ELECTRONICALLY FILED JAMES T. HANNINK (131747) jhannink@sdlaw.com Superior Court of California, 2 || ZACH P. DOSTART (255071) County of Alameda zdostart@sdlaw.com 3 DOSTART HANNINK LLP 02/24/2023 at 04:56:02 PM 4225 Executive Square, Suite 600 La Jolla, California 92037-1484 By: Angela Linhares, Tel: 858-623-4200 Deputy Clerk Fax: 858-623-4299 6 Attorneys for Plaintiff 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 COUNTY OF ALAMEDA 9 10 CASE NO. 23CV028384 11 LAKISHA COLE LINTON, individually and on behalf of all others 12 similarly situated, CLASS ACTION 13 Plaintiff, COMPLAINT FOR: 14 VIOLATION OF THE UNFAIR vs. **COMPETITION LAW** 15 [Bus. & Prof. Code, § 17200 et seq.] AXCESS FINANCIAL SERVICES, INC., 16 an Ohio corporation; and DOES 1-50, inclusive, 17 Defendants. 18 19 20 21 22 23 24 25 26 27 28

CLASS ACTION COMPLAINT

INTRODUCTION

- 1. This class action lawsuit alleges that defendant Axcess Financial Services, Inc. advertises, makes, and services consumer installment loans to California residents for which it charges interest that exceeds the maximum rate allowed under California law. Such conduct violates California's Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq ("UCL").
- 2. This action seeks injunctive relief to enjoin Axcess from advertising, making, or servicing loans in California that do not comply with California's interest rate limitations.
- 3. This action also seeks monetary restitution for plaintiff Lakisha Cole Linton and other California consumers to whom Axcess has charged interest exceeding the amount allowed by law.

THE PARTIES

- 4. Plaintiff Lakisha Cole Linton ("Plaintiff") is an individual residing in Alameda County, California.
- 5. Plaintiff is informed and believes and thereon alleges that Axcess Financial Services, Inc. ("Axcess" or "Defendant") is an Ohio corporation with its principal place of business at 7755 Montgomery Road, Suite 400, Cincinnati, Ohio. Axcess does business in California, including the advertising, making, and servicing of consumer installment loans. On information and belief, Axcess does not have an office in California and conducts its advertising and other business activities through the internet, telephone, and mail. Axcess does business under its own name as well as under the fictitious business name, or brand, "Xact."
- 6. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated with Axcess in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other defendants. This Complaint refers to Axcess and the DOE defendants collectively as "Defendants."
- 7. Venue is proper in this Court because Plaintiff resides in Alameda County and the installment loan between Axcess and Plaintiff was entered into in Alameda County.

BACKGROUND

- 8. Axcess does not hold a license to make consumer or commercial loans in California. Accordingly, Axcess is subject to the interest rate limitations set forth in Article XV, Sections 1(1) and 1(2), of the California Constitution.
- 9. Pursuant to Article XV, Section 1(1) of the California Constitution, for any loan or forbearance of money for use primarily for personal, family, or household purposes, the maximum rate of interest is ten percent (10%) per annum.
- 10. Pursuant to Article XV, Section 1(2) of the California Constitution, for any loan or forbearance of money for any use other than primarily for personal, family, or household purposes, the maximum rate of interest is the higher of (a) ten percent (10%) per annum or (b) five percent (5%) per annum plus the federal funds rate prevailing on the 25th day of the month preceding the earlier of (i) the date of execution of the contract for the loan, or (ii) the date of making the loan. During the four years preceding the filing of this Complaint, the federal funds rate has never exceeded 4.75%. Accordingly, during the four years preceding the filing of this Complaint, the maximum rate of interest permitted pursuant to Article XV, Section 1(2), has never exceeded 10%.
- Notwithstanding those interest rate limitations, when California consumers obtain an installment loan from Axcess, the annual interest rate is set at rates that often exceed 200%. Obviously, that far exceeds the maximum interest rates allowed under Article XV, Sections 1(1) and 1(2) of the California Constitution.
- 12. Axcess is apparently trying to circumvent California's interest rate limitations by means of a "rent-a-bank" arrangement between Axcess, on the one hand, and a state-chartered bank in Utah, Capital Community Bank ("CCBank"), on the other hand. Under this arrangement, the loans that Axcess offers and makes to California consumers, including Plaintiff, are—on paper—purportedly "issued" by the Utah bank. In fact, however, Axcess itself markets the loans, underwrites the loans, originates the loans, services the loans (including billing and collection of payments), and contacts borrowers who miss payments. The loans are advertised and promoted by Axcess under the "Xact" brand, through channels that include (without limitation) https://www.xact.com (the "Xact Website"). A copy of the landing page of the Xact Website is

