**IN THE STATE COURT OF COBB COUNTY**
**STATE OF GEORGIA**

JAMES H. GREENE, and MENNIE JOHNSON in their individual and representative capacities,

Plaintiffs,

v.

GEORGIA CASH AMERICA, INC.; CASH AMERICA INTERNATIONAL, INC.; DANIEL R. FEEHAN; and JOHN DOES 1-10

Defendants.

CIVIL ACTION FILE

NO. 2004A 7104-6



## FOURTH AMENDED & RESTATED CLASS ACTION COMPLAINT

Pursuant to the Consent Order dated and signed June 12, 2009, Plaintiffs hereby file their Fourth Amended Complaint dropping James E. Strong as a class representative and adopting the claims previously asserted in the Third Amended Complaint. No new claims are asserted herein and this amendment relates back to the initial filing of this action on August 6, 2004 and for a cause of action shows the Court as follows:

James H. Greene, and Mennie Johnson, bring this action individually and on behalf of all others similarly situated ("the Class"), seeking compensatory and punitive relief, (subject to trebling under Georgia's civil RICO statute), with the intent to stop and deter Defendants, Georgia Cash America, Inc.; Cash America International, Inc.; Daniel R. Feehan ("Feehan"); and John Does 1-10 from

practicing their illegal and unconscionable business scheme of extending "payday" loans to similarly situated consumers in the State of Georgia and to provide an adequate remedy for the victims of such practices.

Although loans of this type have been illegal under Georgia law since the early 1900's, the insidious practice persists in the face of regulation because pay day lenders, like Defendants, simply refuse to obey the laws of this state. In recognition of this fact, the General Assembly passed Senate Bill 157 ("SB 157") to arm Georgia citizens with remedial procedures in the effort to expunge the unconscionable practice for once and for all and to clarify that the state of Georgia says what it means and means what it says – the state will protect its citizenry from predatory lending practices and will grant remedial relief for those consumers affected.

Accordingly, Plaintiffs now come to this Court on behalf of themselves and those similarly situated and seek redress provided by the common and statutory law of this state and show the Court as follows:

**Identification of the Parties, Jurisdiction, and Venue**

1. Georgia Cash America, Inc. ("Georgia Cash America") is a Georgia corporation, having its principal place of business located in the state of Texas at 1600 West 7th Street, Fort Worth, TX 76102. Georgia Cash America was served with process through its registered agent at the office of its registered agent: Capitol Corporate Services, Inc., 3761 Venture Drive, Suite 260, Duluth, Gwinnett County, GA 30096.

2. Cash America International, Inc. ("Cash America International") is a Texas corporation having its principal place of business located in the state of Texas at 1600 West 7th Street, Fort Worth, TX 76102. Cash America International was served with process through its registered agent at the office of its registered agent: Hugh A. Simpson, 1600 West Seventh Street, Suite 900, Fort Worth, TX 76102. Cash America International upon information and belief is a management corporation responsible for the decision of Georgia Cash America to transact business in Georgia in the manner described in this Complaint.

3. Daniel R. Feehan ("Feehan") is the Chief Executive Officer of Georgia Cash America and Cash America International. Feehan may be served with process at 1600 West 7th Street, Fort Worth, TX 76102.

4. John Does 1-5 are the officers and directors of Georgia Cash America and Cash America International.

5. John Does 6-10 are all owners, partners and stakeholders of Georgia Cash America and Cash America International.

6. Plaintiff, James H. Greene, is a Georgia resident who resides at 297 East Burns Court, Apartment B, Marietta, Georgia, 30008.

