

STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 05:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH ADVANCE)
CENTERS OF NORTH CAROLINA, INC.)
)

JOINT MOTION FOR A PROTECTIVE ORDER
AND ORDER LIMITING DISCOVERY

NOW COMES the North Carolina Banking Commission, the Office of the Commissioner of Banks ("OCOB"), and the Attorney General (hereinafter referred to as "the Petitioners"), and jointly move the Commissioner of Banks ("Commissioner"), pursuant to Rules 26(b)(1) and 26(c) of the Rules of Civil Procedure, to limit the scope of discovery and for a protective order with regard to Respondent's First Set of Requests for Production of Documents and Interrogatories. In support of this motion, Petitioners state:

INTRODUCTION

The Respondent has served the Petitioners with a request for production of documents that is extraordinary in its scope and in its irrelevance to the issues in this

proceeding, and grossly excessive in the burden it seeks to impose on the Petitioners. Taken as a whole, the Respondent's requests seek every document related to payday lending, including all correspondence, internal memoranda, and electronic mail, generated or received by any official or employee of the Attorney General's Office or the Office of the Commissioner of Banks. For the most part, the requests cover documents prepared or received over a period of eight years.

Very few of the requests have anything to do with the issues in this proceeding which involve the Respondent's business activities in North Carolina and whether those activities violate North Carolina lending laws and other regulatory laws. The Respondent should be reminded that this proceeding concerns an investigation of Advance America, Cash Advance Centers of North Carolina, Inc. (AANC) and not an investigation of the Office of the Commissioner of Banks, the Attorney General's Office or North Carolina State Government in general. Respondent's requests are also unprecedented in that much of the information sought consists of information prepared by, and in the possession of, Petitioners' counsel in the course of litigation, investigation or advising government officials.

The Petitioners intend to comply with specific production requests if the documents sought are related to the Respondent's lending business in North Carolina and are not confidential or privileged. However, since the majority of the information sought by Respondent is not relevant or calculated to lead to the discovery of admissible evidence, and because the time frames in this proceeding are relatively short, the Petitioners believe that an order limiting discovery at this juncture is necessary and appropriate. Waiting for responses and objections to discovery, followed by motions to compel and responses thereto, would not promote judicial economy.

The Petitioners have attached as Exhibit 1 to this motion a copy of the Respondent's discovery requests together with their objections noted (in bold face type) immediately following each numbered request and interrogatory. More specifically, Petitioners object and seek an appropriate protective order relative to Request Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 37, and Interrogatory No. 8.

While preserving their objections, the Petitioners will endeavor to reach an agreement with the Respondent's counsel as to the production of relevant, non-privileged

information. However, at this juncture, given the extreme breadth of the Respondent's discovery request and the parties' divergent views as to what is relevant, the Petitioners believe that a protective order and order limiting the scope of the discovery will be necessary.

SPECIFIC GROUNDS FOR OBJECTIONS

1. Relevance. Rule 26(b) of the N.C. Rules of Civil Procedure limits the scope of discovery to information that is relevant to the issues in the proceeding and requires that discovery requests be "reasonably calculated to lead to the discovery of admissible evidence." Most of the Respondent's production requests have no relevance to the issues or potential factual evidence in this proceeding. This proceeding concerns the Respondent's conduct of its business in North Carolina. Other investigations conducted by the Attorney General or Commissioner of Banks, internal communications about payday lending generally, communications with other attorneys, groups or other agencies that do not relate to the Respondent's activities, are simply not relevant to this proceeding. See Request Nos. 1B, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19B-19M, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

2. Privilege. Many of the Respondent's production requests seek information that is subject to the attorney

work product or attorney-client privilege and is therefore not discoverable. See Request Nos. 10, 12, 13, 14, 18, 19, 20, 21, 26 and 27. Rule 26(b)(3) states that a court "may not permit disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation in which the material is sought or work product of the attorney or attorneys of record in the particular action." Despite this clear directive, the Respondent's requests seek discovery of internal memoranda prepared by counsel, investigative and litigation files, litigation plans, and internal communications among counsel and between counsel and their client officials.

3. Overly burdensome and excessive in scope. Rule 26(c) allows a court to enter a protective order limiting discovery to protect a party from "undue burden or expense." Rule 26(b)(1) similarly provides that a court shall limit discovery if the discovery is "unreasonably cumulative or duplicative" or "unduly burdensome or expensive."

