

CAUSE NO. 2013-60479-393

FILED TEXAS
DENTON COUNTY TEXAS
2013 APR -5 PM 4:37
SHERIDAN DEL STEVEN
DISTRICT CLERK
BY _____ DEPUTY

CONSUMER SERVICE ALLIANCE OF TEXAS, INC.,

Plaintiff,

v.

CITY OF DENTON, TEXAS

Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

393 JUDICIAL DISTRICT

DENTON COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR TEMPORARY INJUNCTION**

Plaintiff Consumer Service Alliance of Texas, Inc. ("CSAT") files this Original Verified Petition and Application for Temporary Injunction against Defendant City of Denton, Texas ("Denton" or "the City"), and in support whereof, CSAT would respectfully show the Court as follows:

I.
DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.4, CSAT requests that the Court enter a Level 3 discovery control plan tailored to the facts and issues presented in this case.

II.
PARTIES AND VENUE

2. Plaintiff Consumer Service Alliance of Texas, Inc. is a Texas non-profit corporation. CSAT is a trade association comprised of businesses that provide credit access services to consumers in Texas. CSAT advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of its members, which include multiple credit access businesses that conduct business in Denton, Texas. The interests CSAT seeks to protect in this suit are germane to the

organization's purpose (*i.e.*, to protect financial choices based on informed decision-making and personal responsibility for Texas consumers), and neither the claims asserted nor the relief requested require the participation of CSAT's individual members in this lawsuit.

3. Defendant, the City of Denton, Texas is an incorporated city in Denton County, Texas. Pursuant to section 17.024 of the Texas Civil Practice & Remedies Code, citation may be served on the City's mayor, clerk, secretary or treasurer at Denton City Hall, 215 E. McKinney Street, Denton, Texas 76201.

4. Venue is appropriate in Denton County pursuant to section 15.002(a) of the Texas Civil Practice & Remedies Code.

III. **FACTS**

5. In the 2011 legislative session, the Texas Legislature passed House Bills 2592 and 2594, both of which amended Chapter 393 of the Finance Code (the "CSO Act"). Those amendments included the creation of a new Subchapter G, which provides for the licensing and regulation of credit access businesses ("CAB's"). *See* Tex. Fin. Code § 393.601 *et seq.* (as amended). The amendments have been effective since January 1, 2012.

6. The members of CSAT that conduct business in Denton are considered CAB's under the amended CSO Act. CAB's are credit services organizations that assist consumers in obtaining extensions of consumer credit from third-party lenders. The amendments to the CSO Act require CAB's to be licensed by the State of Texas and to conduct their business under the applicable provisions of the Texas Finance Code. As amended, the CSO Act regulates the field of business in which CAB's operate.

7. The CSO Act broadly authorizes CAB's to assess fees for their services on the terms agreed upon between the CAB's and their customers:

A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

See Tex. Fin. Code § 393.602(b) (as amended).

8. On March 19, 2013, the Denton City Council passed Ordinance 2013-073 (the "Ordinance"), which purports to regulate CAB's that operate in the City.¹ The Ordinance regulates the very same activity regulated by the amended CSO Act.

9. The stated purpose of the Ordinance is to:

[P]rotect the welfare of the citizens of the city of Denton by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this ordinance establishes a registration program for credit access businesses, and imposes recordkeeping requirements on credit access businesses.

Ordinance § 1.

10. The Ordinance contains restrictions on the extensions of consumer credit that CAB's may obtain for consumers or assist consumers in obtaining. The Ordinance's restrictions on credit (the "Credit Restrictions") include the following:

(a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.

(b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:

- (1) three percent of the consumer's gross annual income; or
- (2) 70 percent of the retail value of the motor vehicle.

(c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.

¹ For the convenience of the Court, a copy of the Ordinance is attached hereto as Exhibit 1.

(d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

(e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.

(f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

Ordinance § 11.

11. The Ordinance is enforced through a penalty with a maximum fine of \$500.00 for any knowing violation, with each day of a violation deemed to be a separate offense. *See* Ordinance § 3. The Ordinance takes effect on April 9, 2013, twenty-one days after it was passed by the Denton City Council on March 19, 2013. *Id.* § 12.

