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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 LAKISHA COLE LINTON,
individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 AXCESS FINANCIAL SERVICES, INC.,
16 an Ohio corporation;
17 and DOES 1-50, inclusive,

18 Defendants.

CASE NO. **23CV028384**

CLASS ACTION

COMPLAINT FOR:

VIOLATION OF THE UNFAIR
COMPETITION LAW
[Bus. & Prof. Code, § 17200 et seq.]

1 **INTRODUCTION**

2 1. This class action lawsuit alleges that defendant Axxess Financial Services, Inc.
3 advertises, makes, and services consumer installment loans to California residents for which it
4 charges interest that exceeds the maximum rate allowed under California law. Such conduct violates
5 California’s Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq (“UCL”).

6 2. This action seeks injunctive relief to enjoin Axxess from advertising, making, or
7 servicing loans in California that do not comply with California’s interest rate limitations.

8 3. This action also seeks monetary restitution for plaintiff Lakisha Cole Linton and
9 other California consumers to whom Axxess has charged interest exceeding the amount allowed by
10 law.

11 **THE PARTIES**

12 4. Plaintiff Lakisha Cole Linton (“Plaintiff”) is an individual residing in Alameda
13 County, California.

14 5. Plaintiff is informed and believes and thereon alleges that Axxess Financial Services,
15 Inc. (“Axxess” or “Defendant”) is an Ohio corporation with its principal place of business at 7755
16 Montgomery Road, Suite 400, Cincinnati, Ohio. Axxess does business in California, including the
17 advertising, making, and servicing of consumer installment loans. On information and belief,
18 Axxess does not have an office in California and conducts its advertising and other business
19 activities through the internet, telephone, and mail. Axxess does business under its own name as
20 well as under the fictitious business name, or brand, “Xact.”

21 6. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but
22 will amend this complaint when that information becomes known. Plaintiff alleges on information
23 and belief that each of the DOE defendants is affiliated with Axxess in some respect and is in some
24 manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the
25 principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other
26 defendants. This Complaint refers to Axxess and the DOE defendants collectively as “Defendants.”

27 7. Venue is proper in this Court because Plaintiff resides in Alameda County and the
28 installment loan between Axxess and Plaintiff was entered into in Alameda County.

BACKGROUND

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8. Axxess does not hold a license to make consumer or commercial loans in California. Accordingly, Axxess 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%.

11. Notwithstanding those interest rate limitations, when California consumers obtain an installment loan from Axxess, 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. Axxess is apparently trying to circumvent California’s interest rate limitations by means of a “rent-a-bank” arrangement between Axxess, 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 Axxess offers and makes to California consumers, including Plaintiff, are—*on paper*—purportedly “issued” by the Utah bank. In fact, however, Axxess 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 Axxess 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

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

9 13. Under California law, identification of the true lender is based on the substance of a
10 transaction, not the form. (See, e.g., *Consumer Fin. Prot. Bureau v. CashCall, Inc.* (C.D.Cal. Aug.
11 31, 2016, No. CV 15-7522-JFW (RAOx)) 2016 U.S. Dist. Lexis 130584, at pp. *15-20.) Here,
12 Axxess has the predominant economic interest in the loans, and therefore Axxess is the true or *de*
13 *facto* lender for loans made to California consumers. Accordingly, the rent-a-bank scheme is
14 ineffective to circumvent California’s interest rate limitations that apply to Axxess.

15 **PLAINTIFF’S TRANSACTION AND THE AXCESS LOAN AGREEMENT**

16 14. On November 13, 2022, Plaintiff completed an online application through the Xact
17 Website, <https://www.xact.com>. After submitting the application, Plaintiff was approved for a loan
18 with a principal amount of \$1,000. A true and correct copy of Plaintiff’s loan agreement is attached
19 hereto as Exhibit 3 (with personal information redacted) (the “Loan Agreement”).

20 15. As stated in the Loan Agreement, Axxess set Plaintiff’s interest rate at an Annual
21 Percentage Rate (“APR”) of **214.41%**. Plaintiff’s Loan Agreement is memorialized in a pre-printed
22 form contract. The terms of the Loan Agreement were dictated by Axxess, and Plaintiff had no
23 opportunity for negotiation or modification. On information and belief, except for the transaction-
24 specific information reflected in the Loan Agreement (e.g., Plaintiff’s personal contact information,
25 the amount financed, and the specific APR), the other provisions of that Loan Agreement are
26 boilerplate terms that Axxess included in all of its agreements with California consumers.

27 16. The Loan Agreement includes a provision entitled Notice of Arbitration Agreement;
28 Right to Reject Arbitration Agreement, which provides that the borrower has 30 days after the date

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

3 17. Plaintiff timely rejected the Arbitration Agreement. Attached hereto as Exhibit 4 is
4 a true and correct copy of Plaintiff's rejection notice dated December 5, 2022, addressed as specified
5 to CCBank Arbitration Opt Out/Legal Dept, PO Box 36454, Cincinnati, OH 45236-0454. Attached
6 hereto as Exhibit 5 is a true and correct copy of the USPS Priority Express Mail Proof of Delivery.

7 18. Because Plaintiff timely rejected the Arbitration Agreement, Access has no right to
8 elect arbitration with respect to Plaintiff's claims asserted herein.

9 19. Pursuant to the terms of the Access Arbitration Agreement, borrowers who did not
10 send a written rejection notice have the right to seek public injunctive relief in court. Moreover, by
11 its terms, the Access Arbitration Agreement does not preclude those borrowers from being putative
12 Class members in this case.

13 **ALLEGATIONS REGARDING PUBLIC INTEREST**

14 20. As explained by the California Supreme Court, injunctive relief under the UCL has
15 "the primary purpose and effect" of prohibiting unlawful acts that threaten future injury to the
16 general public. (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 955.) Public injunctive relief can be
17 sought by any private individual who has suffered injury in fact and has lost money or property as
18 a result of the unfair business practice. (*Id.* at p. 959.) On behalf of Plaintiff and the putative Class
19 members, and for the benefit of the general public, this action seeks a public injunction to stop
20 Access from advertising, making, and/or servicing loans in California that carry an unlawful interest
21 rate, thereby enjoining future violations of California law.

22 21. The Access business practices alleged herein threaten future injury to the general
23 public of the State of California. Access directs its marketing activities for illegally-priced loans to
24 low-income California residents, many of whom are vulnerable to exploitation. High interest rate
25 loans trap many low-income consumers in cycles of debt, which in turn can increase the borrowers'
26 reliance on taxpayer-funded government services. The unlawful loan pricing structure alleged herein
27 is injurious to the general public and warrants public injunctive relief.

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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: [Access Financial Services Operates Unlawful 'Rent-a-Bank' Lending Scheme, Class Action Claims](#)
