IN THE FOURTH DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

George D. Johnson, Jr.; William M. Webster, IV; James W. Whatley; Monica L. Allie; Wayne W. Hall; and David Gallen,

CASE NO: 4D08-2740

Appellants,

vs.

Gerald Betts and Donna Reuter, on behalf of themselves and others similarly situated,

Appellees.
_____/

On Non-Final Appeal from the Fifteenth Judicial Circuit,
in and for Palm Beach County, Florida
Case No. 004-CA-008164 MB-AG

ANSWER BRIEF OF APPELLEES GERALD BETTS AND DONNA REUTER

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Rules

STATEMENT OF CASE AND FACTS

Appellees/Plaintiffs, Donna Reuter and Gerald Betts, brought a class action against: 1) Advance America, Cash Advance Centers, Inc. (appellant in case no. 4D08-2739), a Delaware corporation; 2) its subsidiary, Advance America, Cash Advance Centers of Florida, Inc.; and 3) individuals who acted as officers, directors, and/or employees of one or both of the corporate Defendants, namely Steve A. McKenzie and Brenda McKenzie[1] (appellants in case no. 4D08-2738), and George D. Johnson, Jr.; William Webster, IV; James W. Whatley; Monica L. Allie; Wayne W. Hall; and David Gallen (appellants in this case), in response to the Defendants' unlawful scheme of charging and collecting unconscionably usurious interest on consumer "payday" loans. (Appellees' Appendix ("A"), Tab 4). Pursuant to written agreements, Defendants advanced money to Florida consumers in exchange for checks made out in amounts greater than the cash advances with the understanding that Defendants would not cash the checks for a certain period of time, usually two weeks or until the customer's next payday. (A4 ¶¶21, 24). Defendants collected exorbitant, usurious interest on these loans,[2] ranging upward from annual percentage rates of 260%. (A4 ¶¶22, 31).

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[1] Since the filing of Plaintiffs' lawsuit, Steve and Brenda McKenzie divorced and Brenda McKenzie is now known as Brenda Lawson. (A 28, p. 8; A 29, p. 10).

[2] The Florida Supreme Court has held that such transactions, called "deferred presentment" transactions, constitute loans subject to Florida's prohibitions against

In the class action, Plaintiffs allege that by making these loans to Florida consumers, Defendants acted in violation of both Chapter 687 of the Florida Statutes, particularly the prohibition against loan sharking in section 687.071, and the Florida Deceptive and Unfair Trade Practices Act. (A4, pp. 13-15). Plaintiffs also allege that the parent Advance America corporation and the individual Defendants conspired and participated with each other to operate the subsidiary corporation, which is an illegal enterprise, in order to intentionally engage in the criminal enterprise of collecting on these unlawful debts and are all, therefore, liable under the Florida Civil Remedies for Criminal Practices Act ("civil RICO Act"). (A4, pp. 15-16).

The individual Defendants and the parent corporation moved to dismiss, *inter alia*, for lack of personal jurisdiction. (A6; A7; A15). Discovery limited to the issue of jurisdiction has revealed that each Defendant has significant contacts with Florida, sufficient to subject each Defendant to personal jurisdiction in the state.

The parent Advance America corporation was the brainchild of Defendants Webster and Johnson who decided to start a cash advance business after holding discussions in Ft. Lauderdale, Florida, where Johnson lived. (A8, p. 13; A17, pp. 7-8; A23, p. 93; A24, pp. 15-16; A27, p. 24). Both of them made a capital

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usury. *See McKenzie Check Advance of Florida, LLC v. Betts*, 928 So. 2d 1204, 1211 (Fla. 2006).

investment in the parent company, along with Defendants Steve and Brenda McKenzie, who were already engaged in the payday loan business in Florida. (A9; A10; A22, p. 24; A23, pp. 29, 56; A25, p. 24; A27, pp. 10-11, 18-19; A28, pp. 13-15, 17-18, 19, 26-27, 31, 33, 40-41, 44-45, 54, 59-60, 62-63, 67-68; A29, pp. 38, 80). Initially, Johnson invested between 3 to 3.5 million dollars, the McKenzies invested about 1.5 million dollars, and Webster invested about 1 million dollars in the parent company. (A24, pp. 67-69, 72). Their plan was to use this initial investment to create a "national footprint" and open about 200 cash advance stores in various states, including Florida. (A24, p. 70; A26, p. 9).

The Advance America founders were undoubtedly confident that they would be able to quickly implement this plan because two members of their team, Steve and Brenda McKenzie, possessed extensive expertise in the area of payday lending. The McKenzies owned and operated a payday lending company called McKenzie Check Advance, which ran check cashing stores in various states, including Florida, and was eventually purchased by Advance America. (A28, pp. 13-15, 17-18, 19, 31, 33, 40-41, 44-45, 54, 59-60, 62-63, 67-68). This expertise was likely the reason that Defendant Johnson met with Steve McKenzie prior to deciding to enter the payday lending business. (A27, pp. 6-7). Defendants Johnson and Webster benefited from the McKenzies' expertise by observing operations at National Cash Advance, one of the McKenzies' payday lending

businesses (which was later purchased by Advance America), in preparation of operating Advance America. (A17, pp. 9-10, 13; A18, pp. 82-84; A27, pp. 6-7; A28, pp. 23-24, 43).

The plan of the Advance America founders to open payday lending stores throughout the country was quickly implemented. Advance America first opened stores in North Carolina and then Ohio. (A17, p. 13; A23, p. 59; A24, pp. 65-66). Florida stores were opened within 3 to 4 months of the creation of the parent Advance America corporation, and within a year about 60 stores were operating in Florida. (A17, p. 13; A24, pp. 65-66; A25, pp. 18-19, 43; A26, p. 8). That number increased to 96 stores by the following year. (A25, pp. 19, 43). The objective of operating these stores was to make money for the shareholders of the parent Advance America corporation. (A28, p. 78). Profits from the Florida stores were ultimately transferred to bank accounts maintained by the parent company. (A8, p. 8; A26, p. 76).

The parent corporation hired Defendant Gallen, a Florida resident, specifically to open the Florida stores. (A19, ¶5; A21, p. 60; A24; p. 65; A25, pp. 4, 13). Gallen was hired in September of 1997 as regional director of Florida even though Advance America's first Florida store was not opened until March of 1998. (A25, pp. 16-18, 40). He helped open the company's Florida stores by investigating the laws of Florida at the request of Defendant Whatley, specifically

laws regarding debt collection. (A21, pp. 18, 24; A25, p. 12). Gallen obtained legal advice and copies of Florida laws from Defendant Allie as part of this endeavor. (A21, pp. 25, 59).