The Respondent's document request is cumulative, duplicative and grossly overbroad. Taken as a whole, the documents requested by the Respondent include any document of any kind in the possession of the Petitioners relating

to the issue of payday lending over an eight year period. Many of the requests do not identify particular documents or events, but generically refer to documents that "relate to" or "concern payday lending issues." As an example of the duplicative and overbroad nature of the discovery, Request For Production No. 10 requests "Any and all documents created by any government representatives, including but not limited to the following individuals, that in any way concerning [sic] payday lending issues in North Carolina prior to or after the August 31, 2001 sunset of N.C.G.S. § 53-281." (Eight individuals are then named, six of whom are attorneys in the Offices of the Attorney General or Commissioner of Banks.) Request for Production No. 18 then requests "Any and all formal or informal opinions, rulings, announcements, and/or factual or legal memoranda or materials concerning payday lending issues in North Carolina prior to or subsequent to the August 31, 2001 sunset of N.C.G.S. 53-281." (emphasis added)

If the Petitioners were to attempt to comply with these document requests, it would require review of tens of thousands of e-mails, reviews of thousands of documents, correspondence, case records and miscellaneous files. The Respondent's "Instructions and Definitions" No. 2, define the term "document" to encompass virtually every

conceivable form of record or storage, including electronically stored messages ("e-mail").

According to representatives of the Department of Justice ("DOJ") Information Technology Section ("ITS"), DOJ currently has e-mail messages stored only for a period up to two years. The process of recovering these e-mails would be a massive undertaking that would be extremely time consuming, expensive and burdensome upon the ITS staff and its limited resources. According to ITS staff, DOJ's ITS systems are antiquated and incapable of interfacing with other, more sophisticated systems and such an undertaking would cripple the DOJ ITS system. Additionally, the DOJ attorneys named in Respondent's discovery request would have to sort through tens of thousands of e-mails.

According to the Chief Information Technology Officer for the Department of Commerce, which provides information technology services for the OCOB, e-mail messages generated or received on or before June 30, 2004 have been purged. The process to recover deleted e-mail messages after that date could take as much as three weeks, would be expensive, and burdensome on Department staff and its limited resources. And, as in the case of DOJ attorneys, and due to the antiquated nature of the system, OCOB staff members

would have to sort through thousands of e-mails to individually select ones related to payday lending issues.

4. Evidence available from the Respondent's own sources. Rule 26(b)(1) allows for a court, on its own initiative or on motion of a party, to limit discovery if such discovery "is obtainable from some other source that is more convenient, less burdensome, or less expensive." In this case, virtually all of the relevant evidence is in the possession of the Respondent or its bank partner, Republic Bank and Trust Company. The facts of the case relate to how the Respondent conducts business in this State, specifically, how it offers, arranges, disburses, and collects on payday loans, individually or through its relationship with Republic Bank. The Respondent does not have any need to conduct discovery of the Petitioners to obtain this information since the information is already available to it.

5. Confidentiality. The Respondent seeks internal investigative memoranda and reports prepared by the Office of the Commissioner of Banks. These documents, when compiled in preparation for or in anticipation of litigation, are made confidential by statute and should not be subject to discovery absent some showing of compelling need. G.S. § 53-99(b)(2).

6. Banking Commission not a party to this proceeding.

The Respondent has attempted to direct all of its discovery requests to the Banking Commission, in addition to the Attorney General and the Office of the Commissioner of Banks. The Banking Commission is not a party to this proceeding and cannot be required to respond to any of the discovery requests. Pursuant to G.S. §§ 53-92(d) and 53-107.2, the North Carolina Banking Commission is an appellate review body separate and apart from the OCOB. To the knowledge of the undersigned, the Commission has not made any official pronouncements about payday lending issues or exercised any appellate authority over payday lending matters. Without waiving any objection, Petitioners do not object to a review of the transcripts and/or minutes of the North Carolina Banking Commission Proceedings for a designated period of time. The minutes of meetings of the Commission can be made available for review by the Respondent.

RELIEF REQUESTED

For the reasons expressed above, and the specific objections raised with respect to the individual requests for production and interrogatories, the Petitioners move the Commissioner of Banks to deny any discovery request to the Banking Commission; to narrow the scope of the

discovery to those matters that are non-privileged,
relevant to the subject matter of this proceeding, and not
unduly burdensome; and to enter a protective order
accordingly.

This the 5th day of April, 2005.

L. McNeil Chestnut
L. McNeil Chestnut
Special Deputy Attorney General
And Counsel to the Office of the
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N.C. Department of Justice
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CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing JOINT MOTION FOR A PROTECTIVE ORDER AND ORDER LIMITING DISCOVERY by placing a copy of the same in the United States Post Office at Raleigh, North Carolina, certified mail, return receipt requested, postage prepaid and addressed to:

Donald C. Lampe
Christopher W. Jones
WOMBLE, CARLYLE, SANDRIDGE & RICE PLLC
One Wachovia Center
301 South College Street, Suite 3500
Charlotte, NC 28202

Saul M. Pilchen
Lesley B. Whitcomb
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue N.W.
Washington, D.C. 20005

This the 20 day of April, 2005.


