

NORTH CAROLINA
ROCKINGHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 Cvs 2608

ALEXANDER L. LEE, JOE S. BROWN, and
MARK THOMPSON,


Plaintiffs,

v.

LEGAL BUCKS, LLC, LBFUND I, LLC,
LOGAN FINANCIAL NETWORK, INC., J.
KEITH TART, LYNN D. TART, PHILIP L.
SMITH, and VIRGINIA SMITH,

Defendants.

PLAINTIFFS' MOTION TO AMEND AND
ADD PARTIES - RULES 15, 19, 20

BY: 
ROCKINGHAM COUNTY, N.C.

2009 DEC 14 AM 11:40

FILED

Now come the Plaintiffs and move the Court to amend the Complaint to add John and Jane Doe Defendants as set out in the attached Proposed Amended Complaint, and in support of the motion say:

1. In this putative class action Plaintiffs seek the recovery of illegal interest charged to and paid by Plaintiffs and putative class members to the Defendants. Plaintiffs also seek a declaratory judgment that contracts for almost \$2,000,000 in outstanding advances by Defendants to Plaintiffs and putative class members are completely or partially unenforceable.

2. Through discovery it has become apparent that the money which Plaintiffs and class members have paid to Legal Bucks and LBFund I, LLC has been distributed to investors in Legal Bucks, LLC and LBFund I, LLC ("the investors"). The identity of these investors is unknown at the present time and they are identified as John and Jane Does in the amended complaint.

3. Prior to investing the investors were informed that the practices of Defendants were possibly illegal, yet they went ahead and invested in the scheme and have received

portions of the illegal payments paid by Plaintiffs and putative class members. Having received what they knew to be money that was potentially the result of illegal activities, the investors hold said funds in constructive trust for Plaintiffs and putative class members.

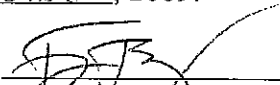
4. Also, discovery has shown that the investors claim a *direct interest* in contract payments from Plaintiffs and putative class members which are allegedly due on the outstanding advances. Based on this perceived right the investors, or some of them, claim the right to control the resolution of the case. As the outstanding contracts in which the investors claim rights is the subject of this litigation the investors are real parties in interest.

5. The Proposed Amended Complaint set out claims against the investors for Constructive Trust, and that they are real parties in interest in the dispute to determine the enforceability of the contracts in which they claim the right to proceeds

6. Based on the foregoing the investors are necessary parties and justice requires they be added to this action.

Wherefore, Plaintiffs pray the Court to allow the Amended Complaint to add the John and Jane Doe Defendants and to allow the substitution of the individual investors once their identities are known.

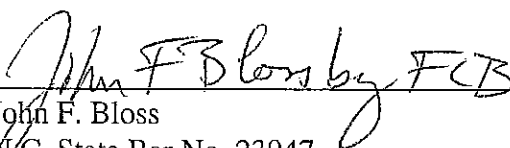
This the 11 day of December, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on attorneys of record by mailing a copy thereof, first class, postage prepaid, to the following:

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Philip L. Smith, and Virginia Smith*

This the 11 day of December, 2009.



Attorney for Plaintiffs

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CvS 8247

ALEXANDER L. LEE, JOE S. BROWN, and
MARK THOMPSON,

Plaintiffs,

v.

LEGAL BUCKS, LLC, LBFUND I, LLC,
LOGAN FINANCIAL NETWORK, INC., J.
KEITH TART, LYNN D. TART, PHILIP L.
SMITH, VIRGINIA SMITH, JOHN DOE 1-
10, and JANE DOE 1-10,

Defendants.

**PROPOSED
AMENDED CLASS ACTION
COMPLAINT**
(Amendments in bold)

Now come the Plaintiffs, complaining of Defendants and say:

INTRODUCTION

Plaintiffs are individuals who accepted litigation funding advances from Defendants Legal Bucks, LLC (“Legal Bucks”) and LBFund I, LLC (“LBFund I”). These loans have been determined to be usurious, violative of the Consumer Finance Act and are Unfair and Deceptive Trade Practices. See *Odell v. Legal Bucks, LLC, et al.*, N.C. App. ___, 665 S.E.2d767 (Sept. 2, 2008) *disc. rev. denied* -, ___ N.C. _____ (Apr. 30, 2009). The other defendants directed and controlled the illegal activities of Legal Bucks and LBFund I. The loans were made by the Defendants as advances against the Plaintiffs’ recoveries in the Plaintiffs’ various personal injury and/or workers’ compensation actions (“underlying action”). Defendants charged up to 100% interest per year on their loans.