As regional director, Gallen supervised eight divisional directors and 88 branch managers, all of whom were located in Florida. (A18, pp. 28, 30-31; A21, 35-37; A25, p. 12). Along with Defendant Whatley, the executive vice president of operations for the parent Advance America corporation, Gallen participated in the decision to open new Florida stores by reviewing sites recommended by the real estate department and signing off on those locations. (A18, p. 40; A21, p. 38; A25, p. 14; A26, p. 8). Defendant Gallen also hired district managers and store personnel in Florida, advised the divisional directors of the company's policies and procedures, oversaw employee training and store operations, and visited each of the Florida stores within his district approximately once per quarter to talk with the store managers. (A18, p. 31; A21, pp. 81-82; A25, p. 14). Eventually, Gallen was promoted to vice president of the parent company and given oversight of operations in both Florida and South Carolina. (A25, p. 42).

The operation and growth of Advance America's payday loan business is demonstrated by the parent company's prospectus, which states:

> With 2,290 payday cash advance centers as of September 30, 2004, we operate the largest network of payday cash advance centers in the United States. Our payday cash advance centers are marketed through local payday cash advance center marketing, supplemented by

> television and print advertising, direct mail marketing, yellow pages advertising and through other media. . . . We try to locate our payday cash advance centers in highly visible, accessible locations and attempt to operate during convenient hours for our customers. Normal business hours of our payday cash advance centers are from 10:00 a.m. until 6:00 p.m., Monday through Friday, and, in most states, from 10:00 a.m. until 3:00 p.m. on Saturday. We typically locate our payday cash advance centers in middle-income shopping areas with high retail activity. Other tenants in these shopping areas typically include grocery stores, discount retailers and national video rental stores. By using consistent signage and design at our payday cash advance centers, we hope to increase our brand recognition. As of September 30, 2004, we operated 2,182 payday cash advance centers under the "Advance America" brand and 108 payday cash advance centers under the "National Cash Advance" brand. We intend to rebrand the remaining 108 "National Cash Advance" brand payday cash advance centers as "Advance America" brand payday cash advance centers, although we have no specific timetable for doing so.

(A30). This prospectus demonstrates that the parent company controls the operations of its subsidiaries that run the payday lending stores throughout the country, including where those stores are located, how they are marketed, and what hours they keep. The parent company also "monitor[s] compliance by [its] payday cash advance centers with applicable federal and state laws and regulations" by conducting "unannounced audits of [its] payday cash advance centers" at least once per year. (A30). And the parent company covered expenses for its Florida subsidiary and profits from the Florida subsidiary flowed to the parent. (A21, p. 147; A26, pp. 76, 79; A32, p. 10).

It was easy for the parent Advance America corporation to control the operations of the Florida subsidiary because the same individuals ran both

companies. (A25, pp. 40-41). The shareholders of each company were the same, (A24, pp. 131-132), as were most members of the boards of directors, (A32, p. 10). Defendant Johnson was on the board of directors of both the parent and subsidiary corporations, serving as the initial chairman of the board. (A9; A23, p. 58; A24, p. 58; A32, p. 10). Defendant Webster was president, CEO, and on the board of directors of both the parent and subsidiary corporations. (A10; A17, pp. 11, 21-22; A18, pp. 18, 20, 28, 31, 53, 72; A21, p. 85; A23, p. 155; A24, p. 58; A32, p. 10). Defendant Whatley served as both vice president of operations and executive vice president of operations of the parent company and he was responsible for the management and operations of the subsidiary. (A9; A10; A11, pp. 5-7; A12; A13; A32, p. 10). Defendant Hall was vice president and secretary of both the parent and subsidiary corporations. (A14, p. 5; A26, p. 14; A32, p. 10). Defendant Allie was vice president of legal affairs for the parent company and assistant secretary of the subsidiary. (A13; A16, pp. 71-72; A32, p. 10). And Defendant Gallen was regional director of operations for the parent company and responsible for the operations and management of the subsidiary. (A9; A10; A11; A12; A13; A25, p. 45; A32, p. 10).

A goal of the parent Advance America corporation was to open as many Florida stores as feasible, (A25, pp. 19-20), and it controlled and profited from the operation of those Florida stores. Although Defendant Gallen was paid by the

parent company, his job duties were strictly limited to working with the Florida stores. (A21, p. 60; A25, pp. 17-18, 45). And Defendant Whatley, who also received his salary from the parent company, established the operational procedures for the Florida stores. (A18, p. 53; A21, pp. 38, 67-68). Daryl Weaver, vice president of operations for the parent company, developed the application form used by Florida consumers requesting payday loans and provided Defendant Gallen with the repayment formula to be used—i.e., that the company would loan a customer 80% of his weekly gross income for repayment within two weeks. (A21, pp. 21, 41, 71-73, 77). Whatley provided Gallen with updated forms when the company changed the terms and conditions under which it would make payday loans. (A21, pp. 131-132).

Further, officers and directors of the parent corporation frequently traveled to Florida and communicated with Florida residents in the operation of their business, and even lobbied in Florida in an attempt to obtain favorable laws and legalize their lending business. Defendant Webster traveled to Florida to inspect business locations for the subsidiary corporation and signed numerous leases for Florida properties. (A17, p. 17-18; A21, pp. 89-90). He attended meetings with regulatory and licensing agencies in Florida, traveled to Florida to meet with employees of the Florida Department of Banking and Finance, and communicated with employees of the Department via telephone and in writing. (A10; A17, pp.

15-16). Additionally, Defendant Webster met or spoke with Florida legislators and their staff during 1997 and 1998, appeared in Florida to testify before legislative committees regarding pending legislation on three separate occasions, and was otherwise involved in the parent company's effort to lobby for favorable laws in Florida. (A10; A16, Plaintiffs' Exhibits 5-6; A24, pp. 189-197).

Defendant Whatley at one time was responsible for the operations of the company in Florida and traveled to Florida approximately once per quarter to supervise those operations. (A11; A18, pp. 18, 20, 28, 31, 41, 53, 72, 93). During these visits, he conducted "a multitude of operational duties" like making sure the stores were open and staffed, making sure the staff was dressed appropriately, and making sure the staff knew how to operate the system. (A18, p. 93). On occasion, Whatley also talked to Florida state officials that visited the Florida store locations. (A18, pp. 91-93).

Defendant Johnson lived in Florida at the time the company was formed and discussed company business with Defendant Webster and management personnel while he was in Florida. (A23, pp. 94-95).

Defendant Hall, who was initially hired as the parent company's chief financial officer, and served at various times as the company's vice president, secretary, comptroller, and director of finance, filed regulatory forms in Florida required by the state for the issuance of business licenses and attended an Advance

America regional meeting held by the company in Marathon, Florida. (A14, pp. 5-6; A26, pp. 6, 13, 40, 42).

