

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED PSL
2011 SEP -6 AM 8:04

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

BY _____
HENN. CO. DISTRICT
COURT ADMINISTRATOR

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Sure Advance LLC,
a Delaware lender,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against Sure Advance LLC, alleges as follows:

INTRODUCTION

1. Sure Advance LLC advertises its payday loans as a short-term solution to the cash flow challenges many Minnesotans face in these difficult economic times. The website advertises that its payday loans "are not intended to meet long-term financial needs." The reality of these payday loans for Minnesota consumers, however, has been very different. Rather than solving short-term cash needs, online payday loans can become a long-term financial nightmare, with high interest rates and other finance charges making it difficult for the consumer to pay down the principal. Sure Advance LLC was well-aware of this reality, and contrary to its online solicitations, placed consumers into repayment schedules where it would be difficult to pay off the loan. Instead, Sure Advance LLC refinanced or "rolled over" these loans when the borrower could not pay off the principal - a practice specifically prohibited by Minnesota law - so that it could continue collecting its interest charges every two weeks. Sure Advance LLC ignored the

most basic provisions of Minnesota law when it lent to Minnesotans, such as laws that cap interest rates, require the lender to register with the Minnesota Department of Commerce, and place numerous other restrictions on payday loans. The State of Minnesota, by its Attorney General, Lori Swanson, brings this action seeking to end to the Defendant's illegal practices and obtain restitution for Minnesota consumers.

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 8.01, 8.31, 8.32, 47.601, subd. 7 and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

3. Sure Advance LLC ("Sure Advance") is a Delaware lender that maintains an address at 750 Shipyard Drive, Suite 213, Wilmington, DE 19801. Sure Advance LLC offers payday loans to borrowers, including Minnesota residents, through its website <https://www.sureadvance.com/>.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.21, 8.32, subd. 2(a) and 47.601, subd. 5.

5. This Court has personal jurisdiction over Sure Advance pursuant to Minn. Stat. § 543.19 because it does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota consumers.

VENUE

6. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2009) because the cause of action arose, in part, in Hennepin County.

BACKGROUND

7. Sure Advance advertises its payday loans as a short-term solution to Minnesota consumers' cash needs. For example, Sure Advance's website states that its payday loans "are not intended to meet long-term financial needs." In practice, however, Sure Advance's illegal practices can turn these payday loans into long term financial problems for some Minnesota consumers.

8. To address the many issues associated with payday loans, the Minnesota Legislature recently amended Minnesota's payday loan laws to clarify that online payday lenders must be registered in Minnesota before they make such loans to Minnesota residents, and must abide by Minnesota's regulations on such loans, including limits on interest rates. This legislation went into effect on August 1, 2009.

9. While Sure Advance has provided payday loans to Minnesota consumers since August 1, 2009, it has not complied with Minnesota's laws on payday loans.

10. Sure Advance completed loan transactions with Minnesota consumers over the internet while the consumers were physically located in the State of Minnesota. In a typical transaction, after a consumer agreed to obtain the loan, Sure Advance obtained the borrower's bank account information and deposited the loan directly in the borrower's bank account, also typically in Minnesota. Sure Advance then withdrew payments on the loan directly from the consumer's bank account.

11. Rather than requiring the consumer to pay back the loan on their next payday, Sure Advance extended consumers' payday loans for more than 30 days by withdrawing mostly or only interest charges from the consumer's bank account every two weeks, or, alternatively, "rolled over" or refinanced consumers' payday loans, paying the old loan with the proceeds of

the new loan. Accordingly, Sure Advance, in violation of Minnesota law, allowed consumer's paydays to come and go without Sure Advance collecting any principal. The "short-term" cash solution advertised by Sure Advance became a potential long-term cash problem for consumers.

12. Sure Advance charged Minnesota borrowers interest rates that exceed the rates allowed under Minnesota law.

13. Sure Advance provided loans that were less than \$350, were for the borrower's own personal, family or household use, and were short-term, unsecured loans to be repaid in a single installment. Sure Advance also provided loans that were more than \$350 but less than \$1,000 and required a minimum payment within 60 days of loan origination of more than 25% of the principal balance.

14. Since at least August 2009, Sure Advance has provided loans to Minnesota consumers that meet the statutory definitions of "consumer small loans" under Minn. Stat. § 47.60, subd 1(a) and "short-term loans" under Minn. Stat. § 47.601, subd. 1(a)(d). These statutes require lenders that provide "small consumer loans" and "short-term loans" to Minnesota borrowers to, *inter alia*, register with and provide certain information to the Minnesota Commissioner of Commerce ("Commissioner") as a consumer small loan lender.

15. Sure Advance has not registered with the Commissioner as required by Minn. Stat. § 47.60 and is not otherwise licensed to provide payday loans in Minnesota as required by Minn. Stat. § 47.601.