Philip A. Lehman
Assistant Attorney General

STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 05:008:CF

IN RE:

ADVANCE AMERICA, CASH ADVANCE
CENTERS OF NORTH CAROLINA, INC.

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EXHIBIT 1

This exhibit is intended to specifically note the objections raised in the accompanying motion and is not intended as the complete or formal response to the Respondent's Request For Production of Documents and Interrogatories which will be forthcoming on or about April 15, 2005.

STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:) RESPONDENT ADVANCE AMERICA,
) CASH ADVANCE CENTERS OF NORTH
ADVANCE AMERICA, CASH ADVANCE) CAROLINA, INC.'S FIRST SET OF
CENTERS OF NORTH CAROLINA, INC.) REQUESTS FOR PRODUCTION OF
) DOCUMENTS AND,
) INTERROGATORIES TO THE NORTH
) CAROLINA BANKING COMMISSION,
) OFFICE OF THE COMMISSIONER OF
) BANKS AND THE NORTH CAROLINA
) OFFICE OF THE ATTORNEY GENERAL
)

TO: The Honorable Joseph Smith, Esq.
North Carolina Commissioner of Banks
316 West Edenton Street
Raleigh, NC 27602

L. McNeil Chestnut, Esq.
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

Phillip A Lehman
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina, 27699-9001

NOW COMES Respondent, Advance America, Cash Advance Centers of North Carolina, Inc. ("AANC"), through counsel, and pursuant to N.C.G.S. § 150B-39, 4 NCAC § 3B.0209, and Rules 26, 33, 34 and 36 of the North Carolina Rules of Civil Procedure, and serves

the following Requests for Production of Documents ("RFP") and Interrogatories upon the North Carolina Banking Commission, the North Carolina Commissioner of Banks, and the North Carolina Office of the Attorney General, each discovery request and/or interrogatory to be answered separately and fully, in writing, under oath, and independently by each of the government agencies, with responses to be served on counsel for Respondent within fourteen days. These RFPs and Interrogatories shall be deemed continuing in nature pursuant to Rule 26 of the North Carolina Rules of Civil Procedure, and you are required to serve supplemental responses if and when any additional responsive information comes to your attention or becomes available to you.

DEFINITIONS AND INSTRUCTIONS

1. The North Carolina Banking Commission, the North Carolina Commissioner of Banks, and the North Carolina Attorney General (together, the "government representatives") are each independently required to respond to each of these Requests for Production and Interrogatories as contemplated and required by the North Carolina Rules of Civil Procedure and the rules for contested hearings before the North Carolina Banking Commission. References to the "government representatives" shall include any and all of the named agencies and offices, or any individual employee(s) of those agencies and offices.

2. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in North Carolina Rule of Civil Procedure 34(a), and shall include any tangible thing upon which information is or has been stored, recorded, or communicated, in or through any medium, including, but not limited to: records, letters, notes, working papers, correspondence, invoices, contracts, agreements, purchase orders, memoranda, tapes, transcripts, stenographical or handwritten notes, microfilm, bulletins, studies, test results and reports, logs,

worksheets, circulars, pamphlets, studies, reports, notices, diaries, calendars, summaries, surveys, books, manuals, financial statements or reports, telephone logs, messages, questionnaires, instructions, photographs, film, graphs, statistical compilations, sound recordings, magnetic discs, records, and tapes, electronically stored mail ("e-mail"), records, and printouts.

3. As used herein, the term "identify" when used in reference to natural persons shall mean to state the persons' full names, title(s), and job description(s), if applicable, and their present business and home address(es) and telephone number(s).

4. As used herein, the term "identify" when used in reference to documents shall mean to describe the documents, setting forth their dates, titles, authors, addresses, parties and contents with reasonable particularity.

5. As used herein, the term "identify" when used in reference to oral statements and communications shall mean to describe the statements and communications by (a) stating when and where they were made; (b) identifying each of the makers and recipients thereof in addition to all other persons present; (c) indicating the medium of communication; and (d) stating their substance.