Defendant Allie worked as the parent Advance America corporation's Director of Government and Legal Affairs and served as its general counsel. (A8; A13; A16, pp. 3-5, 11-12). Her job duties consisted of ensuring the company had the state licensing necessary for its operations, which included securing licenses for the operation of the subsidiary Advance America of Florida. (A13; A16, p. 12). In carrying out these duties, Allie communicated with Florida regulators, met with officials of Florida's Department of Banking and Finance regarding licensing issues during periodic visits to Florida, and met with lobbyists while in Florida. (A13; A16, pp. 17, 19, 35-36). She also approved the company's payment to Florida lobbyists, periodically attended meetings and participated in telephone calls with Florida legislators and their representatives, went on site visits in Florida with lobbyists and legislators, and attended industry conferences in Florida. (A13; A16, pp. 41-42, 56-58, 65-68). Allie executed leases in the state of Florida in her corporate capacity and participated as outside counsel for the Florida subsidiary, as well as serving at its assistant secretary. (A13).

The parent Advance America corporation's involvement with Florida did not end with the opening of stores in the state. The objective of operating these stores was to make money for the shareholders of the parent Advance America company.

(A28, p. 78). In furtherance of this objective, the parent company held meetings in Spartanburg, South Carolina, about once every other month at which each of the regional directors was present, including directors of the subsidiary company and directors of regions other than Florida. (A21, p. 165-166; A25, pp. 21-22). These meetings were usually attended by Defendants Gallen, Webster, Whatley, and Allie. (A21, p. 174; A25, p. 22). The parent company also retained a lobbyist, which it paid between $10,000 and $15,000 a month, to work on behalf of Advance America before the Florida legislature and cabinet and with the Comptroller's office to develop rules and legislation favorable to the company's business in Florida. (A16, Plaintiffs' Exhibits 1-9).

Several of the individual Defendants have also had contacts with Florida in their private capacities. Defendant Whatley has owned a home in Florida, held a bank account in Florida, and entered into personal contracts in the state of Florida. (A11). Defendant Gallen is a Florida resident that has owned a home, held bank accounts, paid taxes, and entered into personal contracts in Florida. (A12; A24, p. 4). Defendant Johnson resided in Fort Lauderdale, Florida at the time the parent company was formed, and he paid Florida property taxes and held a Florida bank account. (A9, p. 6).

With the foregoing evidence in the record, the trial court held a one-hour hearing on Defendants' motions to dismiss at which the parties argued the relevant

legal issues at length. Rather than rule from the bench, the Honorable Judge Hoy took the matter under advisement. (A35, p. 52). A little more than a month later, the trial court entered a written order denying Defendants' motions to dismiss. (A1). Thereafter, the parent Advance America corporation, Steve and Brenda McKenzie, and the remaining individual Defendants took separate non-final appeals under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i), which permits interlocutory appeals of non-final orders that determine "the jurisdiction of the person." (A2; A35; A36).

Plaintiffs' motion to consolidate the three appeals, even just for record purposes, was denied, but the Court ordered *sua sponte* that the appeals be assigned to the same panel.

SUMMARY OF ARGUMENT

I. Defendants Johnson and Gallen are subject to personal jurisdiction in Florida as resident defendants because Plaintiffs have alleged that Johnson and Gallen are Florida residents and neither defendant has refuted these allegations with an affidavit.

II. Plaintiffs' allegations and the record evidence demonstrate that the individual Defendants are subject to personal jurisdiction in Florida because they have been engaged in a general course of business activity in Florida for pecuniary benefit, subjecting them to jurisdiction under Florida statute section 48.193(1)(a); they have committed a "tortious act" in Florida, subjecting them to jurisdiction under 48.193(1)(b); and they have engaged in substantial and not isolated activity within Florida, subjecting them to jurisdiction under 48.193(2).

III. Plaintiffs' allegations and the record evidence demonstrate that each individual Defendant engaged in substantial activity in the state of Florida, well-exceeding the minimum contacts required by due process. Subjecting the individual Defendants to personal jurisdiction in Florida, therefore, comports with due process of law.

ARGUMENT

THE TRIAL COURT CORRECTLY DETERMINED THAT THE INDIVIDUAL DEFENDANTS ARE SUBJECT TO PERSONAL JURISDICTION IN FLORIDA.

Plaintiffs' allegations and the record evidence demonstrate that the individual Defendants are subject to personal jurisdiction in Florida under the long-arm statute because they conducted business in Florida, subjecting them to jurisdiction under section 48.193(1)(a), Florida Statutes; committed a tortious act in Florida, subjecting them to jurisdiction under 48.193(1)(b); and engaged in substantial and not isolated activities in Florida, subjecting them to jurisdiction under 48.193(2). Furthermore, for purposes of jurisdictional analysis, Defendants Johnson and Gallen are Florida residents and do not, therefore, fall under the protection of the long-arm statute. Finally, each of the individual Defendants has sufficient minimum contacts with Florida to satisfy the due process clause. Thus, the Court should affirm the trial court's denial of the individual Defendants' motion to dismiss for lack of personal jurisdiction.

When determining whether it has jurisdiction over a nonresident defendant, a Florida court must conduct a two-step analysis. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). First it must find that there are sufficient facts to bring the case within the purview of Florida's long-arm statute. *Renaissance Health Pub., LLC v. Resveratrol Partners, LLC*, 982 So. 2d 739, 741

(Fla. 4th DCA 2008). Then it must determine "whether there are sufficient 'minimum contacts' to satisfy due process requirements." *Id*.

"Initially, the plaintiff may seek to obtain jurisdiction over a nonresident defendant by pleading the basis for service in the language of the statute without pleading the supporting facts." *Venetian Salami*, 554 So. 2d at 502 (citations omitted). By filing a motion to dismiss on the ground of lack of personal jurisdiction, a defendant does nothing more than raise the legal sufficiency of the pleadings. *Id*. (citing *Elmex Corp. v. Atl. Fed. Savs. & Loan Ass'n*, 325 So. 2d 58 (Fla. 4th DCA 1976)). "A defendant wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of minimum contacts must file affidavits in support of his position." *Id*. Allegations not countered by evidence presented by the defendant are accepted as true. *Nida Corp. v. Nida*, 118 F. Supp. 2d 1223, 1227 (M.D. Fla. 2000) (citing *Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1215 (11th Cir.1999)).

