

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.)
)
SHIVA FINANCE, LLC,)
a Delaware limited liability company,)
)
Defendant.)

Civil Action No. CL20-4847-S

ORDER APPROVING AND ADOPTING
ASSURANCE OF VOLUNTARY COMPLIANCE

Upon review of the Complaint and the Assurance of Voluntary Compliance, and with the consent of the parties, it is hereby ORDERED that:

1. The attached Assurance of Voluntary Compliance is approved and adopted as an Order of this Court;
2. This matter is DISMISSED, WITH PREJUDICE, and the Clerk shall strike this matter from the docket and place it among the ended civil cases;
3. The Court RETAINS jurisdiction over this matter solely to enforce the terms of this Order and the parties' Assurance of Voluntary Compliance; and
4. The Clerk is DIRECTED to send certified copies of this Order to: Erin E. Witte, Assistant Attorney General, Consumer Protection Section, 10555 Main Street, Suite 350, Fairfax Virginia 22030, and Brendan O'Toole, Williams Mullen, 200 South 10th Street, P.O. Box 1320, Richmond, Virginia 23219, counsel for Shiva Finance, LLC.

ENTER: 10/21/2020

Beverly W. Imkass
Judge, Circuit Court for City of Richmond

WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: David B. Irvin
David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Erin E. Witte (VSB No. 81096)
Assistant Attorney General
Office of the Attorney General
Consumer Protection Section
10555 Main Street, Suite 350
Fairfax Virginia, 22030
Phone: (703) 359-6716
Fax: (804) 786-0122

A Copy
Teste: EDWARD F. JENNETT, CLERK
By: [Signature] D.C.

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

SEEN AND AGREED:

SHIVA FINANCE, LLC

By: Brendan D. O'Toole
Brendan D. O'Toole (VSB No. 71329)
Charles E. James, Jr. (VSB No. 46310)
Williams Mullen
200 South 10th Street, Suite 1600
P.O. Box 1320 (23218-1320)
Richmond, Virginia 23219
Phone: (804) 420-6588
Fax: (804) 420-6507

Counsel for Shiva Finance, LLC, d/b/a Advance Financial

RECEIVED AND FILED
CIRCUIT COURT
SEP 28 2020
EDWARD F. JEWETT, CLERK
BY EJO D.C.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

SHIVA FINANCE, LLC,
a Delaware limited liability company,

Defendant.

Civil Action No. CL20-4847-5

ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance ("Assurance") is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the "Attorney General" or the "Commonwealth"), and Shiva Finance, LLC d/b/a Advance Financial ("Advance Financial").

1.1 Advance Financial is a Delaware limited liability company headquartered in Nashville, Tennessee. Advance Financial operates as a lender, offering open-end lines of credit to consumers in the Commonwealth of Virginia solely via the Internet.

1.2 Advance Financial does not contest that it has advertised to and served Virginia consumers. Advance Financial consents to and waives all objections to this Court's jurisdiction for all matters relating to this Assurance's entry, execution, monitoring and enforcement. Advance Financial further waives all objections it may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that Advance Financial was at all relevant times mentioned herein a "supplier" of "goods" or "services," and engaged in "consumer transactions," as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, offering and providing open-end lines of credit to individual Virginia consumers.

Open-End Line of Credit Lending

2.2 During the period from October 2017 to the present, Advance Financial has offered to make and has made cash advances through its open-end line of credit product to Virginia consumers.

2.3 In connection with its open-end line of credit product, Advance Financial provided Virginia consumers with a "Line of Credit Disclosure and Account Agreement" (the "Contract").

2.4 From October 2017 through January 20, 2020, the Contract included an arbitration provision (the "Arbitration Provision") which stated, in pertinent part:

What is arbitration?	An alternative to court.	In arbitration, a third party ("Arbiter") solves Disputes in a hearing ("hearing"). You, related third parties, and we, waive the right to go to court. Such "parties" waive jury trials.
Which Disputes are covered?	All Disputes.	In this Clause, the word "Disputes" has the broadest possible meaning. This Clause governs all "Disputes" involving the parties. This includes all claims even indirectly related to your application and agreements with us. This includes claims related to information you previously gave us. It includes all past agreements. It includes extensions, renewals, refinancings, or payment plans. It includes claims related to collections, privacy, and customer information. It includes claims related to setting aside this Clause. It includes claims about the Clause's validity and scope. It includes claims about whether to arbitrate.

2.5 The Arbitration Provision also included an option for “small-claims court,” so that the parties may litigate a case in small-claims court instead of submitting to arbitration:

Can small-claims court solve some	Yes	Each party has the right to arbitrate, or to go to small-claims court if the small-claims court has the power to hear the Dispute. Arbitration will solve
Disputes?		all Disputes that the small-claims court does not have the power to hear. If there is an appeal from small-claims court, or if a Dispute changes so that the small-claims court loses the power to hear it, then the Dispute will only be heard by an Arbitrator.