6. The use of the singular form of any word includes the plural and vice versa.

7. Should any of these requests or interrogatories call for any of the government representatives to identify or produce a document or describe information which would otherwise be responsive except for the fact that the answering party claims such document or information is privileged or confidential (by operation of statute), then the answering party shall so state and identify the information or document to a degree sufficient to allow the Commissioner to rule, if necessary, on such claim of privilege or a motion to compel discovery. Such information shall reasonably include the type of document, the author, all known recipients, and a general

description of the document's subject matter. This is commonly referred to as a "Privilege Log" and may be so entitled by the answering/objecting party.

8. The term "concerning" means in any way relating to, referring to, describing, evidencing, or constituting.

9. The conjunctive "and" and the disjunctive "or" are mutually interchangeable and are meant to encompass each other.

10. When used in this document, the term "sunset" refers to the August 31, 2001 date on which N.C.G.S. § 53-281 finally expired.

11. When used in this document, the term or phrase "payday lending" is defined and used in the same manner that it was defined and used by the Commissioner of Banks in the Notice of Hearing and Order for a Pre-hearing Conference in this matter. However, its use in these RFPs and Interrogatories is intended for efficiency purposes only and is in no way intended to communicate agreement as to whether the term "lending," as interpreted and/or used and defined in the North Carolina General Statutes, is applicable to the business activities of AANC.

12. When used in this document, the term "you" and "your" shall be defined to include any individual employee or agent of the office, agency or organization to whom these requests and interrogatories are directed.

13. Unless otherwise noted, all document requests and interrogatories pertain to documents and information either in effect or created on or after January 1, 1997, to the present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce the following documents to the extent that they are in your care, custody or control and, with respect to each individual document that you produce and/or group of documents (if the production is of multiple pages constituting one document), please identify the specific request to which you consider your production to be responsive:

1. All documents created by or on behalf of the government representatives associated with or in furtherance of the Commissioner of Banks' investigation(s):

A. Into AANC's business operations within the State of North Carolina, or elsewhere; and

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and is confidential pursuant to G.S. § 53-99(b)(2).

B. Into any other company, business or individual whose business activities have been investigated in an effort to determine whether said company, business or individual was engaged in "payday lending," deferred presentment lending, or other lending programs in violation of or consistent with North Carolina law.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, confidential pursuant to G.S. § 53-99(b)(2), and irrelevant to the subject matter involved in the pending action.

2. Any and all investigative or fact finding reports or memoranda generated by or provided to the government representatives that relate in any way to the North Carolina business activities of AANC.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege. Without waiving said objection, information that is not privileged will be provided.

3. Any and all documents exchanged between the government representatives that relate in any way to the business activities of AANC.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege. Without waiving said objection, information that is not privileged will be provided.

4. Any and all documents generated or assembled by the government representatives forwarded to members of the North Carolina General Assembly (including individual staff members of their offices) and/or the North Carolina Governor's office with regard to payday lending issues, including but not limited to any correspondence, memoranda, position papers, legal or factual analyses, or written statements or testimony in connection with contemplated or pending legislation.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

5. Any and all documents received from members of the North Carolina General Assembly (including individual staff members of their offices) and/or the North Carolina Governor's office with regard to payday lending issues, including but not limited to any correspondence, memoranda, position papers, legal or factual analyses, or written statements or testimony in connection with contemplated or pending legislation.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

6. Any and all documents sent to or received from state banking commissions and or state banking commissioners in other states, or similar agencies, Attorney General's offices of other States, or other state or federal regulators that concern payday lending issues.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action.

7. Any and all documents received from any state agencies, other than the government representatives addressed in these document requests, in North Carolina concerning payday lending issues.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

8. Any and all documents that relate to payday lending issues that were sent to or received from groups or entities of any title or nature that are identified colloquially as consumer advocate/consumer rights groups, or the individuals associated with such groups, including but not limited to the Center for Responsible Lending, the Coalition for Responsible Lending, the Self Help Credit Union, the Self Help Assistance Corporation, the Self Help Services Corporation, the Community Reinvestment Association of North Carolina, the North Carolina Justice Center, the North Carolina Justice and Community Development Center, the Financial Protection Law Center, and the Trial Lawyers for Public Justice, which documents relate to payday lending issues.

OBJECT on the grounds that the discovery sought is irrelevant to the subject matter involved in the pending action and unduly burdensome.

9. Any and all documents that relate to payday lending issues that were sent to or received from any outside attorneys or law firms, including but not limited to J. Jerome Hartzell or any individual associated with the law firm of Hartzell & Whiteman, LLP; Carlene McNulty or any individual associated with the North Carolina Justice Center; Mona Lisa Wallace, John Hughes or any individual associated with the law firm of Wallace & Graham, P.A.; Mallam J. Maynard or any individual associated with the Financial Protection Law Center; F. Paul Bland,

Jr. or any individual associated with the Trial Lawyers for Public Justice; Stephen Gardner or any individual associated with the Law Office of Stephen Gardner, PC; or Richard A. Fisher.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, common interest privilege and irrelevant to the subject matter involved in the pending action.