A. Defendants Johnson and Gallen are subject to personal jurisdiction in Florida as resident defendants.

Defendants Johnson and Gallen are subject to personal jurisdiction in Florida as resident defendants because Plaintiffs have alleged that Johnson and Gallen are Florida residents and neither defendant has refuted these allegations with an affidavit. Thus, the long-arm statute, which applies only to *nonresident*

defendants, is not part of the jurisdictional analysis as to Defendants Johnson and Gallen.

Florida circuit courts have personal jurisdiction over all Florida residents. *Haueter-Herranz v. Romero*, 975 So. 2d 511, 516 (Fla. 2d DCA 2008); *Davis v. State*, 928 So. 2d 442, 448 (Fla. 5th DCA 2006) (noting "the circuit courts have personal jurisdiction over residents of Florida"). The long-arm statute applies only when a nonresident defendant is sued. *Haueter-Herranz*, 975 So. 2d at 516. Plaintiffs alleged in the complaint that Defendants Gallen and Johnson are Florida residents. (A4, ¶¶ 13, 16). Neither Defendant came forward with an affidavit to contest these allegations. Plaintiffs also presented evidence that Gallen and Johnson were Florida residents during the operative time in the complaint. (A9; A12; A19, ¶5; A21, p. 60; A23, p. 93; A25, p. 4; A27, p. 24). Neither Defendant came forward with an affidavit to contest these allegations. Because the trial court was required to take Plaintiffs' allegations as true, *Nida*, 118 F. Supp. 2d at 1227 (citation omitted), and Plaintiffs went beyond what was legally required by presenting evidence in support of those allegations, the trial court was able to properly determine that Defendants Gallen and Johnson are subject to personal jurisdiction in Florida without even applying the long-arm statute. *See Snyder v. McLeod*, 971 So. 2d 166, 168 (Fla. 5th DCA 2007) (finding allegation in complaint

that defendant was Florida resident at the time of the accident was "sufficient to establish personal jurisdiction over" defendant).

The individual Defendants argue that even though Defendant Gallen is admittedly a Florida resident, the causes of action alleged against him are not cognizable because the claims are based on his corporate, rather than personal, actions. Thus, Defendants argue the trial court should have dismissed the allegations against Defendant Gallen for failure to state a claim upon which relief can be granted. The trial court's failure to do so, however, is not reviewable in this non-final appeal. In this non-final appeal, the Court's jurisdiction is limited by Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i) to a review of non-final orders that determine "the jurisdiction of the person." *See Kountze v. Kountze*, 2008 WL 5191571, *3 (Fla. 2d DCA Dec. 12, 2008) (noting there is "no rule permitting review of nonfinal orders that determine whether a complaint states a cause of action"). Defendants' other challenges to the trial court's denial of their motion to dismiss will have to wait until plenary appeal.

B. Plaintiffs' allegations and the record evidence demonstrate that the case against the individual Defendants falls within the purview of Florida's long-arm statute.

Plaintiffs' allegations and the record evidence demonstrate that the individual Defendants are subject to personal jurisdiction in Florida because they have been engaged in a general course of business activity in Florida for pecuniary

benefit, subjecting them to jurisdiction under 48.193(1)(a); they have committed a "tortious act" in Florida, subjecting them to jurisdiction under 48.193(1)(b); and they have engaged in substantial and not isolated activity within Florida, subjecting them to jurisdiction under 48.193(2).

1. § 48.193(1)(a), Fla. Stat.—Conducting business in Florida

One way that a nonresident defendant can be subject to personal jurisdiction in Florida is by "[o]perating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state." § 48.193(1)(a).[3] If the collective actions of a defendant "show a general course of business activity in the State for pecuniary benefit" the requirements of this statute are satisfied. *Dinsmore v. Martin Blumenthal Assocs.*, 314 So. 2d 561, 564 (Fla. 1975).

[3] Appellants contend that Plaintiffs explicitly conceded at the hearing before the trial court that they are relying solely on 481.193(1)(b) to subject the individual Defendants to personal jurisdiction in Florida. *See* Initial Brief, p. 7 n.3. While Plaintiffs did not assert 481.193(1)(a) as their primary ground below, they did raise this basis at the hearing and in their memorandum in opposition to Defendants' Motions to Dismiss (A35, pp. 15-23 of transcript; A20, pp. 12-13). Nevertheless, even if Plaintiffs had not raised 481.193(1)(a) below, the Court could affirm the trial court's ruling on this basis pursuant to the tipsy coachman doctrine. *See Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999) ("[I]f a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.").

a. Founders/Shareholders

Plaintiffs alleged that Defendant Johnson was a founder of both the parent and subsidiary Advance America corporations and that both Johnson and Defendant Webster are shareholders of both corporations. (A4, ¶¶ 13-14). Defendants did not present affidavits to refute these allegations. The record evidence supports Plaintiffs allegations and demonstrates that Johnson and Webster were founders and initial shareholders of both the parent and subsidiary corporations. (A8, p. 13; A9; A10; A17, pp. 7-8; A22, p. 24; A23, pp. 29, 56, 93; A24, pp. 15-16, 131-132; A25, p. 24; A27, pp. 10-11, 18-19, 24; A28, pp. 26-27; A29, pp. 38, 80). Their initial investments were substantial in that Johnson invested at least three million dollars and Webster invested about one million dollars. (A24, pp. 67-69, 72).

At the outset, Johnson and Webster planned that the parent company would open and operate as many stores in Florida as possible with the objective that they would be the ones profiting from the payday loans made to Florida consumers. (A24, p. 70; A26, p. 9; A28, p. 78). Johnson was a Florida resident when he and Webster started the parent company and conducted company business from Florida. (A23, pp. 94-95). Webster, although not a resident, took a very active role in setting up the business in Florida. He traveled to Florida to inspect potential sites for stores, signed Florida leases, attended meetings with Florida state

officials regarding Florida operations, and even testified before Florida legislative committees regarding pending legislation that would affect the business. (A10; A17, p. 15-18; A21, pp. 89-90; A24, pp. 189-197).

Viewing the collective actions of Defendants Johnson and Webster, it is clear that they engaged in a general course of business activity in Florida for pecuniary benefit by operating, conducting, engaging in, or carrying on a business or business venture in this state. *See Wm. E. Strasser Const. Corp. v. Linn*, 97 So. 2d 458, 459-60 (Fla. 1957) (finding defendants were subject to personal jurisdiction in Florida because their acts of acquiring land in Florida and entering into a contract for the construction of an apartment building amounted to defendants engaging in a business venture in state of Florida).