THE PARTIES

1. Alexander L. Lee is a citizen and resident of Danville, Virginia. He entered into contracts with Legal Bucks and LBFund I on or about December 22, 2007 in the amount of \$10,000.00; February 29, 2008 in the amount of \$5,000.00; and August 29, 2008 in the amount of \$6,000.00. Mr. Lee's underlying action has been resolved and approximately \$31,353.00 is being held in escrow by Mr. Lee's attorney pending the resolution of this action.

2. Joe S. Brown is a citizen and resident of Mecklenburg County, North Carolina. He entered into contracts with Legal Bucks and LBFund I on or about May 10, 2005 for \$5,000.00 and in 2006 for \$10,000.00. He has repaid the Defendants in excess of \$48,000.00.

3. Mark Thompson is a citizen and resident of Beckley, West Virginia. He entered into contracts with Legal Bucks and LBFund I on or about August 29, 2006 for \$15,000.00 and January 20, 2007 for \$5,000.00. He repaid Defendants \$31,260.00.

4. Defendant Legal Bucks is a limited liability company organized in North Carolina and which is in the business of "litigation financing."

5. Defendant LBFund I, upon information and belief, is a North Carolina limited liability company in the business of litigation financing and is the financial arm of Legal Bucks.

6. Defendant J. Keith Tart, upon information and belief, is a citizen and resident of Forsyth County, North Carolina and is an officer and manager of Legal Bucks and LBFund I and directs, controls and manages the activities of those Defendants.

7. Defendant Lynn Tart is a citizen and resident of Forsyth County, North Carolina and is an officer and manager of Legal Bucks and directs, controls and manages the activities of Legal Bucks.

8. Defendant Logan Financial Network, Inc., upon information and belief, is a North Carolina corporation, is a manager of LBFund I and directs, controls and manages the activities

of LBFund I.

9. Upon information and belief, Defendant Philip L. Smith is a citizen and resident of Forsyth County, North Carolina and owns, directs, controls and manages Legal Bucks and LBFund I.

10. Upon information and belief, Defendant Virginia Smith is a citizen and resident of Forsyth County, North Carolina and owns, directs, controls and manages LBFund I.

FACTUAL ALLEGATIONS

1. Defendants are in the litigation funding business and have made advances and loans to the Plaintiffs and members of the putative class. Each loan contains fees and interest in excess of the amounts authorized by the Consumer Finance Act and N.C.G.S. § 24-1.1, the North Carolina usury statute.

2. Each loan was an advance against the respective Plaintiff's recovery in the underlying action.

3. Each advance was made in North Carolina.

4. By their terms, the advances were governed by the laws of the State of North Carolina.

5. No Defendant ever informed any Plaintiff that the interest charges on the advances were illegal.

6. Each advance was in or affecting commerce.

7. The Defendants intended to enter into the transactions with Plaintiffs set forth above.

8. The Defendants intended to enter into the class agreements with class members.

9. Once Plaintiffs and class members accepted an advance from Defendants, they

were compelled to take Defendants' claims into account when they considered when and whether to settle their underlying claims.

10. The Defendants have a pecuniary interest in seeing that Plaintiffs and class members pursue their underlying claims to trial, if necessary, so that the Defendants can recover the sums advanced by Legal Bucks and the interest claimed.

11. The Defendants assert that when class members resolve their underlying claims they are required to pay Legal Bucks and LBFund I the amount claimed by Legal Bucks and LBFund I from the proceeds of the lawsuits.

12. Once Plaintiffs and class members recover on their underlying claims, Legal Bucks claims an absolute right to money from Plaintiffs and class members.

13. Upon information and belief, class members in North Carolina numbering in the hundreds have made payments to the Defendants pursuant to the agreements with Legal Bucks.

14. Upon information and belief, class members in North Carolina numbering in the hundreds have pending personal injury actions in which the Defendants have entered into agreements for advances with interest rates similar to the agreements with Plaintiffs.