10. Any and all documents created by any government representatives, including but not limited to the following individuals, that in any way concerning payday lending issues in North Carolina prior to or after the August 31, 2001 sunset of N.C.G.S. § 53-281:

- A. Attorney General Roy Cooper
- B. Joshua N. Stein
- C. Philip A. Lehman
- D. L. McNeil Chestnut
- E. Daniel Garner
- F. M. Lynne Weaver
- G. Reitzel Deaton
- H. Hal Lingerfelt

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, irrelevant to the subject matter involved in the pending action, and unduly burdensome.

11. Any and all documents concerning payday lending issues created by the Office of the Commissioner of Banks.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, confidential pursuant to G.S. § 53-99(b)(2), irrelevant to the subject matter involved in the pending action, and that this request is duplicative of Request No. 10.

12. Any and all documents contained within or otherwise considered a part of - Commissioner Lingerfelt's file and/or investigative materials of any government representative concerning any investigation of AANC's business activities in North Carolina prior or subsequent to the August 31, 2001 sunset of N.C.G.S. § 53-281, including but not limited to any factual or legal analyses.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and confidential pursuant to G.S. § 53-99(b)(2).

13. Any and all documents contained within or otherwise considered a part of Commissioner Lingerfelt's file and/or investigative materials of any government representative concerning any investigation of ACE Cash Express, Inc.'s ("ACE") business activities in North Carolina prior or subsequent to the August 31, 2001 sunset of N.C.G.S. § 53-281, including but not limited to any factual or legal analyses.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, confidential pursuant to G.S. § 53-99(b)(2), and irrelevant to the subject matter involved in the pending action.

14. Any and all documents contained within or otherwise considered a part of Commissioner Lingerfelt's file and/or investigative materials of any government representative concerning any investigation of Goleta National Bank's ("Goleta") business activities in North Carolina prior or subsequent to the August 31, 2001 sunset of N.C.G.S. § 53-281, including but not limited to any factual or legal analyses.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, confidential pursuant to G.S. § 53-99(b)(2), and irrelevant to the subject matter involved in the pending action.

15. To the extent that you intend to call an expert witness or otherwise intend to present opinion evidence at the hearing in this matter, please produce the curriculum vitae of the expert and or other witness through whom you intend to introduce expert opinion testimony, as well as any and all reports, including, without limitation, any draft reports, notes, correspondence, or other documents created by those individuals concerning any and all of the facts or issues to be addressed and or decided in this proceeding, and their opinions, analysis or thoughts relative to said issues.

16. Any and all expert reports and/or correspondence or notes of or with expert witnesses that provided opinion testimony or other evidence in the ACE investigation or litigation (captioned: *State of North Carolina ex rel. Roy Cooper, Attorney General and Hal D. Lingerfelt, Commissioner of Banks v. ACE Cash Express, Inc.*, and bearing Wake County civil action number 02 CVS 000330 and which, after removal to the Federal Court for the Eastern District of North Carolina, bore civil action number 5:02-CV-69-F(3)) concerning its payday lending business operations in North Carolina.

17. Any and all expert reports and/or correspondence or notes of or with expert witnesses that provided opinion testimony or other evidence in the Goleta investigation or litigation (captioned *Goleta National Bank and Ace Cash Express, Inc. v. The Honorable Hal D. Lingerfelt, in his official capacity as the Commissioner of Banks of North Carolina and The Honorable Roy Cooper, in his official capacity as the Attorney General of North Carolina*, and bearing federal civil action number 5:02-CV-20-F(3)) concerning its payday lending business operations in North Carolina.

18. Any and all formal or informal opinions, rulings, announcements, and/or factual or legal memoranda or materials concerning payday lending issues in North Carolina prior or subsequent to the August 31, 2001 sunset of N.C.G.S. 53-281.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, irrelevant to the subject matter involved in the pending action and unduly burdensome.

19. Any and all formal or informal opinions, rulings, announcements, and/or factual or legal memoranda concerning the business operations of other payday cash advance companies, including but not limited to the following companies:

- A. AANC
- B. Ace Cash Express, Inc.
- C. Goleta National Bank
- D. Check 'N Go
- E. Check Into Cash
- F. Cash America International, Inc.
- G. QC Financial Services
- H. Valued Services, LLC
- I. Cash America Financial Services, Inc.
- J. Foresight Management Company, LLC
- K. Nationwide Budget Finance
- L. Compucredit
- M. First American Bank

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action, except as to AANC.