Appellants argue that the Court cannot consider the individual Defendants' actions to be their own for purposes of personal jurisdiction analysis because the Defendants were acting as officers and directors of the parent and subsidiary corporations, rather than of their own accord. That argument is inapposite here, however, when it is the very act of operating and engaging in this payday loan business in Florida that Plaintiffs allege is a violation of the civil RICO Act. *See Edelstein v. Marlene D'Arcy, Inc.*, 961 So. 2d 368, 372 (Fla. 4th DCA 2007) (holding corporate shield doctrine did not apply because corporate officer was "alleged to have committed intentional torts expressly aimed at Florida"); *Thorpe*

v. Gelbwaks, 953 So. 2d 606, 611-12 (Fla. 5th DCA 2007) (holding corporate shield doctrine did not apply because corporate officer was alleged to have committed fraudulent or intentional misconduct); *Molenda v. Hoechst Celanese Corp.*, 60 F. Supp. 2d 1294, 1300 (S.D. Fla. 1999) (noting corporate veil is pierced when corporation is formed for illegal purpose).

Plaintiffs allege in the complaint that the subsidiary corporation is an illegal "enterprise" under the civil RICO Act, (A4, ¶66 (citing § 772.103, Fla. Stat.)), and that the parent company and the individual Defendants knowingly operated this enterprise in order to collect unlawful debt in violation of section 772.103(2). (A4, ¶¶ 67-68). Plaintiffs further allege that the parent company and the individual Defendants have conspired and endeavored to engage in this unlawful behavior and directly or indirectly participated in or conducted this illegal enterprise in violation of the civil RICO Act. (A4, ¶¶ 69-70). The corporate shield doctrine cannot be used to insulate the individual Defendants from their own improper actions and behavior, which is the very subject of Plaintiffs' RICO claim, just because they were acting under the guise of being corporate officers and directors. *See Edelstein*, 961 So. 2d at 372; *Thorpe*, 953 So. 2d at 611-12; *Molenda* 60 F. Supp. 2d at 1300; *Lipsig v. Ramlawi*, 760 So. 2d 170, 187 (Fla. 3d DCA 2000) (noting corporate veil will be pierced when corporation was formed for improper purpose); *Dade Roofing & Insulation Corp. v. Torres*, 369 So. 2d 98, 99 (Fla. 3d

DCA 1979) (noting officers and directors of corporation are not protected by corporate status from acts that they are personally liable for).

b. Officers/Directors

The remaining individual Defendants were all officers or directors of either (or both) the parent and subsidiary Advance America corporations. As with Defendants Johnson and Webster, the remaining individual Defendants engaged in a general course of business activity in Florida for pecuniary benefit by operating, conducting, engaging in, or carrying on a business or business venture in this state.

Defendants Whatley and Gallen are clearly subject to personal jurisdiction under section 48.193(1)(a) because they are the parties who were responsible for the actual operations of the subsidiary corporation in Florida. Whatley was the parent company's vice president of operations and ultimately responsible for the operation of the Florida stores, which required him to travel to Florida approximately once per quarter to oversee those operations. (A11; A18, pp. 18, 20, 28, 31, 41, 53, 72, 93). During these visits, he conducted "a multitude of operational duties" like making sure the stores were open and staffed, making sure the staff was dressed appropriately, and making sure the staff knew how to operate the system. (A18, p. 93). Defendant Whatley also established the operational procedures for the Florida stores. (A18, p. 53; A21, pp. 38, 67-68). On occasion, he talked to Florida state officials that visited the Florida store locations. (A18, pp.

91-93). He also participated in the decision to open new Florida stores. (A18, p. 40; A21, p. 38; A25, p. 14; A26, p. 8).

Defendant Gallen, a Florida resident, was the parent company's regional director of Florida whose job it was to open the Florida stores, staff those stores, and make sure the employees were properly trained and running the stores according to company policy, which required he visit each store quarterly. (A18, pp. 31, 40; A19, ¶5; A21, pp. 38, 60, 81-82; A24, p. 65; A25, pp. 4, 13-14; A26, p. 8).

Defendants Hall and Allie were also instrumental in establishing the subsidiary as an operational company in Florida. Defendant Hall, who was initially hired as the parent company's chief financial officer, and served at various times as the company's vice president, secretary, comptroller, and director of finance, filed the regulatory forms in Florida required by the state in order for the issuance of business licenses. (A14, pp. 5-6; A26, pp. 6, 13, 40, 42).

Allie, who worked as the parent Advance America corporation's Director of Government and Legal Affairs, served as its general counsel, and served as secretary of the subsidiary, secured licenses for the operation of the subsidiary company in Florida. (A8; A13; A16, pp. 3-5, 11-12, 71). In carrying out these duties, Allie communicated with Florida regulators, met with officials of Florida's Department of Banking and Finance regarding licensing issues during periodic

visits to Florida, and met with lobbyists while in Florida. (A13; A16, pp. 17, 19, 35-36). She also approved the company's payment to Florida lobbyists, periodically attended meetings and participated in telephone calls with Florida legislators and their representatives, went on site visits in Florida with lobbyists and legislators, and attended industry conferences in Florida. (A13; A16, pp. 41-42, 56-58, 65-68). Allie executed leases in the state of Florida in her corporate capacity and participated as outside counsel for Advance America of Florida. (A13).

As with Johnson and Webster, the corporate shield doctrine does not insulate the officers and directors of the parent and subsidiary corporations from consideration of their business activities in Florida because Plaintiffs have alleged that the individual Defendants knowingly operated the subsidiary corporation as an illegal enterprise in violation of the civil RICO Act. *See Edelstein*, 961 So. 2d at 372; *Thorpe*, 953 So. 2d at 611-12; *Molenda* 60 F. Supp. 2d at 1300; *Lipsig*, 760 So. 2d at 187; *Torres*, 369 So. 2d at 99.

As Plaintiff's allegations and the record evidence demonstrate that each of the individual Defendants was engaged in a general course of business activity in Florida for pecuniary benefit, each is properly subject to personal jurisdiction in Florida under 48.193(1)(a). *See Future Tech Intern., Inc. v. Tae Il Media, Ltd.*, 944 F. Supp. 1538, 1558 (S.D. Fla. 1996) (finding corporation and its president were

subject to personal jurisdiction in Florida under 48.193(1)(a) where, over course of a year, president and other members of corporation met in Miami with representatives of Florida company in "furtherance of their existing business relationship and in order to procure additional business").

2. § 48.193(1)(b), Fla. Stat.—Committing a tortious act in Florida

Another way that a nonresident defendant can be subject to personal jurisdiction in Florida is by committing a tortious act within the state. § 48.193(1)(b). This section of Florida's long-arm statute is broadly construed. *Future Tech Intern.*, 944 F. Supp. at 1558.