7. Plaintiff, Mennie Johnson, is a Georgia resident who resides at 10293 Misty Ridge Drive, Jonesboro, Georgia, 30238.

8. At all times material hereto, Georgia Cash America operated 17 physical locations throughout the state of Georgia. These locations are as follows:

**Atlanta**

1829 DeLowe Dr.
(404) 752-7003

3850 Jonesboro Rd. SE
(404) 366-4411

1202 Moreland Ave. SE
(404) 627-6464

2619 DL Hallowell Pkwy NW
(404) 799-6000

4230 Buford Hwy.
(404) 329-9511

**Columbus**

3239 Victory Dr.
(706) 687-3375

2419 Manchester Expy
(706) 323-4261

**Decatur**

3181 Glenwood Rd.
(404) 286-1406

**Garden City**

5148 Augusta Rd. & Hwy. 21
(912) 964-1744

**Jonesboro**

6811-A Tara Blvd.
(770) 603-9007

**Mableton**

915 Veterans Memorial Hwy., Suite 211
(770) 739-6900

**Marietta**

587-A Cobb Parkway South
(770) 427-8833

744 Sandtown Rd. S.W.
(770) 425-0814

**Pooler**

507 W. Hwy. 80
(912) 748-8800

**Riverdale**

6963 Hwy. 85, Suite A
(770) 996-3603

**Savannah**

6608 White Bluff Rd.
(912) 351-0200

2125 Victory Dr.
(912) 352-9173

9. This Court has jurisdiction of Georgia Cash America as it is, or at all times material hereto was, a Georgia corporation.

10. This Court has jurisdiction of Cash America International as upon information and belief, Cash America International is a management company which is responsible for Georgia Cash America operating as described in this Complaint. As such, Cash America International transacts business in this state and has committed an act or acts outside the state of Georgia which has caused tortious injury within the state of Georgia.

11. This Court has jurisdiction over Feehan and John Does 1-10 as they are officers, directors, owners, partners, and stakeholders of Cash America International and who upon information and belief have caused Georgia Cash America to transact business in the manner described in this Complaint. As such, Feehan and John Does 1-10 transact business in this state and have committed an act or acts outside the state of Georgia which has caused an injury within the state of Georgia.

12. Alternatively, this Court has jurisdiction of Cash America International, Feehan, and John Does 1-10 because they conspired with Georgia Cash America to violate the law of the state of Georgia and jointly entered into a criminal enterprise against Strong and the Class.

13. Plaintiff Greene contracted with Georgia Cash America at its office at 587-A Cobb Parkway South, Marietta, Cobb County, Georgia. As such, venue is proper in Cobb County pursuant to O.C.G.A. § 14-2-510 in an action against Georgia Cash America.

14. Venue is proper in Cobb County as to Cash America International, Feehan, and John Does 1-10 as venue is proper against a resident defendant Georgia Cash America in Cobb County. Because these remaining defendants are nonresidents who are involved in the same transactions as Georgia Cash America, Defendants are subject to suit as nonresidents in Cobb County pursuant to O.C.G.A. § 9-10-93.

15. The Plaintiffs and those they seek to represent do not assert any claims under the laws of the United States; do not assert any claim against a

state or nationally chartered bank; and do not seek recovery by the Plaintiffs or those they seek to represent in excess of $75,000 (including attorneys fees and exclusive of interest, fees and costs as those terms are used in 28 U.S.C. § 1332).

16. This Class Action Complaint is filed and these proceedings are instituted pursuant to O.C.G.A. § 9-11-23.

17. Plaintiffs seek damages on behalf of themselves and all others similarly situated under the common and statutory laws of Georgia. Specifically, Plaintiffs seek to represent a State-wide Class of all persons extended a payday loan by or through the Defendants since October 9, 2001.

## GENERAL ALLEGATIONS

### A. The Roles of Defendants

18. Defendants Cash America International, Feehan, and John Does 1-10, who are unidentified at this time, have at certain times relevant owned, operated, managed and controlled, directly or indirectly, Defendant Georgia Cash America.

19. Defendants Cash America International, Feehan, and John Does1-10, who are unidentified at this time, have conceived and/or implemented a scheme to make usurious and unlawful loans through Defendant Georgia Cash America. These loans are commonly known as "payday loans."

### B. How the Loans are Made

20. The typical "payday loan" transaction involves an advance to the borrower of $500 or less which is due to be repaid within a short period of time.

21. Generally the borrower gives a check to the lender in the amount of the advance, plus an additional amount representing a "fee." The check is held by the lender until the advance is due to be repaid.

22. At that time, one of three things happens: the lender negotiates the check, the borrower redeems the check with cash, or the borrower pays yet another fee for the privilege of extending the due date.