20. Any and all formal or informal opinions, rulings, announcements, and/or factual or legal memoranda created or received by you concerning the authority and/or jurisdiction of the government representatives, or the lack of authority and/or jurisdiction, to regulate or otherwise control payday lending activities in North Carolina subsequent to August 31, 2001, even if such documents were created prior to that date.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, unduly burdensome and irrelevant to the subject matter involved in the pending action, except for official public announcements and formal opinions of the Attorney General.

21. Any and all correspondence in any form whatsoever exchanged between the government representatives concerning payday lending activities by any company doing business in North Carolina.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, irrelevant to the subject matter involved in the pending action and unduly burdensome.

22. Any and all formal or informal opinions, memoranda or correspondence created in response to an inquiry or complaint by any individual consumer, consumer advocate or consumer advocacy group regarding payday lending issues in North Carolina, and any and all such inquiries and complaints.

OBJECT on the grounds that the discovery sought is confidential pursuant to G.S. § 53-99(b)(2), unduly burdensome and irrelevant to the subject matter involved in the pending action, except as to AANC.

23. Any and all documents sent to or received from or directed to the National Association of Attorneys General ("NAAG") regarding payday lending issues.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

24. Any and all documents sent to or received from or directed to the Conference of State Bank Supervisors ("CSBS") regarding payday lending issues.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

25. Any and all documents or communications concerning payday lending activities that were received from or sent to any North Carolina State Governmental Agency, excepting the government representatives addressed in these document requests.

OBJECT on the ground that the discovery sought is attorney work product and/or attorney-client privilege, common interest privilege and irrelevant to the subject matter involved in the pending action.

26. Any and all internal memoranda concerning your agency's, office's and/or organization's plan of action, intentions, analyses or intended chronology regarding administrative investigations and/or administrative action(s) against business in North Carolina that you believe(d) were involved in payday lending activities in North Carolina subsequent to August 31, 2001, even if such documents were created before that date.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action, except as to AANC.

27. Any and all documents reflecting your office's, agency's, or organization's plan of action relative to businesses that you believe(d) were/are engaged in payday lending activities in North Carolina, which documents were created prior or subsequent to execution of the consent order in the ACE payday lending litigation.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action, except as to AANC.

28. Any articles, statements, testimony, reports, power point presentations, speeches, "white papers" or other similar documents created by you concerning payday lending activities in North Carolina or elsewhere.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

29. Any and all statements by any of the government representatives, including but not limited to the following individuals, concerning payday lending activities in North Carolina or elsewhere subsequent to August 31, 2001, made or given to the print or online media in North Carolina:

- A. Attorney General Roy Cooper;
- B. Joshua Stein;
- C. L. McNeil Chestnut;
- D. Philip Lehman;
- E. Daniel Garner;
- F. Commissioner Joseph A. Smith, Jr.;
- G. Commissioner Hal Lingerfelt; or
- H. Any Commissioner, Chairman or Member of the Banking Commission.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action, except as to AANC.

30. Any and all speeches given by Attorney General Roy Cooper in any public or private forum during his campaign or after his election to the Office of North Carolina Attorney General concerning or referencing payday lending activities in North Carolina or elsewhere, whether the speech was given prior to, on, or after August 31, 2001.

OBJECT on the grounds that the discovery sought is irrelevant to the subject matter involved in the pending action and unduly burdensome.

31. Any and all documents concerning the sunset or expiration of N.C.G.S. § 53-281 including but not limited to opinions, plans, analyses or strategies to seek administrative or and legal remedies against companies doing business in North Carolina that you believe(d) continued to be involved in any way in payday lending activities subsequent to August 31, 2001, even if such documents were created prior to that date.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action, except as to AANC.

32. Any and all documents reflecting events, conversations, or meetings between your office, agency or organization and any individual, business, group of businesses, or trade organization concerning payday lending activities in North Carolina subsequent to August 31, 2001.

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege and irrelevant to the subject matter involved in the pending action.

33. Any documents created and sent by you to any company or business that you believe(d) was/were engaged in the business of payday lending in North Carolina subsequent to August 31, 2001.

OBJECT on the grounds that the discovery sought is irrelevant to the subject matter involved in the pending action, except as to AANC.

34. Any and all documents received by you from any company that you believe(d) was/were engaged in the business of payday lending in North Carolina subsequent to August 31, 2001.

OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action, except as to AANC.

35. Any and all documents sent to or received from any federally insured or federally chartered bank known or believed to be doing business with AANC in North Carolina.

