

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p> <hr/> <p>On Certiorari to the Colorado Court of Appeals Hon. RUSSELL E. CARPARELLI, STEVEN L. BERNARD, and KAREN S. METZGER, Judges, Case No. 07CA0582 District Court, City and County of Denver Hon. ROBERT S. HYATT, Judge Case Nos. 05CV1143 and 05CV1144</p> <hr/> <p>CASH ADVANCE and PREFERRED CASH LOANS, Petitioners/Cross-Respondents, v. STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO, and LAURA E. UDIS, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Respondents/Cross-Petitioners.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Rick Wynkoop Counsel for <i>Amici Curiae</i> Atty. Reg. # 32006 Wynkoop & Thomas P.C. 4410 Yates Street Denver, CO 80212 (720) 855-0451</p> <p><i>Of Counsel:</i> Julie Nepveu D.C. Bar No. 458305 AARP Foundation Litigation Michael Schuster D.C. Bar No. 934133 AARP 601 E Street, NW Washington, DC 20049 202-434-2060 On the Brief for <i>Amici Curiae</i></p>	<p>Case No.: 08SC639</p>
<p>MOTION FOR LEAVE TO FILE BRIEF <i>AMICI CURIAE</i> IN SUPPORT OF RESPONDENTS/CROSS-PETITIONERS</p>	

Come now the following parties, by counsel, pursuant to Colo. App. R. 29, and respectfully seek permission of the Court to file a brief in the above-styled appeal as *amici curiae* in support of Respondents/Cross-Petitioners. Interested organizations were invited to file a brief *amicus curiae* by Order of the Court, April 15, 2009. As provided in Rule 29, the brief is being conditionally filed with this Motion. The Movants represent non-profit organizations with an interest in assuring that state consumer credit laws are enforced to protect borrowers and that lenders are not permitted to disguise the true nature of their products in order to evade state regulation.

The *amici* support the enactment and enforcement of strong state laws that protect consumers from exploitation in the credit marketplace. They include AARP, Center for Responsible Lending, Consumer Federation of America, National Association of Consumer Advocates, and National Consumer Law Center.

Movants respectfully submit that their brief is desirable because it will assist the Court in evaluating the importance of upholding the Court of Appeal's finding that the Attorney General is entitled to investigate whether the practices of Cash Advance and Preferred Cash Loans violates state law and, if so, to take appropriate action to protect Colorado borrowers.

Movant’s brief describes the history and growth of the “fringe banking” industry that makes short-term loans of small amounts of money to borrowers who are particularly vulnerable to these lenders’ exploitative practices. This discussion, as well as a description of the various ruses these lenders have used over the years to evade state usury laws and other interest rate caps, provides a context for the Court to better understand the importance of not allowing lenders to impede the State’s regulatory and enforcement authority.

Interests of Organizational *Amici*

The organizational *amici* are particularly concerned about high-cost lenders and non-traditional sources of credit that target low- and moderate-income consumers and those with impaired credit who cannot access mainstream credit sources. These lenders, often referred to as the “fringe banking” or “alternative financial services” (AFS) industry, take advantage of borrowers already in financial distress by imposing exploitative terms, such as astronomical annual percentage rates (APRs), oppressive collection practices, and extreme default penalties. Organizational *amici* have litigated on behalf of borrowers and filed *amicus* briefs urging courts to enforce state laws enacted to protect borrowers from these egregious practices and to reject the various ruses lenders have created to evade these protections.

During their long histories as consumer advocates, organizational *amici* 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, and subsequently associating with national and out-of-state federally-insured banks in order to preempt interest caps in effect in the borrowers' states. The purported relationships that Cash Advance and Preferred Cash Loans claim with various tribal entities are merely another incarnation of lenders' efforts to circumvent state consumer protections.