15. Other than the financial transaction in the agreements complained of herein, the Defendants have no other business or personal relationships with Plaintiffs or class members.

16. The Defendants actively market the financing of Legal Bucks and LBFund I to personal injury claimants in North Carolina.

17. The Defendants actively market the financing of Legal Bucks and LBFund I to personal injury claimants because such persons typically have very limited resources, are in extreme need, have a desperate need for money, and will agree to exorbitant rates of interest in order to obtain funds during the long period of time that may be required for their underlying

claims to be resolved. As a consequence, the advancing of money to personal injury claimants is highly profitable if the advances can be deceptively structured as assignments of proceeds so as to avoid the legal prohibitions against usurious interest and against making speculative investments in personal injury claims.

18. The agreement between Defendants and Plaintiffs and the agreements between Defendants and the class members, which agreements allow Plaintiffs and class members to keep the advances from Defendants regardless of the outcome of their cases and which include oppressive repayment terms, provide Plaintiffs and class members with a disincentive to settle their cases.

19. The Defendants conspired among themselves and others to engage in the actions complained of herein.

CLASS ALLEGATIONS

20. This is a class action brought pursuant to Rule 23 of the North Carolina Rules of Civil Procedure because questions of law and fact common to all members of the proposed class predominate over any questions affecting individual class members, because a class action lawsuit is superior to other available methods for fair and efficient adjudication of the controversy, and because final monetary and injunctive relief is appropriate with respect to the class as a whole.

21. The proposed class is defined as all individuals who entered into contracts with Legal Bucks similar to Plaintiffs' contracts and received advances from Defendants in the four years prior to the filing of this action and up to and including the resolution of this case.

22. Plaintiffs' counsel estimates that the proposed class numbers at least several hundred. More precise estimates depend upon information to be produced by the Defendants

during discovery.

23. The questions of law and fact which are common to the class include whether the Defendants' actions constitute usury, violate the Consumer Finance Act, and constitute unfair and deceptive trade practices; whether the agreements are illegal and void pursuant to N.C.G.S. § 16-1 and § 153-165; and whether the agreements are void as against public policy.

24. This matter is appropriately handled as a class action because of the legal, geographic, and chronological scope of Defendants' tortious conduct. If the class is not allowed to control this litigation, not only are the interests of the class members likely to be ignored, since their damages are relatively small in comparison to the cost of litigation and they are presently unaware of their legal rights, but the possibility of widely different legal results may occur.

25. Plaintiffs assert that they are adequate representatives of the class because of the nature of their factual claims. Plaintiffs are prepared to go forward with the litigation and act in the best interest of the class. Similarly Plaintiffs' counsel are experienced in class action litigation and are willing to go forward and act in the best interest of the proposed class.

26. Upon information and belief, one other litigation regarding this controversy has been commenced against Defendants: *Odell v. Legal Bucks, LLC, et al. Rockingham County Case No. 05 CVS 999*. This case may be consolidated with the *Odell* action.

FIRST CAUSE OF ACTION - USURY

27. The preceding paragraphs are incorporated herein by reference.

28. The advances that are the subject of this action were accepted by Plaintiffs and the members of the proposed class and therefore, the transactions are governed by Chapter 24 of the North Carolina General Statutes G.S. § 24-2.1 and § 24-8.

29. The Defendants' actions are loans and/or advances prohibited by N.C.G.S. § 24-2.1. The interest charged and received by Defendants from Plaintiffs and class members is greater than allowed by N.C.G.S. § 24-2.1 and § 24-8 and constitutes usury.

30. Because Defendants knowingly took, received, reserved, or charged a greater rate of interest than permitted by Chapter 24 or other applicable law, either before or after the interest accrued, Defendants should be required to forfeit the entire amount of interest set forth in the agreements, or which has been agreed to be paid thereon, and further, Defendants should be required to disgorge to Plaintiffs and members of the proposed class twice the amount of interest paid by them, pursuant to G.S. § 24-2.

SECOND CAUSE OF ACTION - CONSUMER FINANCE ACT

31. The preceding paragraphs are incorporated herein by reference.

32. The Defendants' practices, wherein they loaned less than \$10,000.00, constitute illegal lending practices and are in violation of N.C.G.S. § 53-166 in that Defendants exacted charges greater than permitted by Chapter 24 and were not licensed by the State Banking Commission.