36. Any and all documents sent to or received from any federally insured or federally chartered bank known or believed to be doing payday lending business with other companies in North Carolina.

37. Any and all documents, including, without limitation, investigative reports, expert opinions, correspondence and notes contained your investigative files or the files of any individual cooperating or affiliated with you or acting as your agent or independent contractor concerning the investigation(s) into alleged payday lending activities of any company, including but not limited to the following companies:

- A. McKenzie Check Advance of North Carolina, LLC d/b/a National Cash Advance
- B. National Cash Advance
- C. Check'n Go of North Carolina, Inc.
- D. Check Into Cash, Inc.
- E. Valued Services, LLC
- F. QC Financial Services
- G. Cash America Financial Services, Inc.
- H. Foresight Management Company, LLC
- I. Nationwide Budget Finance
- J. Compucredit

OBJECT on the grounds that the discovery sought is attorney work product and/or attorney-client privilege, confidential pursuant to G.S. § 53-99(b)(2), and irrelevant to the subject matter involved in the pending action, except as to AANC.

38. Any and all documents supporting your use and definition of the terms "fee" and "finance charge" as those terms are used in paragraph 5 of the Commissioner of Banks' Notice of Hearing in this matter ("Notice") (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and/or North Carolina Statutory language).

39. Any and all documents supporting your use and definition of the phrase "originates payday loans" as it is used in paragraph 8 of the Notice (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and/or North Carolina Statutory language).

40. Any and all documents supporting your use and definition of the phrase "payday lending presence" as it is used in paragraph 14 of the Notice (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and/or North Carolina Statutory language).

41. Any and all documents supporting your use and definition of the phrase "substantial portion of the loan fees" as it is used in paragraph 15 of the Notice (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and/or North Carolina Statutory language).

42. Any and all documents obtained from any source, or received from Republic Bank & Trust Company ("RB&T") relative to RB&T's business and/or affiliation with AANC.

43. Any and all documents supporting your use and definition of the following terms as those terms are used in paragraph 27 of the Notice in reference to AANC's business activities

in North Carolina on or after August 31, 2001 (in responding to this Request for Production, please identify particular documents and/or pages/lines of testimony and/or North Carolina Statutory language):

- A. "Offering"
- B. "Arranging"
- C. "Collecting"

44. Any and all documents relied upon to form the basis of the allegation that AANC is "engaged in the business of lending" in North Carolina as that term is used in paragraph 1 of the "Claims for Relief" section of the Notice (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and or North Carolina Statutory language the referenced allegation).

45. Any and all documents supporting your use of the phrase "endorsing or otherwise securing loans or contracts for the payment of loans" in paragraph 1 of the "Claims for Relief" section of the Notice (in responding to this Request for Production, please identify particular documents and or pages/lines of testimony and or North Carolina Statutory language the referenced allegation).

46. Any and all documents relied upon to support the allegation that AANC "seeks to avoid [application of N.C.G.S. § 53-166(a)] by any device, subterfuge, or pretense whatsoever" as it is stated in paragraph 2 of the "Claims for Relief" section of the Notice."

47. Documents relied upon to support the allegation in paragraph 3 of the "Claims for Relief" section of the Notice that AANC is engaging in or has engaged in "the business of cashing checks, drafts, or money orders for consideration," as well as the use of the term "avoid" in the same paragraph.

48. Any and all documents upon which you rely to define the phrase “for consideration” as it is used in paragraph 3 of the “Claims for Relief” section of the Notice.

49. To the extent that you believe or assert that AANC’s receipt of payment, by a federally chartered or federally insured bank, for services rendered to said bank constitutes receipt of “for consideration” in violation of any North Carolina General Statute, please produce any and all documents relied upon to form the basis of your use and definition of the phrase “for consideration” as it is used in paragraph 3 of the “Claims for Relief” section of the Notice.

50. Any and all documents relied upon to support the allegations contained in the fifth paragraph (which is incorrectly denoted as No. “6”) of the “Claims for Relief” section of the Notice and, without limitation, the specific allegations that:

- A. AANC may be engaged in the business of lending within the meaning of N.C.G.S. § 53-166;
- B. AANC offers consumer loans (and your support for the definition and use of the term “offers” as it is used in that paragraph);
- C. AANC arranges consumer loans (and your support for the definition and use of the term “arranges” as it is used in that paragraph);
- D. AANC originates consumer loans (and your support for the definition and use of the term “originates” as it is used in that paragraph);
- E. AANC collects consumer loans (and your support for the definition and use of the term “collects” as it is used in that paragraph);
- F. AANC “contracts for, exacts or receives in connection with such loans, directly or indirectly, “charges” in connection with loans (and your support for the definition and use of the phrase “contracts for, exacts or receives in

connection with such loans, directly or indirectly, charges” as it is used in that paragraph).

