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NEWS RELEASE

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NC Superior Court Sides with Consumers against Payday Lenders

Three rulings could pave the way for North Carolinians to recoup the illegally high fees paid to payday lenders

A North Carolina Superior Court judge has ruled that the mandatory arbitration agreements in three payday lenders' consumer contracts are unenforceable, effectively giving the go-ahead to class action lawsuits seeking to recoup illegally high fees paid to the lenders.

The three cases involve tens of thousands of consumers who patronized Advance America, Check Into Cash, and Check 'n Go in North Carolina from 2001 until the businesses left the state in 2005 and 2006.

"North Carolina law is very clear that the defendants' payday lending operations here were illegal," said Carlene McNulty, attorney for the North Carolina Justice Center, one of the organizations that filed the lawsuits. "Now that the Superior Court has cleared away the defendants' procedural defenses, we're very hopeful that we will soon achieve justice for our clients."

The contracts for payday loans included mandatory arbitration agreements that required consumers to resolve any disputes with the company through the arbitration process. The agreements also prohibited consumers from participating in class action lawsuits against the company.

Because the cost of pursuing such cases on an individual basis would be enormous, the companies' contract term banning class actions essentially denied the consumers any meaningful way of recovering the illegal overcharges.

The Superior Court rulings came about as a result of a North Carolina Supreme Court ruling last year. The court found in a predatory mortgage lending case, *Tillman vs. Commercial Credit*, that mandatory arbitration agreements are unconscionable and unenforceable. In light of that ruling, the state Court of Appeals remanded the three class-action cases to the North Carolina Superior Court.

"This is a very important decision because it is the first case in which a North Carolina court has applied the *Tillman* ruling to a class action ban," said Paul Bland of Public Justice, a national public interest law firm based in Washington, DC. "We believe that Judge Hooks' thoughtful and well-reasoned decision will be very influential in shaping the future of the law in North Carolina and elsewhere."

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“The defendants' ban on class actions amounted to a get-out-of-jail-free card—immunity even if they broke the law,” explained Mal Maynard of the Financial Protection Law Center in Wilmington. “This ruling was plainly right and supported by a wealth of solid evidence.”

Superior Court Judge Jack Hooks found that the arbitration agreements were unconscionable and thus unenforceable. He noted that, in fact, no individual arbitration claims had ever been filed in North Carolina against any of the three payday lending companies. He went on to say that the contractual prohibition against class action participation in these cases violates the public policy of the State of North Carolina and is therefore unenforceable.

In addition to the three organizations, the class members are represented attorneys from three law firms: Jerry Hartzell of Hartzell and Whiteman in Raleigh, N.C; Mona Lisa Wallace and John Hughes of Wallace & Graham in Salisbury, N.C; and Richard Fisher of Cleveland, Tenn.

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