IV. CAUSES OF ACTION

COUNT ONE: DECLARATORY JUDGMENT

12. CSAT incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

13. A justiciable controversy exists between CSAT and the City as to the rights and status of the parties. The declaratory judgment requested herein will resolve the controversy between the parties.

14. "The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall

contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” Texas Const. Art. 11, § 5.

15. Any immunity the City may have from suit is waived because CSAT has joined the City as a party and seeks a declaration that the Ordinance is invalid. *See Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 633–34 (Tex. 2010) (noting that governmental entities are to be joined in suits to construe their legislative pronouncements and that immunity from suit is waived in such suits) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n. 6 (Tex. 2009)); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 445–46 (Tex. 1994) (stating that governmental entities are not immune from suits seeking a construction of their legislative pronouncements); Tex. Civ. Prac. & Rem. Code § 37.006(b) (“In any proceeding that involves the validity of a municipal ordinance . . . the municipality must be made a party and is entitled to be heard . . .”).

16. CSAT seeks a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code and the Texas Declaratory Judgments Act, regarding the rights and status of the parties under the Ordinance, including the following declarations:

(a) That the Ordinance is preempted and unenforceable because it conflicts with the CSO Act, as amended.

(b) That the Ordinance’s Credit Restrictions are preempted and unenforceable because they conflict with § 393.602(b) of the CSO Act. The Credit Restrictions are preempted because they conflict with the CSO Act by prohibiting CSAT’s members from acting in a way expressly authorized by the amended CSO Act. Specifically, the CSO Act authorizes CAB’s to assess fees “as agreed to by the parties” and allows a CAB’s fees to “be calculated daily,

biweekly, monthly or on another periodic basis.” Tex. Fin. Code § 393.602(b) (as amended). The Ordinance’s Credit Restrictions, however, conflict with this express language of the CSO Act by limiting the number of installments and renewals, thereby infringing on the parties’ rights to agree to the amount and calculation of the CAB’s fees.

COUNT TWO
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS

17. CSAT incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

18. This application for temporary and permanent injunction is based on the declaratory judgment set forth above. If the Court determines that the Ordinance is preempted and thus invalid, CSAT requests that the Court issue a temporary injunction, mandating that the City not enforce the Ordinance or the Credit Restrictions found within the Ordinance. Therefore, any immunity the City may have from suit is waived because CSAT has joined the City as a party and seek a declaration that the Ordinance is invalid. *See, e.g., Tex. Lottery Comm’n*, 325 S.W.3d at 633–34.

19. CSAT is likely to prevail on the merits. CSAT asserts that the Ordinance is preempted for at least two reasons. First, the Ordinance is preempted because it conflicts with the CSO Act, by which the State regulates the same activity that the Ordinance purports to regulate. Second, the Credit Restrictions are preempted because they conflict with the CSO Act by prohibiting CSAT’s members from acting in a way expressly authorized by the amended CSO Act. Specifically, the CSO Act authorizes CAB’s to assess fees “as agreed to by the parties” and allows a CAB’s fees to “be calculated daily, biweekly, monthly or on another periodic basis.” Tex. Fin. Code § 393.602(b). The Ordinance’s Credit Restrictions, however, conflict with this

express language of the CSO Act by limiting the number of installments and renewals, thereby infringing on the parties' rights to agree to the amount and calculation of the CAB's fees.

20. Unless the City is enjoined, CSAT's members will be imminently and irreparably harmed. If the City is allowed to enforce the Ordinance and its Credit Restrictions and thereby restrict the ability of CSAT's members to obtain extensions of consumer credit for consumers or assist consumers in obtaining extensions of credit in a manner expressly permitted by Texas law, CSAT's members will suffer significant and irreparable harm and will not have an adequate remedy at law. Indeed, CSAT's members, will suffer irreparable harm, including having to (i) reinvent their business plans, (ii) restructure loans, (iii) re-format and re-print loan documents, (iv) re-format and re-write websites, and (v) forego arranging credit for customers who otherwise would have sought out the CAB's services.

21. Any harm associated with the entry of a temporary injunction is outweighed by the potential damage to CSAT and CSAT's members and their customers.

22. CSAT is willing and able to post a bond in an amount the Court deems appropriate.

23. For the foregoing reasons, CSAT requests that this Court, upon notice and hearing, issue a temporary injunction, mandating that the City not enforce the Ordinance or the Credit Restrictions found within the Ordinance. CSAT further requests that, upon final hearing, the Court issue a permanent injunction prohibiting the City from enforcing the Ordinance and the Credit Restrictions.