23. Payday lenders typically charge fees of between 20% and 30% of the face amount of the check for a two-week advance. Such fees compute to an annual percentage rates as high as 520% to 780%.

C. **Senate Bill 157 ("SB 157")**

24. The General Assembly passed SB 157 "to reiterate that in the State of Georgia the practice of engaging in activities commonly referred to as payday lending...[is] presently illegal and to strengthen the penalties for those engaging in such activities." O.C.G.A. § 16-17-1(e).

25. The General Assembly expressly found that despite the fact that payday lending was illegal under existing law, there were insufficient deterrents to cause the activity to cease.

26. The General Assembly also expressly found that payday lenders adopted a number of schemes to disguise their illegal transactions and to deny consumers relief. Specifically, the General Assembly pointed to the partnering of payday lenders with FDIC-insured banks chartered in states where there is little or no limit on the amount of interest the bank can charge. This purported "partnership" allows the payday lender to claim that it is only making the loan on

behalf of the out-of-state bank and thus has immunity from usury laws on preemption grounds. Yet, in reality, the out-of-state bank has little involvement other than lending its name to the transaction. Indeed, the out-of-state bank shoulders little risk of loss and receives only a small portion of the loan proceeds.

27. Because this "partnering" is a mere subterfuge, payday lenders, like Defendants, are the *de facto* lenders and are illegally operating in Georgia.

28. As a way to fight an industry that is well-funded and well-versed in evading state usury laws, the General Assembly expressly approved the procedural use of the class action as a means for consumers to obtain appropriate relief.

29. The General Assembly also invoked, and codified, the existing common law of the state of Georgia to ensure that arbitration clauses in any unconscionable payday loan contract would not be enforceable.

**SPECIFIC ALLEGATIONS AS TO PLAINTIFF JAMES H. GREENE**

30. Beginning in at least 2004, Plaintiff James H. Greene entered into multiple payday lending contracts with Georgia Cash America at its Marietta, Georgia, location.

31. Plaintiff Greene was loaned various dollar amounts, never exceeding $500, exclusive of interest and finance charges.

32. In order to secure these loans, Plaintiff Greene agreed to pay multiple finance charges that exceeded annual percentage rates of 200%.

33. Plaintiff Greene was not allowed to "negotiate" his contract with Georgia Cash America. In fact, the adhesion contract was presented to him on a "take it or leave it basis."

34. Furthermore, the arbitration clauses in the contract and arbitration agreement are not the product of negotiation. Plaintiff Greene was not even able to talk to the individual who determined the amount and conditions of the preprinted agreement.

35. The type of consumer loan that Defendants offered to Plaintiff Greene unquestionably placed Plaintiff Greene at a severe bargaining disadvantage.

36. The rates of interest Defendants charged, over 200% annually, would only appeal to an extremely desperate consumer.

37. Consumers who are willing to borrow money at such interest rates would foreseeably sign anything.

38. The arbitration agreement is fraudulent on its face in that it states that the "lender" is Community State Bank and that "Georgia Cash" is merely the bank's agent. In reality Defendants have extended their "subterfuge," that they utilize in the underlying contract, to the arbitration agreement. The bank is not the lender under Georgia law.

Simply, the arbitration agreement is used to as part of the payday lender's scheme to circumvent Georgia's laws against payday lending and to give the arbitration agreement the imprimatur of legality.

39. The arbitration agreement lacks mutuality of obligation and is therefore unconscionable because in the paragraph styled "Arbitrations," the agreement provides that while all claims brought by the borrower must be resolved by binding arbitration, the lender may bring a collections action. This lack of mutuality of remedy renders the arbitration clause unenforceable.

40. The arbitration agreement also precludes the borrower from either instigating or participating in a class action suit. A class action is the only way that borrowers with claims as small as the individual loan transactions can obtain relief.