Appellants argue that it is impossible for the individual Defendants to be subject to jurisdiction under this subsection of the long-arm statute because the civil RICO Act is not a "tort" and, therefore, Defendants' violation of this act cannot amount to "committing a tortious act." The individual Defendants, however, have failed to preserve this argument for appellate review because they never raised the argument before the trial court.[4]

[4] "For an issue to be preserved by a defendant in a case involving co-defendants, that defendant must object or that defendant must join in the objection of the other defendant." *Eagleman v. Korzeniowski*, 924 So. 2d 855, 859 (Fla. 4th DCA 2006). Because the parent Advance America corporation was the only party to raise below the argument that violation of the civil RICO Act does not constitute the commission of a "tortious act" under 48.193(1)(b), (A34, p. 44), and the individual Defendants failed to join in the argument, this argument cannot be raised by the individual Defendants on appeal.

Even if the Court decides to consider Appellants' argument on the merits, the argument still fails because a violation of the civil RICO Act constitutes a "tortious act" under the Florida Supreme Court's broad construction of the term. In *Execu-Tech Business Systems, Inc. v. New Oji Paper Co. Ltd.*, 752 So. 2d 582, 585 (Fla. 2000), the Florida Supreme Court found that allegations that defendants "deliberately conspired to fix the wholesale price of their product throughout the United States, including Florida[, in] violation of the Florida Deceptive and Unfair Trade Practices Act" alleged a "tortious act" under 48.193(1)(b). It explained that, "'Broadly speaking, a tort is a civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages.'" *Id.* at 585 n.8 (quoting Prosser and Keeton on The Law of Torts 2 (W. Page Keeton, general ed., 5th ed. 1984)).[5] Because the civil RICO Act provides for the remedy

[5] Several other courts have found that allegations of a statutory violation can satisfy the "tortious act" requirement of 48.193(1)(b). *See Cable/Home Commc'n Corp. v. Network Prods., Inc.*, 902 F.2d 829, 856-57 (11th Cir. 1990) (finding violations of federal copyright and communications laws to be sufficient to trigger jurisdiction under 48.193(1)(b)); *Williams Elec. Co. v. Honeywell, Inc.*, 854 F.2d 389, 394 (11th Cir. 1988) (finding violations of federal antitrust laws to be sufficient to trigger jurisdiction under 48.193(1)(b)); *Chatham Steel Corp. v. Brown*, 858 F. Supp. 1130, 1146 (N.D. Fla. 1994) (finding violation of Comprehensive Environmental, Response, Compensation and Liability Act constitutes a "tortious act" under 48.193(1)(b)). The case relied on by Appellants, *Brown v. Nova Info. Sys., Inc.*, 903 So. 2d 968 (Fla. 5th DCA 2005), is distinguishable because there the court found that a statutory claim of fraudulent conveyance under Florida's Uniform Fraudulent Transfer Act does not amount to a tort because that statute, unlike the civil RICO Act, does not provide for the remedy of damages. *Id.* at 969

of damages, *see* § 772.104(1), Fla. Stat.,[6] by alleging that the individual Defendants conspired with and participated with each other and the other Defendants in order to create and operate the illegal enterprise/subsidiary Advance America corporation in Florida in violation of 772.103 of the civil RICO Act, Plaintiffs have alleged that each of the individual Defendants committed a "tortious act" in Florida. The individual Defendants are, therefore, subject to personal jurisdiction in Florida pursuant to section 48.193(1)(b) of the long-arm statute.

Appellants also contend that Plaintiffs failed to properly plead a count for civil RICO. This issue, however, is not reviewable in this non-final appeal. Here, the Court's jurisdiction is limited by Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i) to a review of non-final orders that determine "the jurisdiction of the person." *See Kountze v. Kountze*, 2008 WL 5191571, *3 (Fla. 2d DCA Dec. 12, 2008) (noting there is "no rule permitting review of nonfinal orders that determine whether a complaint states a cause of action"). Review of the trial court's denial of the individual Defendants' motion to dismiss for failure to state a claim is not proper until plenary appeal.

(citing *Beta Real Corp. v. Graham*, 839 So. 2d 890 (Fla. 3d DCA 2003); *Freeman v. First Union Nat'l Bank*, 865 So. 2d 1272 (Fla. 2004)).

[6] "Any person who proves . . . that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200. . . ." § 772.104(1), Fla. Stat.

Nevertheless, a review of the complaint demonstrates that Plaintiffs have pled cognizable causes of action against the individual Defendants for violation of the civil RICO Act, and that such allegations satisfy the requirements of 48.193(1)(b). The civil RICO Act, like its federal counterpart (the Racketeer Influenced and Corrupt Organizations Act), permits civil causes of action against individuals that establish or operate a criminal enterprise, thereby making the individuals, rather than the enterprise, the liable party. Under the civil RICO Act, liability attaches to those persons who: 1) derive proceeds from a pattern of criminal activity or the collection of an unlawful debt and who use or invest those proceeds in the establishment or operation of an enterprise, § 772.103(1), Fla. Stat.; 2) through a pattern of criminal activity or the collection of an unlawful debt acquire or maintain any interest or control in an enterprise, § 772.103(2); 3) are employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt, § 772.103(3); or 4) conspire or endeavor to violate any of the above provisions. § 772.103(4).

Plaintiffs allege in their complaint that the Florida subsidiary is the "enterprise" for purposes of the civil RICO claim. (A4 ¶ 66). As demonstrated by the depositions and other record evidence, each of the individual Defendants, as well as the parent Advance America corporation, was not only associated with the

subsidiary/enterprise, but was also deeply involved in the establishment and operations of the subsidiary's payday loan activities in Florida. *See* pages 2 to 11, *supra*. Thus, not only did Plaintiffs sufficiently allege that the individual Defendants and parent corporation were "associated with" the enterprise, and were all, either by establishing and/or operating the enterprise, "employed by" or "participa[nts] in" the operation of the enterprise, making their claims under the civil RICO Act viable, but the undisputed record evidence supports these allegations. As Plaintiffs' allegations and the record evidence demonstrate that the individual Defendants each acted in violation of the civil RICO Act, and thereby committed a tortious act in Florida, they are subject to personal jurisdiction under 48.193(1)(b). *See Renaissance Health Pub., LLC v. Resveratrol Partners, LLC*, 982 So. 2d 739 (Fla. 4th DCA 2008) (holding allegations that president wrote article disparaging plaintiff's product, which was published on defendant company's website, amounted to allegations that president committed a tortious act subjecting the president to personal jurisdiction in Florida); *Edelstein v. Marlene D'Arcy, Inc.*, 961 So. 2d 368 (Fla. 4th DCA 2007) (finding allegations that New York accountant failed to follow regulations and failed to pay plaintiff monies due in sale of Florida venture were sufficient to subject accountant to jurisdiction in Florida for the commission of a tortious act); *Thorpe v. Gelbwaks*, 953 So. 2d 606 (Fla. 5th DCA 2007) (holding allegations that defendant stockholder

misrepresented financial condition and expected sales and profits of Florida franchise in order to induce its sale amounted to allegations that stockholder committed a tortious act in Florida).