AARP is a non-partisan, non-profit organization with nearly 40 million members, approximately 705,322 of whom live in Colorado. As the leading organization representing the interests of people aged 50 and older, AARP has a keen interest in ending unfair and deceptive practices in consumer lending since many of these practices have a disproportionate impact on older people. AARP thus supports the enforcement of

prohibitions on usurious interest rates and other oppressive terms and conditions. Due to concerns about abuses in the fringe banking market, AARP attorneys represent borrowers alleging that a payday lender that charges in excess of 700% APR is violating Pennsylvania's usury and consumer protection statutes. *King v. Advance America*, C.A. 07-cv-237 (E.D. Pa. class action compl. filed Jan. 18, 2007). *See also Purdie v. ACE Cash Express, Inc.*, No. Civ. A. 301CV1754L, 2003 WL 22976611 (N.D. Tex. Dec. 11, 2003) (represented nationwide class of borrowers alleging payday lender violated federal and state laws and partnered with a national bank to evade state usury and other laws), and *Favors v. Stewart Fin. Co.*, No. 2002-CV-55526 (Ga. Super. Ct. Fulton County filed July 9, 2002) (represented payday borrowers alleging a fraudulent, predatory scheme targeting Social Security and Supplemental Security Insurance beneficiaries). AARP also has filed *amicus curiae* briefs in numerous cases challenging fringe banking industry practices and efforts to avoid compliance with state laws. *See, e.g., BankWest, Inc. v. Baker*, 446 F.3d 1358 (11th Cir. 2006), 411 F.3d 1289 (11th Cir. 2005); *Muhammad v. County Bank of Rehoboth Beach, Del.*, 912 A.2d 88 (N.J. 2006); *Wis. Auto Title Loans, Inc. v. Jones*, 714 N.W.2d 155 (Wis. 2006).

The AARP Foundation, a 501(c)(3) organization, is AARP's affiliated charity, committed to helping the most vulnerable members of our society. Accordingly, low-income individuals, women, and minorities, and others at risk of falling into poverty in the second half of life are the primary target audiences of the Foundation's advocacy, community service and educational programs. Through its AARP ElderWatch Project, the Foundation has partnered with the Colorado Attorney General's Office to help fight the financial exploitation of older people in the State. The Project provides information to, and coordinates efforts by, the state's law enforcement offices, adult protection and mental health agencies, and organizations assisting older persons. Among the Project's activities are a toll-free hotline that provides information and assistance to older people and their caregivers; consumer alerts disseminated to law enforcement and adult protection agencies, nursing homes, independent living and assisted living facilities, and other private and non-profit organizations; collection of data on abuse and financial exploitation of older people; and development of educational materials on fraud and scams, as well as training materials and curricula for use by law enforcement personnel, prosecutors, adult protection and other agencies, older persons and their family members, and the media.

The Center for Responsible Lending (“CRL”) is a non-profit policy, advocacy, and research organization dedicated to exposing and eliminating abusive consumer lending practices, including payday lending. It conducts extensive empirical research to investigate the harms created by payday lending. One of CRL’s earliest policy successes was aiding in the successful fight to stop payday lenders from preying on North Carolina’s consumers, and in subsequent years it aided in similarly successful efforts in other states. CRL is an affiliate of Self-Help, a non-profit lender that has provided more than \$5 billion in responsible financing to help more than 50,000 low-wealth borrowers buy homes, build businesses, and strengthen community resources.

Consumer Federation of America (CFA) was established in 1967 to advance the interests of consumers through research, advocacy, and education. CFA’s membership is comprised of about 280 national, state, and local consumer groups throughout the country which, in turn, represent more than 50 million consumers. Recognizing the phenomenal growth and high cost of short-term consumer credit, CFA has made protecting the interests of individual consumers in this market a priority. Through empirical research, testimony before Congress and state legislatures, and comments on pending regulations, CFA has highlighted areas of unfair