V. ATTORNEY FEES

24. CSAT incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

25. CSAT has retained the undersigned counsel to represent it in this action and have agreed to pay such counsel their reasonable and necessary attorney fees. CSAT seeks recovery of its reasonable and necessary attorney fees, costs, and expenses through trial and all appeals, pursuant to sections 37.009 of the Texas Civil Practice & Remedies Code.

VI.
JURY DEMAND

26. CSAT demands a jury trial on all questions so triable.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Consumer Service Alliance of Texas, Inc. respectfully prays and requests:

1. That this Court declare, pursuant to the Uniform Declaratory Judgment Act, sections 37.001 *et seq.* of the Texas Civil Practice & Remedies Code, that:

(a) The Ordinance is preempted and unenforceable because it conflicts with the CSO Act, as amended.

(b) The Ordinance's Credit Restrictions are preempted and unenforceable because they conflict with § 393.602(b) of the CSO Act.

2. That a temporary injunction be issued, mandating that the City not enforce the Ordinance or the Credit Restrictions found within the Ordinance;

3. That the Court set an injunction bond in the amount it deems appropriate;

4. That the Court set a hearing on CSAT's request for a temporary injunction;

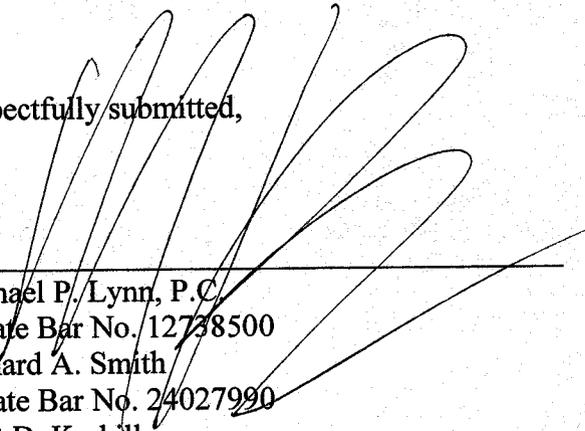
5. That a permanent injunction be ordered upon final trial of this cause to prevent the City from enforcing the Ordinance or the Credit Restrictions found within the Ordinance;

6. That the Court award CSAT its reasonable and necessary attorney fees, costs, and expenses; and

7. That CSAT be awarded such other and further relief, both special and general, at law or in equity, to which it may show itself to be justly entitled.

DATED: April 5, 2013

Respectfully submitted,



Michael P. Lynn, P.C.
State Bar No. 12738500

Richard A. Smith
State Bar No. 24027990

Kent D. Krabill
State Bar No. 24060115

LYNN TILLOTSON PINKER & COX, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Telephone: 214.981.3800
Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF CONSUMER
SERVICE ALLIANCE OF TEXAS, INC.**

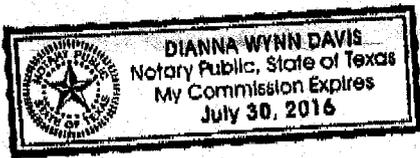
VERIFICATION

STATE OF Texas §
COUNTY OF Travis §
§

Before me personally appeared Tim J. Von Kennel, Executive Director for Plaintiff Consumer Service Alliance of Texas, Inc., and certifies that he has read Plaintiff's Original Petition and Application for Temporary Injunction, and states that the facts stated therein are within his personal knowledge and are true and correct.

Tim J. Von Kennel
Tim J. Von Kennel

SWORN TO AND SUBSCRIBED BEFORE ME on April 5, 2013, to certify which witness my hand and seal of office.



Dianna Wynn Davis
Notary Public, State of Texas

Dianna Wynn Davis
Printed Name of Notary

My Commission Expires: July 30, 2016

ORDINANCE NO. 2013-073

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REQUIRING REGISTRATION OF CREDIT ACCESS BUSINESSES; DEFINING TERMS; ESTABLISHING A REGISTRATION FEE; IMPOSING RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT MADE BY CREDIT ACCESS BUSINESSES; PROVIDING RECORDKEEPING REQUIREMENTS; PROVIDING DEFENSES; PROVIDING A PENALTY NOT TO EXCEED \$500; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

Credit Access Businesses

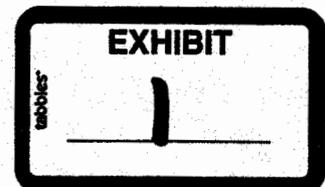
SECTION 1. Purpose of Ordinance.

