

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

LILLIAN EASLEY

**Claimant,**

**VS.**

**WLCC II D/B/A**

## ARROWHEAD ADVANCE

**Respondent.**

**Case No. 01-20-0003-8154**

## STATEMENT OF CLAIM

Respondent WLCC II d/b/a Arrowhead Advance (“Respondent”) operates an illegal scheme to hide behind the facade of Native American tribes while it openly violates the usury laws of Alabama. Operating solely online and therefore available to anyone in Alabama with a computer and a bank account, Respondent made a series of loans to Claimant Lillian Easley (“Claimant” or “Ms. Easley”) in 2018 and 2019. These loans, with principal amounts varying from \$200 to \$950, carried an annual interest rate of 621.54%.

Ms. Easley files this Statement of Claim under the Alabama Small Loan Act,  
Alabama Code § 5-18-1 et seq.

## I. Parties

1. The Claimant, Ms. Lillian Easley, is an adult resident of Mobile County, Alabama.

2. WLCC II D/B/A Arrowhead Loans is an internet lender with its principal place of business stated as P.O. Box 6048, Pine Ridge, South Dakota 57770. The website through which Respondent offers its usurious loans has the following web address: <https://www.arrowheadadvance.com/arrowhead/>. The website touts its services as easy to access and available to anyone with a computer: “Let’s Get to the Point. We offer fast, easy loans. How much cash do you need?”

## **II. FACTS**

3. Usurious small loans, sometimes called “payday loans” because some lenders in this unlawful industry require borrowers to hold a job and to give the lender access to the borrowers’ bank accounts, have been an ongoing financial burden on lower-income residents of Alabama and other states for decades. Payday lending takes advantage of people’s need for money. While marketed as short-term loans for emergency cash, the loans are usually not short term. A typical borrower cannot repay the entire amount of the loan right away. Instead, to avoid default, the borrower will often roll the loan over into another loan or take out a loan from an alternative lender. As interest continues to accrue on these loans, borrowers get stuck in a vicious debt trap from which they cannot escape. Similarly, and with similar results, some borrowers pay off a payday loan only to initiate another such loan soon after the payoff. More of the borrowers’ limited resources are diverted to

interest on the payday loans, and borrowers struggle to meet their basic needs, such as food, shelter, and medical care.

4. Defendants charge over six hundred percent per annum in many instances, including the loans at issue in this case, usually on loans of a few hundred dollars. Many borrowers have found themselves unable to pay the interest back, let alone the principal. The lenders would then attempt to collect by garnishing bank accounts and taking other collection actions.

5. Statutes regulating these schemes were passed in Alabama and in other states as well. Some provisions of these statutes were intentionally enacted to avoid the toxic “rollover” scenario.

6. The Alabama Small Loan Act, Ala. Code § 5-18-1, et. seq. restricts the legal interest rate of loans of less than \$1,500 and states in relevant part:

Maximum rates of interest and charge. Every licensee under this chapter may contract for and receive as interest on any loan of money less than one thousand five hundred dollars (\$1,500) an amount at a rate not exceeding three percent a month on that part of the unpaid principal balance not in excess of two hundred dollars (\$200), and two percent a month on that part of the unpaid principal balance in excess of two hundred dollars (\$200) but less than one thousand five hundred dollars (\$1,500).

Ala. Code § 5-18-15.

7. In addition, every business making such loans in Alabama must be licensed, Ala. Code § 5-18-4(a).

8. Any loan made in violation of the Alabama Small Loan Act is void.

*Id.*, at § 5-18-4(d).

9. Nevertheless, creative high-cost lenders devised other schemes attempting to circumvent these statutes. In one scheme—the so-called “rent-a-bank” strategy—payday lenders convinced banks headquartered in states with high (or nonexistent) usury limits to form a lending venture in order to capitalize on the fact that the bank was obligated to comply only with the usury law of its home state, even for loans made elsewhere.

10. Federal banking regulators eventually shut down these “rent-a-bank” schemes. See Michael A. Stegman, Payday Lending, 21 JOURNAL OF ECONOMIC PERSPECTIVES 169, 178-9 (2007) (describing rent-a-bank scheme and regulatory reaction).

11. Some payday and high-cost lenders, ever-resourceful, developed a new method to attempt to avoid state usury laws—the “rent-a-tribe” scheme. The lending scheme at issue, in this case, is one such unlawful scheme.

12. In the rent-a-tribe scheme, the high-cost lender, operating online, associates with a Native American tribe attempting to insulate itself from federal and state law by “renting” the tribe’s sovereign legal status and its general immunity from suit under federal and state laws.

