to any individual member of the Settlement Class renders it unlikely that class members possess the means to pursue meaningful relief on an individual basis.

H. The proposed Settlement is the product of protracted, extensive arm's-length, informed, non-collusive negotiations between the Parties and was entered into in good faith.

I. This action is maintainable as a class action, meeting all the requirements of Florida Rule of Civil Procedure 1.220(a) and (b)(3), based upon the following conclusions of law:

- i. The large number of Class Members<sup>3</sup>, approximately 18,483, makes individual joinder impractical;
- ii. The claims of Class Members raise common questions of fact as a result of Defendants' standardized forms, procedures and provisions concerning deferred presentment transactions;
- iii. All Class Members' claims are subject to common issues of law, namely, 1) whether the deferred presentment transactions are loans under Florida law; 2) whether the money charged by Defendants for the deferred presentment transactions is interest under Florida law; 3) whether the amount of money charged by Defendants for deferred presentment transactions violated Florida law concerning maximum permitted interest rates; and (4) whether Defendants are entitled to a safe harbor defense for good faith reliance on guidance and regulations of the Department of Banking;
- iv. Plaintiffs' claims are typical of those of the Settlement Class as a result of Defendants' standardized deferred presentment transaction contracts and

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<sup>3</sup> "Class Members" as used herein refers to all members of the Settlement Class.

procedures, and that by pursuing their claims, Plaintiffs furthered the interests of the Settlement Class;

- v. Plaintiffs have no interests antagonistic to the Settlement Class and are adequate representatives of the class;
- vi. Plaintiffs' counsel possesses the experience and resources to adequately represent the interests of the Settlement Class and have represented the Settlement Class in an exemplary fashion throughout the prosecution of this action;
- vii. A class action is a superior means for resolving the claims of the Settlement Class against Defendants given the absence of effective alternative means of relief available or utilized by the Settlement Class;
- viii. The location of the cases in Palm Beach County, Florida, is desirable for resolution of the claims of the Settlement Class;
- ix. Resolving the claims of the Settlement Class through a class action settlement is manageable;
- x. Issues of fact and law common to all Class Members predominate over any individual issues because all Class Members' claims arise from standardized contracts and procedures utilized by Defendants and implicate the same tenets of Florida law; and
- xi. Plaintiffs have standing to represent all Class Members in this Court, and there is no conflict in their representation of the Settlement Class.

J. The manner of giving notice of the settlement to the Class Members as set forth in the Agreement, including the mailing of the Notice to Class Members and Claim Form, and the

re-mailing of the Notice and Claim Form during the claims period to those Class Members if better current addresses are located as a result of the investigation and the maintenance of the Settlement Website, constitutes the best notice practicable under the circumstances, meets the requirements of Florida Rule of Civil Procedure 1.220, satisfies due process under the Florida and United States Constitutions and any other applicable law, and constitutes due and sufficient notice to the Class Members<sup>4</sup>.

K. The Notice fully and accurately informs the Class Members of all material elements of the Agreement, of their right to proceed in this Court, of their right to be excluded from the Settlement Class, and of their right and opportunity to object to the settlement.

Accordingly, it is hereby, for settlement purposes only, **ORDERED AND ADJUDGED:**

1. The Court preliminarily approves the Parties' Agreement as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing.

2. For settlement purposes only and pursuant to Florida Rule of Civil Procedures 1.220, the Court hereby provisionally certifies a Settlement Class, as defined in the Agreement, consisting of all persons who entered into a deferred presentment transaction with any of the Defendants before March 12, 1999, which is the date on which Defendants can confirm they implemented agreements that included arbitration provisions. The Settlement Class specifically excludes persons who signed an agreement with a Defendant on or after March 12, 1999 containing an arbitration provision with the same Defendant with whom they had previously entered into a transaction or transactions.

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<sup>4</sup> By the terms of the Agreement, during the claims period, the Settlement Administrator shall work with Class Counsel's designee to economically and efficiently locate Class Members whose Notice was returned undeliverable. This opportunity to locate missing Class Members is not deemed necessary for due process purposes.

3. For settlement purposes only, the Court approves and certifies Wendy Betts and Gerald Betts as representatives of the Settlement Class.

4. For settlement purposes only, the Court approves and certifies: E. Clayton Yates, Esq., E. CLAYTON YATES, PA, 201 South Second St. Suite 208, Fort Pierce, FL 34950; Theodore J. Leopold, Esq., Diana Martin, Esq., COHEN MILSTEIN SELLERS & TOLL PLLC, 2925 PGA Boulevard, Suite 200, Palm Beach Gardens, Florida 33410; Sean Estes, Esq., JAMES, HOYER, P.A., 2801 W. Busch Blvd., Suite 200, Tampa, FL 33618; Richard A. Fisher, Esq., RICHARD FISHER LAW OFFICE, 1008 Tasso Rd NE, Cleveland, Tennessee 37323, and F. Paul Bland, Jr., PUBLIC JUSTICE, 1620 L Street, NW, Suite 630, Washington, DC 20036, as counsel for the Settlement Class.