41. It is impossible for Plaintiff Greene and other similarly-situated consumers to pursue a claim individually based on small-dollar loan transaction against Defendants. In the absence of a class action, individual recoveries alone provide insufficient incentive to permit Plaintiffs and the Class from finding legal representation under a contingent fee arrangement. The prohibitive expense of the only other common arrangement for legal representation—paying by the hour--forms another barrier to legal representation for those whose finances are already decimated by payday lending. Also, the cost of attorney's fees is a significant factor in determining the arbitration agreement unconscionable. In this case, prohibiting class actions and compelling arbitration pursuant to an adhesion clause carries the practical effect of providing Defendants immunity—leaving Plaintiffs and the Class without the protection afforded by law. Because payday lending targets unsophisticated and desperate consumers in dire

financial straits, without class-wide relief, Plaintiffs and the Class members remain trapped in a cycle of predatory payday loans.

42. The arbitration clause also prohibits Plaintiff Greene from recovering punitive damages, a remedy that would be available in a court of law.

43. Economic coercion of the borrower is also evidenced by the fact that the prevailing party of an action brought under the contract bears the costs of reasonable attorneys' fees and the costs of arbitration. Arbitration is prohibitively expensive to the borrower in light of the amounts in controversy. Thus, the arbitration clause nullifies any real legal relief.

44. Defendants' arbitration defense has been stricken in its entirety pursuant to a discovery sanction order. The trial court's action in this regard was affirmed on appeal and the judgment is now final.

**SPECIFIC ALLEGATIONS AS TO PLAINTIFF MENNIE JOHNSON**

45. Beginning in at least 2003, Plaintiff Mennie Johnson entered into multiple payday lending contracts with Georgia Cash America at its Jonesboro, Georgia, location.

46. Plaintiff Johnson was loaned various dollar amounts, never exceeding $500, exclusive of interest and finance charges.

47. In order to secure these loans, Plaintiff Greene agreed to pay multiple finance charges that exceeded annual percentage rates of 200%.

48. Plaintiff Johnson was not allowed to "negotiate" her contract with Georgia Cash America. In fact, the adhesion contract was presented to her on a "take it or leave it basis."

49. Furthermore, the arbitration clauses in the contract and arbitration agreement are not the product of negotiation. Plaintiff Johnson was not even able to talk to the individual who determined the amount and conditions of the preprinted agreement.

50. The type of consumer loan that Defendants offered to Plaintiff Johnson unquestionably placed Plaintiff Johnson at a severe bargaining disadvantage.

51. The rates of interest Defendants charged would only appeal to an extremely desperate consumer.

52. Consumers who are willing to borrow money at such high interest rates would foreseeably sign anything.

53. Further, the arbitration agreement is fraudulent on its face in that it states that the "lender" is Community State Bank and that "Georgia Cash" is merely the bank's agent. In reality Defendants have extended their "subterfuge," that they utilize in the underlying contract, to the arbitration agreement. The bank is not the lender under Georgia law. The arbitration agreement is used to as part of the payday lender's scheme to circumvent Georgia's laws against payday lending and to give the arbitration agreement the imprimatur of legality.

54. The arbitration agreement lacks mutuality of obligation and is therefore unconscionable because in the paragraph styled "Arbitrations," the agreement provides that while all claims brought by the borrower must be resolved by binding arbitration, the lender may bring a collections action. This lack of mutuality of remedy renders the arbitration clause unenforceable.

55. The arbitration agreement also precludes the borrower from either instigating or participating in a class action suit. A class action is the only way that borrowers with claims as small as the individual loan transactions can obtain relief.

56. It is impossible for Plaintiff Johnson and other similarly-situated consumers to pursue a claim individually based on one loan transaction against Defendants. In the absence of a class action, individual recoveries alone provide insufficient incentive to permit Plaintiffs and the Class from finding legal representation under a contingent fee arrangement. The prohibitive expense of the only other common arrangement for legal representation—paying by the hour--forms another barrier to legal representation for those whose finances are already decimated by payday lending. Also, the cost of attorney's fees is a significant factor in determining the arbitration agreement unconscionable. In this case, prohibiting class actions and compelling arbitration pursuant to an adhesion clause carries the practical effect of providing Defendants immunity—leaving Plaintiffs and the Class without the protection afforded by law. Because payday lending targets unsophisticated and desperate consumers in dire financial straits, without class-wide relief, Plaintiffs and the Class members remain trapped in a cycle of predatory payday loans.