13. Like its predecessors, this scheme must fail. As courts and regulators examine the underlying relationship between the high-cost lender and the tribe, they can only conclude that the relationship between the tribe and the monied in-

terests which provide the capital for this scheme is insufficient to permit the lender to avail itself of the tribe's immunity. In virtually every such instance, it is not the tribe operating or even benefiting primarily from the usurious lending — it is the outside entity.

14. A search of the website of the Alabama Secretary of State reveals that the Respondent is not licensed to make loans in Alabama and does not have a place of business in Alabama.

15. Failure to obtain a license and failure to operate a physical place of business in Alabama are separate and discrete violations of the Alabama Small Loan Act and render any loan by such an unlicensed entity void under Alabama law.

16. Mrs. Easley has been damaged by the Respondent's violation of these provisions because she cannot visit an office or speak to anyone in Alabama regarding the usurious interest rate on the loans at issue herein. The Respondent never applied for an Alabama license for itself nor for any of the lending or loan servicing entities under its control and indeed took no action to seek to comply with Alabama law in connection with loans made to and collected from Mrs. Easley and other Alabama borrowers.

17. The United States Supreme Court, in *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987), made it clear that arbitration did not substitute arbitrators for legislatures or the Congress. Rather, it forced arbitration upon the con-

sumer as a mere forum. *McMahon* is replete with statements that it assumes arbitration will enforce all statutory rights, and that, should it not do so, the courts will make the necessary corrections:

Ordinarily, "[by] agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it only submits their resolution to an arbitral, rather than a judicial, forum."

. . . there is no reason to assume at the outset that arbitrators will not follow the law; although judicial scrutiny of arbitration awards necessarily is limited, such review is sufficient to ensure that arbitrators comply with the requirements of the statute.

. . . so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.

*Shearson/American Express v. McMahon*, 482 U.S. 220, 229-230; 232; 240 (1987) (internal citations omitted).

18. Consistent with the holdings of the United States Supreme Court in the *McMahon* case, the Eleventh Circuit Court of Appeals has held that a party must be able to vindicate her statutory rights in an arbitration proceeding: "We have held the terms of an arbitration clause regarding remedies must be 'fully consistent with the purposes underlying any statutory claims subject to arbitration.'"

*Hudson v. PIP INC.*, No. 19-11004, Google Scholar (11th Circuit 2019) (quoting *Paladino v. Avnet Comput. Techs., Inc.*, 134 F.3d 1054, 1059 (11th Cir. 1998).

## **COUNT I**

### **Declaratory Judgment; Violation of the Alabama Small Loan Act**

19. Loans for amounts greater than \$500 and up to \$1500 (such as the loan to the Claimant at issue here) are regulated in Alabama by the Alabama Small Loan Act (“ASLA”). The maximum interest that may be charged on such loans is “a rate not exceeding three percent a month on that part of the unpaid principal balance not in excess of two hundred dollars (\$200), and two percent a month on that part of the unpaid principal balance in excess of two hundred dollars (\$200) but less than one thousand five hundred dollars (\$1,500). Ala. Code (1975) § 5-18-15.

20. The loans at issue here carry principal amounts between \$200 and \$950, thus falling within the jurisdiction of the the ASLA.

21. The loans at issue here carry stated annual interest rates in excess of six hundred per cent (600%), vastly exceeding the limitation on interest imposed on such loans in Alabama by the Alabama legislature.

22. The ASLA requires every lender making loans within the ambit of the ASLA to be licensed. Ala. Code (1975) § 5-18-4.

23. The ASLA requires every lender making loans within the ambit of the ASLA to operate out of a physical location in Alabama. Ala. Code (1975) § 5-18-5-8.

24. The ASLA declares every loan made in violation of the ASLA to be unlawful, criminal in nature, and void: “(d) Penalties. Whoever violates or participates in the violation of any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars (\$500) nor less than one hundred dollars (\$100), or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court. **Any contract of loan in the making or collection of which any act shall have been done which violates this section shall be void,** and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever. Ala. Code § 5-18-4(d) (emphasis added).

25. Claimant therefore prays that the Arbitrator will enforce the provisions of the Alabama Small Loan Act and issue an Order declaring Respondent’s loan agreements to be void *ab initio*.

DATED: June 15, 2002

Respectfully submitted,

/SPG  
Steven P. Gregory

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### **CERTIFICATE OF SERVICE**

I certify that I have on the 15th day of June, 2020, uploaded the foregoing to the case management system of the American Arbitration Association, which will electronically notify and serve counsel for the Respondent.

/SPG  
Steven P. Gregory