33. The Defendants have sought to avoid the application of N.C.G.S. § 53-166(a) by device, subterfuge or pretense.

34. Pursuant to N.C.G.S. § 53-166(d) the agreements are void, and Defendants have no right to collect, receive or retain any principal or charges whatsoever with respect to the loans to Plaintiffs or class members.

THIRD CAUSE OF ACTION - UNFAIR AND DECEPTIVE TRADE PRACTICES

35. The preceding paragraphs are incorporated herein by reference.

36. Defendants' actions described herein were in or affecting commerce.

37. Defendants' action described herein constituted Unfair and Deceptive Trade Practices in violation of N.C.G.S. § 75-1.1 *et seq.*, and Plaintiffs and the class members have been damaged thereby.

FOURTH CAUSE OF ACTION - CONSTRUCTIVE TRUST

38. The preceding paragraphs are incorporated herein by reference.

39. A constructive trust should be imposed upon monies collected by Defendant from Plaintiffs and members of the proposed class, and such amounts should be returned to Plaintiffs and members of the proposed class, along with interest.

FIFTH CAUSE OF ACTION - DECLARATORY JUDGMENT

40. The preceding paragraphs are incorporated herein by reference.

41. Plaintiffs and members of the class are entitled to a declaration under the Uniform Declaratory Judgment Act, N.C.G.S. § 1-253 through 1-267, that the Defendants' practices are illegal and that the contracts are void.

SIXTH CAUSE OF ACTION - RESCISSION/RESTITUTION

42. The preceding paragraphs are incorporated herein by reference.

43. The Defendants' action in speculating in personal injury actions for profit, as described herein, are unconscionable and are void as against public policy.

44. Defendants have received money which belongs to members of the proposed class and which in equity and good conscience Defendants ought to pay to members of the proposed class, along with interest.

CLAIMS AGAINST THE DOE DEFENDANTS

45. **The preceding paragraphs are incorporated herein by reference.**

46. **The John and Jane Doe Defendants ("Doe Defendants") are, upon**

information and belief, primarily citizens of North Carolina, whose identities are unknown because the Defendants have refused to disclose them. These fictitious parties are so identified pursuant to N.C.G.S. § 1-166. When the true identities are learned, the actual individuals will be substituted for the Doe defendants.

47. The Doe Defendants are investors in Defendant LBFund I, LLC and Legal Bucks. They invested in these companies with the knowledge that the business may be illegal. In fact, the following statement, or language similar to it, was provided to these Defendants:

It is conceivable that the courts will find litigation funding to be an illegal practice and, additionally, void all outstanding advance contracts. Should this happen, an investor may lose his entire investment.

48. Knowing the business was potentially illegal the Doe Defendants have received money from LBFund I, LLC and/or Legal Bucks. This money consists of interest payments illegally charged to the Plaintiffs and putative class members. These Defendants hold these funds in constructive trust for the benefit of the Plaintiffs and putative class members.

49. Upon information and belief the Doe Defendants also claim they have direct contractual rights in the proceeds LBFund I, LLC and Legal Bucks claim they are entitled to receive from Plaintiffs and putative class members. Consequently these Defendants are, or may be, real parties in interest.

WHEREFORE, Plaintiffs pray that they have the following relief for themselves and class members:

- a. That the Court determine that this action shall proceed as a class action;

- b. That the Court determine and declare that all of the Agreements are illegal, void and unenforceable;
- c. That all class members who have paid Defendants usurious interest pursuant to the Agreements shall have and recover double damages pursuant to N.C.G.S. § 24-2;
- d. That all class members who have paid money to Defendants pursuant to the Agreements have and recover of Defendants all sums paid;
- e. That all damages be trebled pursuant to N.C.G.S. § 75-16.2;
- f. That attorney's fees be awarded pursuant to N.C.G.S. § 75-16.1;
- g. That all class members recover prejudgment interest at the legal rate on compensatory damages;
- h. That the Court permanently enjoin Defendants from engaging in the activities complained of in this action and from collecting or attempting to collect funds from Plaintiffs or the class members pursuant to the Agreements;
- i. That the Court grant a trial by jury on all issues of fact;
- j. And that the Court grant such other and further relief as may be just and proper.

This the ____ day of _____, 2009.

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