3. §48.193(2), Fla. Stat.—Substantial activities within Florida

Nonresident defendants are also subject to personal jurisdiction in Florida if they engage in "substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, [and] whether or not the claim arises from that activity." §48.193(2), Fla. Stat.[7]

As discussed in the statement of case and facts and at pages 18 to 25, *supra*, each of the individual Defendants has engaged in substantial and not isolated activity within Florida. It matters not that much of this activity was conducted in connection with the Defendants' positions of employment with the parent Advance America corporation. *See May v. Needham*, 820 So. 2d 430, 431 (Fla. 4th DCA 2002) (stating "general jurisdiction over an individual may be based on that individual's activities as an employee on behalf of a corporation") (citing *Achievers Unlimited, Inc. v. Nutri Herb, Inc.*, 710 So. 2d 716 (Fla. 4th DCA 1998)); *but see Radcliffe v. Gyves*, 902 So. 2d 968, 972 n.4 (Fla. 4th DCA 2005). This substantial

[7] Although Plaintiffs did not raise this argument below, the Court can affirm the trial court's ruling on this basis pursuant to the tipsy coachman doctrine. *See Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999) ("[I]f a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.").

activity is sufficient to subject each individual Defendant to personal jurisdiction in Florida. *See Future Tech Intern., Inc. v. Tae Il Media, Ltd.*, 944 F. Supp. 1538, 1557-58 (S.D. Fla. 1996) (finding corporation and its president were subject to personal jurisdiction in Florida under § 48.193(2) where, over course of a year, president and other members of corporation met in Miami with representatives of Florida company in "furtherance of their existing business relationship and in order to procure additional business"); *Noury v. Vitek Mfg. Co., Inc.*, 730 F.Supp. 1573, 1574 (S.D. Fla. 1990) (concluding that § 48.193(2) was satisfied where defendant engaged in sales activity for a period of several years by taking telephone orders from Florida and shipping directly to Florida, advertised in national publications reaching Florida, and attended professional conference in Florida).

C. The individual Defendants have sufficient minimum contacts with Florida to satisfy due process requirements.

Plaintiffs' allegations and the record evidence demonstrate that each individual Defendant engaged in substantial activity in the state of Florida, well-exceeding the minimum contacts required by due process. Subjecting the individual Defendants to personal jurisdiction in Florida, therefore, comports with due process of law.

"Due process requires that a nonresident has sufficient minimum contacts with the forum state such that the maintenance of a suit does not offend 'traditional

notions of fair play and substantial justice.'" *Carib-USA Ship Lines Bahamas Ltd. v. Dorsett*, 935 So. 2d 1272, 1275 (Fla. 4th DCA 2006) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "In analyzing whether a nonresident has the requisite minimum contacts with a forum state to justify personal jurisdiction, courts should determine whether the nonresident's 'conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Id*. (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). In order for a nonresident defendant to anticipate being haled into a Florida court, it is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within Florida, thus invoking the benefits and protections of its laws. *Id*. (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)). If a defendant is subject to personal jurisdiction in Florida under section 48.193(2) of the Florida Statutes, then the constitutional due process burden is necessarily satisfied. *Id*. as 1275-76 (citing *Woods v. Nova Cos. Belize Ltd.*, 739 So. 2d 617, 620 (Fla. 4th DCA 1999)).

For purposes of this due process analysis, a defendant's contacts with the forum state are "assessed over a period of years prior to the filing of the complaint." *Id*. at 1276 (citing *Woods*, 739 So. 2d at 621). And an "individual's activities as an employee on behalf of a corporation" are included in the analysis, particularly where, as here, the corporate shield doctrine cannot be properly

invoked due to the intentional misconduct of the defendant. *See Edelstein v. Marlene D'Arcy, Inc.*, 961 So. 2d 368, 372 (Fla. 4th DCA 2007) (finding due process was met where defendant who was treasurer and accountant of business venture had ongoing relationship with venture, prepared its tax returns and performed bookkeeping services, and provided advice that resulted in alleged conversion of millions of dollars); *May v. Needham*, 820 So. 2d 430, 431 (Fla. 4th DCA 2002) (finding it "clear that general jurisdiction [and, consequently, minimum contacts] over an individual may be based on that individual's activities as an employee on behalf of a corporation") (citing *Achievers Unlimited, Inc. v. Nutri Herb, Inc.*, 710 So. 2d 716 (Fla. 4th DCA 1998)); *Thorpe v. Gelbwaks*, 953 So. 2d 606, 611 (Fla. 5th DCA 2007) (finding defendant had sufficient minimum contacts with Florida to satisfy due process requirements because he regularly worked in Florida for five month period and was involved in the development of financial spreadsheets and documents related to sale of franchise located in Florida); *but see Radcliffe v. Gyves*, 902 So. 2d 968, 973 (Fla. 4th DCA 2005).

It is not necessary to apply this due process minimum contacts analysis to Defendants Johnson or Gallen because, as discussed at pages 15 to 16, *supra*, Plaintiffs alleged that Johnson and Gallen are Florida residents, and neither Johnson nor Gallen have filed affidavits to refute these allegations. The minimum contacts analysis applies only to nonresidents.

The remaining individual Defendants each have sufficient minimum contacts with Florida such that their right to due process will not be violated by requiring them to appear in Florida to defend Plaintiffs' lawsuit. Each Defendant had substantial contacts with Florida in relation to the operation of the subsidiary corporation.

Defendant Webster traveled to Florida to inspect potential sites for stores, signed Florida leases, attended meetings with Florida state officials regarding Florida operations, and even testified before Florida legislative committees regarding pending legislation that would affect the business. (A10; A17, p. 15-18; A21, pp. 89-90; A24, pp. 189-197). Webster was also on the board of directors of the subsidiary corporation and was an officer of that company. (A10; A17, pp. 11, 21-22; A18, pp. 18, 20, 28, 31, 53, 72; A21, p. 85; A23, p. 155; A24, p. 58; A32, p. 10).