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reasonable attorneys' fees and the costs of arbitration. Arbitration is prohibitively expensive to the borrower in light of the amounts in controversy. Thus, the arbitration clause nullifies any real legal relief.

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## CLASS ACTION ALLEGATIONS

59. This action is brought as a class action pursuant to O.C.G.A. § 9-11-23.

60. On information and belief, the Class numbers in the hundreds, if not thousands, and the joinder of all Class members is impracticable. Discovery to date reveals that there are at least 25,146 potential class members.

61. There are genuine questions of law and fact common to the Class, including:

a. Whether the interest charged on the loans violates the Georgia Industrial Loan Act;

b. Whether Defendants charged more than 10% per annum simple interest on loans of $3,000 or less in violation of the Georgia Industrial Loan Act;

c. Whether Defendants' loan contracts are null and void under Georgia law;

d. Whether Defendants violated O.C.G.A. § 7-4-2(a)(2) by charging more than 16% per annum on loans of $3,000 or less in violation of Georgia's Usury Statute;

e. Whether Defendants violated O.C.G.A. § 7-4-18(a) by charging more than 5% per month on loans made in the state of Georgia in violation of Georgia's Criminal Usury Statute;

f. Whether Defendants violated O.C.G.A. § 7-1-700, *et. seq.*, regarding check cashing fees;

g. Whether Defendants converted funds of the Plaintiffs and the class through a predatory lending scheme;

h. Whether Defendants have violated their statutory duty under SB 157 (Act 440);

i. Whether Defendants are jointly and severally liable for their acts because they entered a joint conspiracy and acted in concert to harm Plaintiffs and the Class by making loans in excess of 5% per month interest and 16% per annum interest on loans of $3,000 or less in violation of Georgia's Usury Statute.

j. Whether Defendants are jointly and severally liable for their acts because they entered a joint conspiracy and acted in concert to harm the Plaintiffs and the Class by marketing and extending to Plaintiffs loans that charge interest in excess of 10% per annum in violation of the Georgia Industrial Loan Act;

k. Whether Defendants have acted in bad faith in regard to the making and performance of these usurious loans, have been stubbornly litigious, and have caused Plaintiffs and the Class unnecessary trouble and expenses of litigation pursuant to O.C.G.A. § 13-6-11;

l. Whether Defendants composed a "criminal enterprise" within the meaning of O.C.G.A. § 16-14-1, *et. seq.*;

m. Whether Defendants' unlawful scheme constituted a criminal enterprise executed through a pattern of racketeering activity;

n. Whether Defendants committed the illegal act of usury, a predicate act under Georgia RICO;

o. Whether Defendants committed the illegal acts of theft by taking and theft by deception, predicate acts under Georgia RICO;

p. Whether Defendants' pattern of racketeering activity shared a common target or victim, to wit: Georgia's most vulnerable and desperate consumers; and

q. Whether the arbitration agreements contained in the adhesion contracts are unconscionable and fraudulent under the statutory and common law of Georgia.

62. The claims of Plaintiffs are typical of the claims of the Class. Each class member was subjected to the same practices and procedures, was harmed in the same way and has claims for relief under the same legal theories.

63. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have common interests with all members of the Class and will vigorously protect the interest of the Class through qualified counsel experienced in handling class action and consumer protection cases. Neither the named Plaintiffs nor Class counsel have any interests which would conflict with the interests of the Class.

64. This case is properly maintainable as a class action pursuant to all other applicable law.

65. A class action is a superior method for the fair and efficient adjudication of this controversy. Most of the Class members were and still may be unaware of the wrongs perpetrated against them or of their right to legal redress for those wrongs. The practices complained of are directed against financially vulnerable persons unable to protect their rights. Individual litigation of their relatively small claims is not economically feasible—considering the costs of legal representation, such claims have a negative economic value. However, Defendants derive large aggregate profits from their unlawful conduct, making a class action appropriate.

66. Pursuant to the Civil Practice Act, this class action is appropriate since the prosecution of separate actions by individual members of the Class would create a risk of:

a) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for persons opposing the Class; and

b) adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of other