The purpose of this ordinance is to protect the welfare of the citizens of the city of Denton by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this ordinance establishes a registration program for credit access businesses, and imposes recordkeeping requirements on credit access businesses.

SECTION 2. Definitions.

In this ordinance:

- 1) **Certificate of Registration** means a certificate of registration issued by the director under this ordinance to the owner or operator of a credit access business.
- 2) **Consumer** means an individual who is solicited to purchase or who purchases the services of a credit access business.
- 3) **Credit Access Business** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 4) **Deferred Presentment Transaction** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 5) **Director** means the director of the department designated by the City Manager to enforce and administer this ordinance and includes any representatives, agents, or department employees designated by the director.
- 6) **Extension of Consumer Credit** has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.
- 7) **Motor Vehicle Title Loan** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.



- 8) **Person** means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.
- 9) **Registrant** means a person issued a certificate of registration for a credit access business under this ordinance and includes all owners and operators of the credit access business identified in the registration application filed under this ordinance.
- 10) **State License** means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 3. Violations; Penalty.

a) A person who knowingly violates a provision of this ordinance, or who fails to perform an act required of the person by this ordinance, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

b) An offense under this ordinance is punishable by a fine of not more than \$500.

c) The penalties provided for in Subsection (b) are in addition to any other enforcement remedies that the city may have under city ordinances and state law.

SECTION 4. Defense.

It is a defense to prosecution under this ordinance that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 5. Registration Required.

A person commits an offense if the person acts, operates, or conducts business as a credit access business without a valid certificate of registration. A certificate of registration is required for each physically separate credit access business.

SECTION 6. Registration Application.

a) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the director. The application must contain the following.

1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.

2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business.

3) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and other persons with a financial interest in the credit access business, and the nature and extent of each person's interest in the credit access business.

4) A copy of a current, valid state license held by the credit access business.

5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Denton Development Code.

6) A non-refundable application fee of \$50.

b) An application or registrant shall notify the director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.

SECTION 7. Issuance and Display of Certificate of Registration; Presentment Upon Request.

a) The director shall issue to the applicant a certificate of registration upon receiving a completed application pursuant to Section 6 hereof.

b) ~~A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the director or any peace officer for examination.~~

SECTION 8. Expiration and Renewal of Certificate of Registration.

a) A certificate of registration expires on the earlier of:

1) one year after date of issuance; or

2) the date of expiration, revocation, or other termination of the registrant's state license.

b) A certificate of registration may be renewed by making application in accordance with Section 6. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

SECTION 9. Nontransferability.

A certificate of registration for a credit access business is not transferable.

SECTION 10. Maintenance of Records.

a) A credit access business shall maintain a complete set of records of all extensions of consumer credit made by the credit access business, which must include the following information:

- 1) The name and address of the consumer.
- 2) The principal amount of cash actually advanced.
- 3) The documentation used to establish a consumer's income under Section 11.

b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code, as amended.

d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business.

SECTION 11. Restrictions on Extensions of Consumer Credit.

a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.

b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:

- 1) three percent of the consumer's gross annual income; or
- 2) 70 percent of the retail value of the motor vehicle.

c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.

d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the extension of consumer credit. An

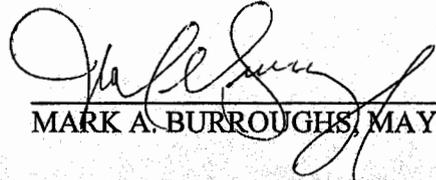
extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.

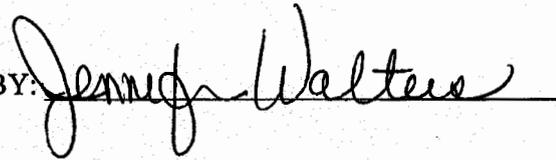
f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

SECTION 12. This ordinance shall become effective twenty-one (21) days from the date of its passage and approval.

PASSED AND APPROVED this the 19th day of March, 2013.


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 