attached hereto as Exhibit 1. A copy of the "How it Works" page of the Xact Website is attached hereto as Exhibit 2. As explained there, consumers and prospective borrowers apply for loans through the Xact Website, and are promised a quick decision so they can obtain funds as soon as the next business day. On information and belief, CCBank has virtually no involvement in the loans other than the fact that its name is used on the loan documents. Indeed, on its own website, CCBank describes itself as a "community-focused financial institution, serving the banking needs of *Utah residents*[.]" (See https://ccbankutah.com/about/overview [accessed February 24, 2023] (emphasis added).)

13. Under California law, identification of the true lender is based on the substance of a transaction, not the form. (See, e.g., *Consumer Fin. Prot. Bureau v. CashCall, Inc.* (C.D.Cal. Aug. 31, 2016, No. CV 15-7522-JFW (RAOx)) 2016 U.S.Dist. Lexis 130584, at pp. *15-20.) Here, Axcess has the predominant economic interest in the loans, and therefore Axcess is the true or *de facto* lender for loans made to California consumers. Accordingly, the rent-a-bank scheme is ineffective to circumvent California's interest rate limitations that apply to Axcess.

PLAINTIFF'S TRANSACTION AND THE AXCESS LOAN AGREEMENT

- 14. On November 13, 2022, Plaintiff completed an online application through the Xact Website, https://www.xact.com. After submitting the application, Plaintiff was approved for a loan with a principal amount of \$1,000. A true and correct copy of Plaintiff's loan agreement is attached hereto as Exhibit 3 (with personal information redacted) (the "Loan Agreement").
- 15. As stated in the Loan Agreement, Axcess set Plaintiff's interest rate at an Annual Percentage Rate ("APR") of 214.41%. Plaintiff's Loan Agreement is memorialized in a pre-printed form contract. The terms of the Loan Agreement were dictated by Axcess, and Plaintiff had no opportunity for negotiation or modification. On information and belief, except for the transaction-specific information reflected in the Loan Agreement (e.g., Plaintiff's personal contact information, the amount financed, and the specific APR), the other provisions of that Loan Agreement are boilerplate terms that Axcess included in all of its agreements with California consumers.
- 16. The Loan Agreement includes a provision entitled Notice of Arbitration Agreement; Right to Reject Arbitration Agreement, which provides that the borrower has 30 days after the date

of the Agreement to reject the Arbitration Agreement (which is set forth in the Loan Agreement) by sending a written rejection notice. (See Exhibit 3 at pp. 8-9.)

- 17. Plaintiff timely rejected the Arbitration Agreement. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff's rejection notice dated December 5, 2022, addressed as specified to CCBank Arbitration Opt Out/Legal Dept, PO Box 36454, Cincinnati, OH 45236-0454. Attached hereto as Exhibit 5 is a true and correct copy of the USPS Priority Express Mail Proof of Delivery.
- 18. Because Plaintiff timely rejected the Arbitration Agreement, Axcess has no right to elect arbitration with respect to Plaintiff's claims asserted herein.
- 19. Pursuant to the terms of the Axcess Arbitration Agreement, borrowers who did not send a written rejection notice have the right to seek public injunctive relief in court. Moreover, by its terms, the Axcess Arbitration Agreement does not preclude those borrowers from being putative Class members in this case.

ALLEGATIONS REGARDING PUBLIC INTEREST

- 20. As explained by the California Supreme Court, injunctive relief under the UCL has "the primary purpose and effect" of prohibiting unlawful acts that threaten future injury to the general public. (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 955.) Public injunctive relief can be sought by any private individual who has suffered injury in fact and has lost money or property as a result of the unfair business practice. (*Id.* at p. 959.) On behalf of Plaintiff and the putative Class members, and for the benefit of the general public, this action seeks a public injunction to stop Axcess from advertising, making, and/or servicing loans in California that carry an unlawful interest rate, thereby enjoining future violations of California law.
- 21. The Axcess business practices alleged herein threaten future injury to the general public of the State of California. Axcess directs its marketing activities for illegally-priced loans to low-income California residents, many of whom are vulnerable to exploitation. High interest rate loans trap many low-income consumers in cycles of debt, which in turn can increase the borrowers' reliance on taxpayer-funded government services. The unlawful loan pricing structure alleged herein is injurious to the general public and warrants public injunctive relief.