5. Plaintiffs have designated BrownGreer PLC to serve as Settlement Administrator, and the Court approves BrownGreer PLC as Settlement Administrator. The Settlement Administrator, and Julie Boyd, as designee of Class Counsel, shall make certain the duties are performed as required by the Agreement, this Preliminary Approval Order, the Final Approval Order and Judgment, and those submitted upon written request by Class Counsel. The total costs of administration shall be submitted to the Court for approval. The Settlement Administration Expenses shall not exceed \$130,000 unless otherwise approved and ordered by the Court.

6. Within fourteen (14) days of this Preliminary Approval Order, Defendants shall advance to the Settlement Administrator \$25,000 against the Settlement Fund to cover initial administrative expenses. Such funds will be deposited into an account specifically established for this settlement (“Settlement Fund Escrow Account”). Upon consent of counsel for the Parties, which consent will not be unreasonably withheld, the Settlement Administrator may issue funds

from the Settlement Fund Escrow Account to cover the initial costs of sending out the Class Notice and Claim Forms, and any preliminary costs associated with the establishment of the website.

7. Within seven (7) days of this Order, Defendants shall provide to one of Class Counsel and to the Settlement Administrator the Class List and information required by the Agreement, including Class Members' full name, transaction information, last known address, telephone numbers and Social Security numbers to the extent available and not already provided. By providing transactional information, and specifically Class Members' Social Security numbers, to Class Counsel, their designee, and the Settlement Administrator for the limited purpose of verifying the identities of Claimants, and if the Settlement Administrator determines searches should be performed by the appropriate commercial databases and/or searchable databases for locating Class Members, Class Counsel, Defendants, Defendants' Counsel, the Settlement Administrator, and Julie Boyd are not violating any state, federal, or administrative laws, not limited to any privacy laws.

8. Within twenty-one (21) days of this Preliminary Approval Order, the Settlement Administrator shall mail, or cause to be mailed, by first-class mail to each Class Member the Notice and Claim Form. The Court approves as to form, content, and distribution, the Class Notice and Claim Form attached to the Agreement as Exhibits "1" and "2," respectively.

9. The Court approves the process of giving notice to Class Members in the manner set forth in the Agreement and this Preliminary Approval Order, and finds that the Notice constitutes the best practicable notice under the circumstances. The mailing of Notice satisfies the requirements of Florida Rule of Civil Procedure 1.220(d)(2), satisfies due process under the United States Constitution and any other applicable law, and shall constitute due and sufficient notice to all persons entitled thereto.

10. Any of the Class Members who receive a Notice and Claim Form as result of the mailing described in Paragraph 8 above who wish to receive any of the monetary benefits provided for under the Agreement must sign and include the last four digits of their Social Security number, and mail the fully completed Claim Form to the Settlement Administrator postmarked on or before May 2, 2018. A Claim Form postmarked after the deadline date shall be deemed untimely and such claims shall be denied unless agreed to by the Parties or ordered otherwise by the Court. Class Members shall be presumed to have received the Notice and Claim Form if the Notice and Claim Form is not returned to the Settlement Administrator by the U.S. Postal Service. For a period of ninety (90) days from the mailing, the Settlement Administrator shall re-mail a returned Notice to updated or current addresses provided by the U.S. Postal Service and/or by investigation of the Settlement Administrator and Julie Boyd and/or at the request of the Class Members. Upon any re-mailing, Class Members shall have whatever portion of Claims Deadline remains<sup>5</sup> to return their Claim Form to the Settlement Administrator.

11. The Court approves the procedures set forth in the Agreement for Class Members to request exclusion from the Settlement Class and the Settlement. Any Class Member shall have the right to exclude himself or herself from the Settlement Class and from participation in the Settlement by mailing a written request for exclusion from the Settlement Class in the manner provided in the Notice, and postmarked to the Settlement Administrator no later than March 17, 2018. The written request for exclusion from the Settlement Class must contain all the information required by the Notice.

12. All Class Members who timely submit a valid request for exclusion shall be excluded from the Settlement Class and shall not be entitled to participate in the settlement or

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<sup>5</sup> For example, if a re-mailing is sent out by the Claims Administrator on the seventieth (70th) day of the Preliminary Approval Order, then a Class Member would have fifty (50) days to return a Claim Form to the Class Administrator.

receive a benefit under the Settlement, nor will those Class Members be bound by the Settlement. All Class Members who do not timely and properly request exclusion shall be bound by all terms of the Agreement, the releases contained therein, and by the Final Approval Order and Judgment. Except for any Class Members who timely submit a valid request for exclusion from the Settlement Class and the settlement in the manner provided in the Notice, the Parties and each of the Class Members over whom the Court has jurisdiction irrevocably submit to the exclusive jurisdiction of this Court in connection with the Settlement and for any suit, action, proceeding or dispute arising out of the Settlement.