51. Any and all documents supporting the allegations in paragraph 6 of the “Claims for Relief” section of the Notice that there is “good cause to believe that AANC may be cashing checks for consideration in violation of G.S. § 53-276.”

52. Any and all documents forming the basis for your definition and use of the term “consideration” as that term is used in paragraph 6 of the “Claims for Relief” section of the Notice in relation to G.S. § 53-276.

INTERROGATORIES

1. Provide the definition that you intend to apply to each of the terms or phrases from the Notice that are quoted in the above Requests for Production of Documents at/in request nos.: 39, 40, 41, 42, 44, 45, 46, 48, 49, 50 and 52, and with respect to each identified term or phrase, identify the source that you used in defining said term or phrase.

RESPONSE:

2. Define the term “deferred deposit cash advance centers” as that term is used in the Notice and explain all characteristics that combine to create such a “center.”

RESPONSE:

3. Identify any distinctions known to you between an “account controlled by the bank,” as that phrased is used in paragraph 8 of the Notice in reference to a federally insured,

out-of-state bank, and actual ownership of the referenced account by the federally insured "out-of-state-bank."

RESPONSE:

4. Identify, with specificity, the relevance (relative to any allegations of misconduct or violations of North Carolina law by AANC) of the allegations in paragraph 16 of the Notice regarding the "customer's perspective" of the loan process, and the allegation in that paragraph that, from that perspective, the "loan process" and "documentation" are "substantially the same."

RESPONSE:

5. With respect to paragraphs 14-26, inclusive, contained within the Notice, identify which North Carolina statutes or laws, if any, were violated as a result of the conduct and/or allegations described in the subject paragraph, and if more than one action is described and/or you believe more than one statute or law is violated, then identify each specific act that violates any statute or law and identify the statute or law that you believe to be violated.

RESPONSE:

6. State your factual basis for the claim that the payment that AANC receives from a federally chartered bank for the services that it provides to that federally chartered bank constitutes "consideration" from consumers or customers for loans such that AANC may be treated as the lending institution.

RESPONSE:

7. To the extent you intend to offer any expert witness opinion testimony or evidence at the hearing in this matter, identify the following information about any such expert:

- A. Name, address, telephone number, and email address;
- B. area(s) of expertise;
- C. issues upon which the witness is expected to testify and/or opine;
- D. the witnesses' opinions relative to each of the issues that you identified in response to this Interrogatory; and
- E. the basis for each opinion identified in response to this interrogatory.

RESPONSE:

8. Identify each and every individual currently or previously employed by you that has met with and/or participated in or attended meeting(s) with members, agents or employees of businesses engaged in payday lending operations in North Carolina prior or subsequent to August 31, 2001 and/or with trade organizations representing the interests of such businesses, and with respect to each such individual, state the following:

- A. date of the meeting or conference;
- B. subject of the meeting or conference;
- C. whether or not the identified individual spoke during the meeting or conference;
- D. if the identified individual spoke during the meeting or conference, the substance of his or her comments;
- E. identification of all other participants in the identified meeting or conference; and
- F. whether or not the identified individual took notes or spoke from prepared remarks during the meeting or conference.

RESPONSE: OBJECT on the ground that the discovery sought is irrelevant to the subject matter involved in the pending action.

9. Identify specific and/or particular consumers whom you allege paid money (in any form) to AANC in consideration or exchange for a short term loan since August 31, 2001.

RESPONSE:

This the ____ day of March, 2005.

Respectfully submitted,

Donald C. Lampe
Johnny M. Loper
Christopher W. Jones
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(202) 371-7000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served **RESPONDENT ADVANCE AMERICA, CASH ADVANCE CENTERS OF NORTH CAROLINA, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND, INTERROGATORIES TO THE NORTH CAROLINA BANKING COMMISSION, OFFICE OF THE COMMISSIONER OF BANKS AND THE NORTH CAROLINA OFFICE OF THE ATTORNEY GENERAL** in the above-captioned action upon all parties both electronically (by e-mail (.pdf format)) and by depositing copies in the United States Mail, first-class postage prepaid, addressed as noted below:

The Honorable Joseph Smith, Esq.
North Carolina Commissioner of Banks
C/O Daniel Garner
316 West Edenton Street
Raleigh, NC 27602

L. McNeil Chestnut, Esquire
Special Deputy Attorney General
Administrative Division
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

Phillip A Lehman
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina, 27699-9001

This the ____ day of March, 2005.

Christopher W. Jones