22. Additionally, when unlicensed lenders such as Axcess charge illegal interest rates, it harms the governmental interest in regulating financial institutions that do comply with California's interest rate and lending laws. Licensing by the California Department of Financial Protection and Innovation (formerly the California Department of Business Oversight) carries with it requirements regarding net worth and surety bonds (among others), and subjects the business to audits and investigations. And, of course, licensed lenders must comply with California law or be subject to losing their license. In contrast, Axcess makes loans to California consumers while disregarding California law regarding interest-rate limitations.

CLASS ACTION ALLEGATIONS

- 23. Pursuant to Code of Civil Procedure § 382, Plaintiff seeks to represent a Class defined as follows: "All individuals who, during the limitations period, (a) obtained a loan in California that was advertised, made, or serviced by Axcess and (b) paid interest on such loan at a rate in excess of ten percent (10%). Excluded from the Class are all employees of Defendants, all employees of Plaintiff's counsel, and the judicial officers to whom this action is assigned."
- 24. <u>Numerosity</u>. Plaintiff alleges on information and belief that the Class comprises at least 50 individuals.
- 25. <u>Ascertainability</u>. The members of the Class may be ascertained from business records maintained by Axcess and/or third parties.
- 26. Common Questions of Fact or Law. This action is suitable for class treatment because questions of law and fact have common answers that are the same for the Class, and those questions predominate over any questions affecting only individual Class members. The common questions include, but are not limited to: (i) whether Axcess is the true lender on Plaintiff's and Class members' loans; and (ii) whether the loans carried interest rates that exceeded the maximum allowed by California law.
- 27. <u>Typicality and Adequacy</u>. Plaintiff's claim is typical of other Class members. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interests that are adverse to the Class members.

28. <u>Superiority</u>. A class action is superior to other available methods for fairly and efficiently adjudicating the issues. Class certification will not present any significant management difficulties. Class certification would conserve judicial resources and avoid the possibility of inconsistent judgments. The expense and burden of individual litigation would make it difficult for individual Class members to redress the wrongs done to them without a class action. On information and belief, many Class members do not know that their legal rights have been violated.

FIRST CAUSE OF ACTION

Unfair Competition

(Bus. & Prof. Code, § 17200 et seq.)

- 29. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.
- 30. The Unfair Competition Law defines unfair competition as including any unlawful or unfair business act or practice. (Bus. & Prof. Code, § 17200.)
- 31. By advertising, making, and/or servicing loans in California that carry interest rates exceeding the maximum rate allowed by California law, Defendants have engaged in unlawful and/or unfair business acts or practices, in violation of Business and Professions Code § 17200.
- 32. There were, and there continue to be, reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.
- 33. Defendants' acts and omissions as alleged herein violate obligations imposed by the California Constitution and/or statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.
- 34. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of unfair competition.
- 35. Unless enjoined and restrained by this Court, Defendants will continue to commit the violations alleged herein. Pursuant to § 17203, this action seeks injunctive relief to enjoin Defendants from continuing the unlawful practices as alleged herein. Injunctive relief is sought for the benefit of the general public of the State of California, including Plaintiff, Class members, and all California consumers.

1	36.	Pursuant to § 17203, this action seeks an order granting class certification and,
2	thereafter, restitution to Plaintiff and all Class members of all interest paid on their respective loans	
3	in excess of the amount authorized by California law. If a class is not certified, Plaintiff seeks	
4	restitution or	n an individual basis.
5		PRAYER
6	WHEREFORE, Plaintiff prays for judgment against Defendants as follows:	
7	1.	For an order certifying the Class;
8	2.	For restitution to Plaintiff and all Class members;
9	3.	For injunctive relief, including a public injunction for the benefit of the People of the
10	State of Cali	fornia;
11	4.	For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;
12	5.	For costs of suit; and
13	6.	For such other relief as the Court deems proper.
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15	DATED: Fe	ebruary 24, 2023 DOSTART HANNINK LLP
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17		Zech P. DOSTART
18		Attorneys for Plaintiff
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Axcess Financial Services Operates Unlawful 'Rent-a-Bank' Lending Scheme, Class Action Claims</u>