13. A list of the names and addresses of the Class Members who have timely submitted a valid request for exclusion from the Settlement Class shall be filed by the Parties with the Court no later than March 16, 2018.

14. Class Members who wish to object to the settlement, or any part thereof, shall file a written objection with the Court and serve it upon Class Counsel and Defendants' Counsel, in the manner provided in the Notice, postmarked no later than March 17, 2018. The objection must include all the information required by the Notice. Only Class Members who timely submit a valid objection shall have the right to be heard on the objection at the Final Approval Hearing. Class Members who have timely requested exclusion may not object to the Settlement, nor may any non-party object. Class Members who do not make an objection to the Settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Agreement, the releases contained therein, and the Final Approval Order and Judgment.

15. The Final Hearing is hereby set for JUNE 1, 2018 at 8:45 a.m., to determine whether the Settlement, the method of Notice, the claims procedure and the administration of the Settlement

should receive final approval as being fair, reasonable and adequate to the Settlement Class and whether the Final Approval Order and Judgment should be entered. The Court may adjourn or continue the Final Approval Hearing without further notice to the Class Members.

16. Counsel for the Settlement Class shall file a motion for final approval of the settlement on or before MAY 18, 2018. At the Final Approval Hearing, the Court will also consider an application for attorney's fees ("Fee Award"), an award of out-of-pocket costs and expenses incurred by Class Counsel on the Action ("Litigation Cost Award"), an incentive award to the Class Representatives ("Class Representatives Award"), and settlement administration costs to be paid from the Settlement Fund. Any application for a Fee Award, Litigation Cost Award and Class Representatives Award shall be filed with the Court no later than MAY, 18, 2018. Each Class Counsel receiving, or claiming a right to, attorney's fees and costs from the Settlement Fund shall be bound by the Florida Rules of Professional Conduct in receiving, or making any claim for, payment of any attorney's fees or costs.

17. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be considered or construed to be an admission or concession by Defendants of the truth of any of the allegations of the complaints filed with the Court, or of any liability, fault or wrongdoing of any kind by Defendants, who have denied all liability in these cases.

18. The Parties and all Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all Claims against the Released Parties to the extent set forth in the Agreement, unless such persons request exclusion from the Settlement in a timely and proper manner. Upon the entry of Final Approval Order and Judgment, the Plaintiffs and all Class Members who have not timely filed a valid request for exclusion from the Settlement,

shall be permanently barred and enjoined from instituting or prosecuting, in any capacity, any action, arbitration or proceeding of any kind against the Released Parties within the scope of the Released Claims set forth in the Agreement.

19. The Settlement Fund shall be distributed to Class Members according to the Agreement procedure and formula after deduction for authorized costs of administration, attorney's fees and litigation costs approved by the Court, and Class Representatives Award approved by the Court.

20. Within ten business days of the Effective Date, Defendants shall remit to the Settlement Administrator the Settlement Fund of \$4,322,500 less the sum of \$25,000 pay to the Settlement Administration as required by this Preliminary Approval Order and any other sums that may advanced for initial administrative expenses.

21. All discovery and other pretrial proceedings in the Action are stayed and suspended until further order of the Court except such Action as may be necessary to implement the Agreement and this Order.

22. In the event that the Agreement is terminated under the terms of the Agreement, or for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (a) the Agreement shall be null and void and of no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (b) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any of the Parties of any act, matter, or proposition, and shall not be used in any manner of or any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding; (c) this Preliminary Approval Order shall be vacated and of no

further force or effect whatsoever, as if it had never been entered; (d) the status of this action shall revert to the state it was in prior to the Settlement; (e) the Parties and Class Members shall have all rights, claims, and defenses that they had or were asserting prior to the Settlement; and (f) any of the Parties may elect to move the Court to implement the provisions of this paragraph, and none of the nonmoving parties (or their counsel) shall oppose any such motion.

23. The Court retains exclusive jurisdiction over this action and the Class Members to consider all further matters arising out of, or connected with, the settlement and administration of the settlement.

Done and ordered in Palm Beach County, West Palm Beach, Florida on January 2, 2018.

 *Meenu J. Sasser*  
STATE OF FLORIDA  
ADMINISTRATIVE OFFICE OF THE COURT  

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MEENU SASSER, CIRCUIT JUDGE

cc: Counsel for Plaintiff  
Counsel for Defendants

- Christopher Craig Casper (ccasper@jameshoyer.com)
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