16. Minn. Stat. §47.60 places limits on the amount of interest that lenders may charge Minnesota borrowers for small consumer loans or for short-term loans under \$350. Specifically, Minnesota law limits the amount of interest that may be charged on these types of loans as follows:

- (a) on any amount up to and including \$50, a charge of \$5.50 may be added;

- (b) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to ten percent of the loan proceeds plus a \$5 administrative fee;
- (c) on amounts in excess of \$100, but not more than \$250, a charge may be added equal to seven percent of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee;
- (d) for amounts in excess of \$250 and not greater than the maximum of subdivision 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee.

Minn. Stat. § 47.60, subd. 2(a).

17. For loans that are more than \$350 but less than \$1,000, Minn. Stat. § 47.601, subd. 6(b)(3) provides that such loans may not contain interest rates, fees, charges, or loan amounts that exceed those allowable under section 47.59, subdivision 6. Sure Advance charges Minnesota borrowers more interest than is permitted under either Minn. Stat. § 47.60, subd. 2(a) and Minn. Stat. § 47.59.

18. Minn. Stat § 47.60 and Minn. Stat. § 47.601 place various other obligations on payday lenders, such as disclosure requirements, annual reports, and restrictions on choice-of-law and choice-of-forum clauses in the loan contracts. Sure Advance also failed to observe these statutory requirements and prohibitions.

COUNT I
MINN. STAT. §§ 8.31 AND 47.60

19. Plaintiff re-alleges all prior paragraphs of this Complaint.

20. Sure Advance provided “consumer small loans” and was a “consumer small loan lender” as defined by Minn. Stat. § 47.60.

21. Sure Advance violated Minn. Stat. § 47.60 by, *inter alia*, failing to become licensed with the Commissioner of Commerce, by charging more interest than is permitted under the statute, by failing to observe the disclosure requirements, by either extending its loans over 30 days as prohibited by Minn. Stat. § 47.60, Subd. 2(b) or by “rolling over” its loans as

prohibited by Minn. Stat. § 47.60, Subd. 2(f), and by failing to provide the Commissioner with the annual report required by the statute.

22. The Minnesota Attorney General is empowered to enforce Minn. Stat. §§ 8.31 and 47.60 against Sure Advance, and is entitled to the relief provided in those statutes..

COUNT II
MINN. STAT. §§ 8.31 AND 47.601

23. Plaintiff re-alleges all prior paragraphs of this Complaint.

24. Sure Advance provided “consumer short-term loans” and was a “consumer short-term lender” as defined in Minn. Stat. § 47.601.

25. Sure Advance violated Minn. Stat. § 47.601 by, *inter alia*, failing to obtain any license or other authorization to provide payday loans to Minnesotans, by charging more interest than is permitted under Minnesota law, failing to observe the disclosure requirements, and failing to comply with the restrictions on choice-of-law and choice-of-forum clauses set forth in Minn. Stat. §47.601.

26. The Minnesota Attorney General is empowered to enforce Minn. Stat. §§ 8.31 and 47.601 against Sure Advance, and is entitled to the relief in those statutes.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Sure Advance as follows:

1. Declaring that Sure Advance’s actions, as set forth above, constitute multiple violations of Minn. Stat. §§47.60 and 47.601;

2. Enjoining Sure Advance and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in conduct in violation of Minn. Stat. §§ 47.60 and 47.601;

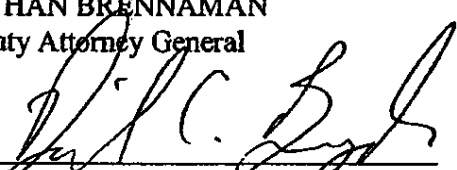
3. For the relief authorized in Minn. Stat. §§ 47.60 and 47.601;
4. Awarding judgment against Sure Advance for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. §8.31, and other authority, for all persons injured by Sure Advance's acts described in this Complaint;
5. Awarding judgment against Sure Advance for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minnesota law;
6. Awarding Plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. 8.31, subd. 3 a; and
7. Granting such further relief as provided by law or as the Court deems appropriate and just.

Dated: 9/06/2011

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

NATHAN BRENNAMAN
Deputy Attorney General

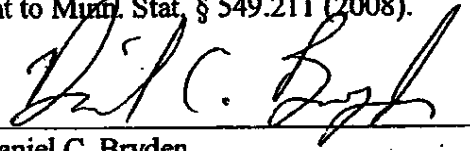

DANIEL C. BRYDEN
Assistant Attorney General
Atty. Reg. No. 302284

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 757-1478 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR PLAINTIFF
STATE OF MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2008).



Daniel C. Bryden

AG: #2875123-v1