Defendant Whatley helped decide what stores to open in Florida and then traveled to Florida approximately once per quarter to oversee operations in those stores. (A11; A18, pp. 18, 20, 28, 31, 40-41, 53, 72, 93; A21, p. 38; A25, p. 14; A26, p. 8). During these visits, he conducted "a multitude of operational duties" like making sure the stores were open and staffed, making sure the staff was dressed appropriately, and making sure the staff knew how to operate the system. (A18, p. 93). Defendant Whatley also established the operational procedures for

the Florida stores. (A18, p. 53; A21, pp. 38, 67-68). On occasion, he talked to Florida state officials that visited the Florida store locations. (A18, pp. 91-93).

Defendant Allie secured licenses for the operation of the subsidiary company in Florida by communicating with Florida regulators, meeting with officials of Florida's Department of Banking and Finance regarding licensing issues during periodic visits to Florida, and met with lobbyists in Florida. (A13; A16, pp. 12, 17, 19, 25, 36). She also periodically attended meetings and participated in telephone calls with Florida legislators and their representatives, went on site visits in Florida with lobbyists and legislators, and attended industry conferences in Florida. (A13, A16, pp. 65-66). And Defendant Allie executed leases in the state of Florida in her corporate capacity. (A13). Allie was also an officer of the subsidiary corporation. (A13; A16, pp. 71-72; A32, p. 10).

Defendant Hall filed regulatory forms in Florida required by the state in order for the issuance of business licenses, and he attended a regional meeting held by the parent company in Florida. (A14, pp. 5-6; A26, pp. 6, 13, 40, 42). Hall was also an officer of the subsidiary corporation. (A14, p.5; A26, p. 14; A32, p. 10).

These contacts are sufficient to satisfy due process because each of the individual Defendants has engaged in substantial activity in the state of Florida, well-exceeding the minimum contacts required by due process, and should, therefore, have reasonably anticipated being haled into court here. *See Siegel v.*

Marcus, 980 So. 2d 1272, 1275 (Fla. 4th DCA 2008) (finding nonresident limited partner in Florida partnership that owned an apartment complex in Florida had sufficient minimum contacts with Florida because he deliberately affiliated himself with the state); *Edelstein*, 961 So. 2d at 371-72 (nonresident defendant that was officer of Florida company and provided the company with accounting services was subject to personal jurisdiction in Florida); *Aspsoft, Inc. v. WebClay*, 983 So. 2d 761, 767 (Fla. 5th DCA 2008) (finding corporation had sufficient minimum contacts with Florida because it entered into computer consulting agreement that required payment be made in Florida and its employees communicated telephonically with plaintiff's employees in Florida for the purpose of receiving the consulting services); *Future Tech Intern., Inc. v. Tae Il Media, Ltd.*, 944 F. Supp. 1538, 1559 (S.D. Fla. 1996) (finding due process requirements satisfied by continuous and systematic contacts that corporation and its president had with Florida where, over course of a year, president and other members of corporation met in Miami with representatives of Florida company in "furtherance of their existing business relationship and in order to procure additional business"); *Nordmark Presentations, Inc. v. Harman*, 557 So. 2d 649, 651 (Fla. 2d DCA 1990) (finding due process satisfied where employee attended three business meetings in Florida and received support and directions from employer's Florida office).

Even if, as Appellants claim, the corporate shield doctrine would normally limit consideration of actions taken by the individual Defendants in their capacities as officers and directors of the parent corporation, the doctrine would not apply here because Plaintiffs allege that the corporate officers intentionally conspired to harm Florida consumers, thereby directing their unlawful actions at Florida. *See Edelstein*, 961 So. 2d at 372 (holding corporate shield doctrine did not apply because plaintiff alleged the corporate officer committed intentional torts (conspiracy, conversion, malpractice) expressly aimed at Florida); *Allerton v. State Dep't of Ins.*, 635 So. 2d 36, 40 (Fla. 1st DCA 1994) (finding a "Florida plaintiff, injured by the intentional misconduct of a nonresident corporate employee expressly aimed at him, [has] the right to obtain personal jurisdiction over that employee in a Florida court"); *Odell v. Signer*, 169 So. 2d 851, 853-54 (3d DCA 1964) (finding "individual officers, as agents of the corporation would be personally liable to any third person they injured by virtue of their tortious activity even if such act were performed within the scope of their employment as corporate officers").

Plaintiffs' allegations and the record evidence demonstrate that each individual Defendant engaged in substantial activity in the state of Florida, well-exceeding the minimum contacts required by due process. Subjecting the individual Defendants to personal jurisdiction in Florida, therefore, comports with

due process of law.[8] To hold otherwise would be to hold that Florida consumers injured within Florida by the intentional misconduct of the individual Defendants in charging usurious interest on payday loans made through an illegal enterprise that they established and operated in Florida must travel to the Defendants' states of residence to obtain a remedy. *See Licciardello v. Lovelady*, 544 F.3d 1280, 1288 (11th Cir. 2008) (holding that "Florida plaintiff, injured by the intentional misconduct of a nonresident [in the unauthorized use of a trademark on a website accessible in Florida] expressly aimed at the Florida plaintiff, is not required to travel to the nonresident's state of residence to obtain a remedy").

[8] Appellants state in a footnote that they "incorporate and adopt herein by reference the argument in Appellant Advance America-Florida's Initial Brief at pages 26-28. . . ." (Initial Brief, p. 14 n.6). Advance America-Florida, the subsidiary corporation, however, did not move to dismiss below and is not a party in this appeal. Plaintiffs thereby assume that Appellants meant to reference the brief filed by the parent Advance America corporation. Nevertheless, even if it is appropriate to incorporate by reference the arguments made in a brief filed in a separate appeal, which Plaintiffs doubt, it is inappropriate here because Appellants opposed consolidating these appeals, even just for record purposes. In the event the Court determines that Appellants' incorporation of these arguments is proper and decides to consider them, however, Plaintiffs hereby incorporate by reference their opposition to the above referenced arguments contained in Plaintiffs' Answer Brief in case number 4D08-2738.

CONCLUSION

Plaintiffs' allegations and the record evidence demonstrate that each of the individual Defendants is subject to personal jurisdiction in Florida under the long-arm statute because they conducted business in Florida under 48.193(1)(a), committed a tortious act in Florida under 48.193(1)(b), and engaged in substantial and not isolated activities in Florida under 48.193(2). Furthermore, for purposes of jurisdictional analysis, Defendants Johnson and Gallen are Florida residents and do not, therefore, fall under the protection of the long-arm statute. Finally, each of the individual Defendants has sufficient minimum contacts with Florida to satisfy the due process clause. Thus, the Court should affirm the trial court's denial of the individual Defendants' motion to dismiss for lack of personal jurisdiction.

Respectfully submitted this 22nd day of December, 2008.

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Appellees' Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) in that the Initial Brief being submitted is in Times New Roman 14-point font.

s/ Diana L. Martin
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