

JALIYAH MUHAMMAD,	:	
on her own Behalf and on	:	
Behalf of all Others	:	
Similarly Situated,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION:
	:	DOCKET NO: A-000558-04-T3
Plaintiff/Appellant,	:	
	:	
v.	:	INTERLOCUTORY APPEAL FROM
	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	UNION COUNTY
COUNTY BANK OF REHOBOTH BEACH	:	DOCKET NO. UNNL-0410-04
DELAWARE, EASYCASH, TELECASH	:	
AND MAIN STREET SERVICE	:	
CORPORATION, JOHN DOE AND	:	Sat Below: THOMAS LYONS, J.S.C.
JOHN ROE,	:	
	:	
	:	
Defendants/Respondents.	:	

**MOTION OF AARP, CONSUMERS LEAGUE OF NEW JERSEY
 & NATIONAL ASSOCIATION OF CONSUMER ADVOCATES
 FOR LEAVE TO FILE BRIEF *AMICI CURIAE*
 IN SUPPORT OF PLAINTIFF-APPELLANT**

Now come AARP, Consumers League of New Jersey, and National Association of Consumer Advocates ("Applicants"), by counsel, pursuant to Rule 1:13-9 of the New Jersey Rules of Court, and move the Court for leave to file a brief in the above-styled appeal as *amici curiae*.

In support of their Motion, Applicants state that they are non-profit membership organizations that devote a considerable amount of work to protecting consumers from exploitation in the credit marketplace, including advocacy for the enactment and

enforcement of strong and effective state consumer protection laws. Applicants recognize that low-income consumers, those whom mainstream lenders consider "high risk" borrowers, and those on fixed incomes often have difficulty finding credit on reasonable terms. They typically are relegated to "fringe banks," high-cost lenders, and non-traditional sources of credit where they often are subject to deceptive and unfair lending practices, such as hidden fees, exceedingly high interest rates, oppressive collection practices, and extreme default penalties. Because products in these markets, including payday loans, are particularly exploitative, Applicants have assisted in state legislative efforts to enact protections for borrowers, and have filed numerous *amicus curiae* briefs urging courts to uphold these protections.

During their long histories as consumer advocates, Applicants have observed the need for enhanced protection of consumer rights and vigilant enforcement of laws designed for this purpose. Payday loans are just one in an array of products in a burgeoning industry that targets necessitous borrowers, the very people for whose protection usury and other interest rate limits exist. Yet, the companies that make these loans historically have tried to evade these protections, initially disguising the nature of the transactions by assigning labels

other than loans to avoid disclosure and other statutory requirements. Their association with national and out-of-state federally-insured banks is just the latest in a series of efforts to circumvent these statutes. In addition, lenders in this market increasingly try to avoid public scrutiny and accountability by imposing abusive mandatory arbitration clauses that make it exceedingly difficult, if not impossible, for borrowers to pursue their legal remedies and change industry practices.

AARP is a non-partisan organization with more than 35 million members aged 50 and older, approximately 1.3 million of whom live in New Jersey. As the largest membership organization representing the interests of older Americans, AARP is greatly concerned about unfair and deceptive financial products and services targeted at vulnerable consumers, including those involving a range of credit transactions. Because older persons are disproportionately victimized by many of these practices, AARP supports laws and public policies to protect their rights and to preserve the means for them to seek legal redress when they are harmed in the marketplace. Due to concerns about abusive practices of the "fringe banking" industry AARP has published reports on the issues involved and measures needed to protect consumers, as well as a model payday loan law. See,

e.g., Sharon Hermanson & George Gaberlavage, AARP, *The Alternative Financial Services Industry* (2001), and Elizabeth Renuart, AARP, *Payday Loans: A Model State Statute* (2000). In addition, due to its interest in preserving court access to ensure consumers can seek the full range of remedies that Congress and state legislatures enacted for their benefit, AARP attorneys have represented borrowers challenging payday loans as violative of state usury, small loan, and consumer protection statutes, see, e.g., *Purdie v. ACE Cash Express, Inc.*, No. 301-CV1754-X (N.D. Tex. final settlement approved & judgment entered Dec. 11, 2003), and AARP has filed *amicus* briefs in numerous federal and state cases challenging fringe banking products and those addressing the unconscionability and unenforceability of arbitration provisions. See, e.g., *Bankwest, Inc. v. Baker*, No. 04-12420-C (11th Cir. brief filed June 23, 2004); *Hayes v. County Bank*, No. 2003-07270 (N.Y. Sup. Ct. App. Div. brief filed Apr. 1, 2004); *Discover Bank v. Shea*, 362 N.J. Super. 90, 827 A.2d 292 (Nov. 6, 2003); *AT&T v. Ting*, 319 F.3d 1126 (9th Cir. 2003), *cert. denied*, 540 U.S. 811 (2003).