lending practices and advocated for strengthened consumer protections and enhanced enforcement. CFA also has published a series of reports on developments in the fringe banking industry. *See, e.g.*, Jean Ann Fox & Patrick Woodall, Consumer Fed'n of Am., *Cashed Out: Consumers Pay Steep Premium to "Bank" at Check Cashing Outlets* (2006), http://www.consumerfed.org/pdfs/CFA_2006_Check_Cashing_Study111506.pdf; Jean Ann Fox & Anna Petrini, Consumer Fed'n of Am., *Internet Payday Lending: How High-priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections* (2004), http://www.consumerfed.org/pdfs/Internet_Payday_Lending113004.PDF; Jean Ann Fox, Consumer Fed'n of Am., *Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury* (2004); Jean Ann Fox & Edmund Mierzwinski, Consumer Fed'n of Am. & U.S. Pub. Interest Research Group, *Rent-A-Bank Payday Lending – How Banks Help Payday Lenders Evade State Consumer Protections* (2001).

The members of the National Association of Consumer Advocates (NACA) are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary practice and areas of specialty involve 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.

The National Consumer Law Center, Inc. (NCLC) is a national, non-profit public interest research and advocacy organization focusing on the legal needs of low-income, financially distressed, and elderly consumers. NCLC is a nationally-recognized expert on consumer credit issues, including fringe banking products, and has drawn on this expertise to provide information, legal research, policy analyses, and market insight to Congress and state legislatures, administrative agencies, and courts for over 40 years. A major focus of NCLC's work has been to increase public awareness of, and to promote protections against, high-cost loans and other forms of abusive credit extended to low-income consumers. NCLC publishes an eighteen-volume Consumer Credit and Sales Legal Practice Series, including, *inter alia*, *The Cost of Credit: Regulation, Preemption, and Industry Abuses* (4th ed. 2009). NCLC frequently is asked to appear as *amicus curiae* in consumer law cases before courts around the country and does so in appropriate circumstances.

Wherefore, *amici* respectfully request that the Court grant them leave to file the accompanying Brief as *amici curiae* in support of Respondents/Cross-Petitioners.

Date: August __, 2009

Respectfully submitted,

Rick Wynkoop
Atty. Reg. # 32006
Wynkoop & Thomas P.C.
4410 Yates Street
Denver, CO 80212
(720) 855-0451

CERTIFICATE OF SERVICE
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within Motion of AARP, Center for Responsible Lending, Consumer Federation of America, National Association of Consumer Advocates, and National Consumer Law Center to File a Brief *Amici Curiae*, was duly served upon all parties herein by depositing copies of same in the United States mail, first class mail, postage prepaid, at Denver, Colorado, this _____ day of August, 2009, to:

Edward T. Lyons, Jr., Esq.
Thomas J. Burke, Jr., Esq.
Jones & Keller, P.C.
1625 Broadway, Suite 1600
Denver, Colorado 80202

Peter Ortego, Esq.
Ute Mountain Ute Tribe
Post Office Box 128
Towaoc, Colorado 81334

Helen Padilla, Esq.
American Indian Law Center, Inc.
P.O. Box 4456
Albuquerque, New Mexico 87196

Jennifer H. Weddle, Esq.
Greenberg Traurig LLP
1200 17th Street, Suite 2400
Denver, Colorado 80202

Jill Tompkins, Esq.
American Indian Law Clinic
University of Colorado School of
Law
404 UCB
Boulder, Colorado 80309-0404

Paul Chessin, Esq.
Assistant Attorney General
Colorado Attorney General's Office
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

Rick Wynkoop
Atty. Reg. # 32006
Wynkoop & Thomas P.C.

4410 Yates Street
Denver, CO 80212
(720) 855-0451

I hereby certify that a copy of the Motion for Leave to File Brief *Amici Curiae* in Support of Respondents/Cross-Petitioners was served on this _____ day of August, 2009, by express mail overnight delivery, to the following:

Paul Chessin, Assistant Attorney General
Colorado Attorney General's Office
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

Edward T. Lyons, Jr.
Jones & Keller, P.C.
1625 Broadway, Suite 1600
Denver, Colorado 80202

Julie Nepveu
AARP Foundation
Counsel for Organizational *Amici*