Since its founding in 1900, the Consumers League of New Jersey (CLNJ) has educated consumers about the opportunities and dangers in the marketplace, and has advocated for the rights of consumers in the New Jersey legislature and in Congress. See,

e.g., Suzanne Nussbaum & James Boskey, *The Consumers League of New Jersey and the Development of Occupational Disease Legislation*, 4 Seton Hall Legis. J. 101 (1979). CLNJ is a member organization of the National Consumers League and the Consumer Federation of America, and Rutgers University Library, New Brunswick, has catalogued CLNJ's archives. CLNJ has been granted the status of *amicus curiae* in many cases, including *Perth Amboy Ironworks Inc. v. Am. Home Assurance Co.*, 118 N.J. 249 (1990), *49 Prospect St. Tenants Ass'n v Sheva Gardens*, 277 N.J. Super 449 (App. Div. 1988), *Green v. Cont'l Rentals, Inc.*, 292 N.J. Super 241 (Law Div. 1994), and the pending *Perez v. Rent-A-Center, Inc.*, Dkt. No A 3379-03T1 (N.J. Super. Ct. App. Div.). CLNJ believes that payday loans and rent-to-own contracts which exceed the 30% criminal usury limit of N.J.S.A 2C:21-19 should be subject to enforcement suits by both the state and consumers acting as private attorneys general.

The members of the National Association of Consumer Advocates ("NACA") are private, public sector and legal services attorneys, and law professors and students, whose primary practice involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its

members as well as consumers in the ongoing struggle to curb unfair and abusive business practices. From its inception, NACA has focused on issues involving abusive and fraudulent practices by businesses that provide financial and credit-related products and services, and has been concerned about their imposition of arbitration on their customers because of the expense, limitation on discovery and remedies, and inability to reverse decisions which are incorrectly made and result in injustice.

Applicants are interested in this case because its disposition will have a significant affect on the ability of numerous consumers to seek adequate redress in a range of legal disputes. As occurred here, the party with superior bargaining power typically includes an arbitration requirement in an adhesion contract. In addition to effecting a waiver of the borrower's right to a jury trial, arbitration entails a significant change in the rights and remedies available to a consumer. Of particular significance for Appellants and other consumers with relatively small amounts in dispute, the arbitration clause precludes class actions and aggregation of claims. Combined with other features of the clause, this bar makes it extremely unlikely that any individual borrower will be able to pursue a claim.

Additionally, Applicants are concerned that the effect of the clause, if enforced, will be to foreclose the possibility of any definitive adjudication of the legality of a practice designed to evade the usury laws and the protections such laws provide to vulnerable consumers.

Applicants believe their experience as consumer advocates and their particular expertise concerning the fringe banking industry and unconscionability challenges to arbitration clauses qualify them to provide the court with valuable assistance in resolving the issues presented. Applicants' discussion of the products offered by fringe lenders such as defendants, the ways in which they harm borrowers, and the arguments lenders in this market make to avoid compliance with state usury and other interest limits, will assist the Court in more fully appreciating the implications of its decision on New Jersey consumers. Applicants submit that this information also will assist the Court in understanding what consumers risk when corporations with superior knowledge include arbitration clauses in adhesion contracts and then prevent consumers from attempting to challenge those clauses and seek redress in court.

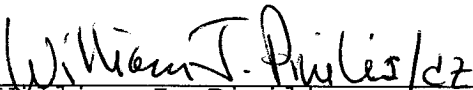
Applicants respectfully suggest, therefore, that their brief will enhance the Court's ability to render a fully informed decision and request that the Court grant this Motion and fix a

briefing schedule as provided in Rule 1:13-9.

Dated: December 16, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of a Motion of AARP, Consumers League of New Jersey & National Association of Consumer Advocates For Leave to File Brief *Amici Curiae* In Support of Plaintiff-Appellant, was served on counsel of record via Federal Express priority overnight this 16th day of December, 2004, to:

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