2.6 The Virginia Code defines “small-claims courts” as those which have jurisdiction, concurrent with the general district court, over civil disputes in amounts of up to \$5,000 (exclusive of interest) and do not permit the parties to be represented by attorneys. Va. Code §§ 16.1-122.1 through 122.4.

2.7 From October 2017 through February 1, 2020, Advance Financial filed 1,971 lawsuits against its consumer borrowers in general district courts throughout the Commonwealth.

2.8 Advance Financial did not pursue arbitration in these collection cases.

2.9 Advance Financial also did not file these collection cases in small-claims court, but rather in general district courts, where the parties may be represented by attorneys.

2.10 Advance Financial was represented by counsel in each of these lawsuits.

2.11 As of August 19, 2020, of the 1,971 collections lawsuits, Advance Financial has (a) nonsuited 260 lawsuits; (b) otherwise dismissed (without prejudice) 207 lawsuits, and (c) taken a judgment in 1,504 lawsuits. Of the 1,504 lawsuits that it reduced to judgment, Advance Financial (d) initiated garnishment proceedings in 929 lawsuits, and (e) received funds via a garnishment or other collection efforts (including any voluntary payments made) on such judgments in 527 lawsuits.

2.12 The Commonwealth alleges that Advance Financial misrepresented to consumers in its Contract that all disputes would be heard in either arbitration or in small-claims court, and instead it hired counsel and filed 1,971 lawsuits in general district courts all over the Commonwealth.

2.13 The Commonwealth alleges that Advance Financial violated § 59.1-200(A)(5) and (14) of the VCPA by misrepresenting that all disputes would be heard in either arbitration or in small-claims court, and instead filing 1,971 lawsuits in general district courts all over the Commonwealth.

2.14 The Commonwealth, through its Attorney General, issued a notice of violation (“NOV”) letter to Advance Financial on December 10, 2019.

2.15 Advance Financial continued to obtain default judgments and accept payments from garnishees after December 10, 2019.

2.16 On or about January 22, 2020, Advance Financial amended its Arbitration Provision as follows:

<p>Can small-claims court or General District Court solve some Disputes?</p>	<p>Yes</p>	<p>Each party has the right to arbitrate, or to go to small-claims court or General District Court if those courts have the power to hear the Dispute. Arbitration will solve all Disputes that the small-claims court or General District Court do not have the power to hear. If there is an appeal from small-claims court or General District Court, or if a Dispute changes so that the small-claims court or General District Court loses the power to hear it, then the Dispute will only be heard by an Arbitrator.</p>
---	-------------------	---

2.17 Advance Financial has cooperated with the Attorney General in connection with its inquiry.

III. ADVANCE FINANCIAL’S POSITION

3.0 The statements contained in Section III represent the position of Advance Financial. Advance Financial disagrees with the “Commonwealth’s Position” in general and

specifically with all allegations and claims that Advance Financial's Contract violated Virginia law, or that Advance Financial misrepresented anything to Virginia consumers in connection with its Contract.

Open-End Line of Credit Lending

3.1 Advance Financial's Contract allegedly complied with Virginia law.

3.2 The Attorney General has not identified and Advance Financial is not aware of any ongoing concerns, investigations by the Attorney General or alleged violations of Virginia law committed by Advance Financial (other than those alleged by the Commonwealth in Section II, above) prior to the Effective Date.

3.3 Under Virginia law, a "small-claims court" is a division of the Virginia general district courts. Va. Code § 16.1-122.1. When the amount at issue in a civil case does not exceed \$5,000, small-claims courts have concurrent jurisdiction with the general district courts over those civil cases. *Id.* § 16.1-122.2. Thus, it was entirely lawful for Advance Financial to file its lawsuits in Virginia general district courts for claims that did not exceed \$5,000.

3.4 The Commonwealth, through its Attorney General, issued an NOV to Advance Financial on December 10, 2019. The next day, and despite disagreeing with the Commonwealth's interpretation and intent of the phrase "small-claims court" in the Arbitration Provision, Advance Financial suspended sending new lawsuits for filing in Virginia general district courts.

3.5 Advance Financial allegedly did not violate the VCPA (willfully or otherwise) and, to the extent a violation exists, it is an alleged technical violation that was not borne of malicious intent to deceive or defraud Virginia's citizens.

3.6 Even assuming a technical violation of the VCPA resulting from the inclusion of

the phrase "small claims court" in the Arbitration Provision, that violation did not allegedly result in any demonstrable harm to a consumer.

3.7 On or about January 22, 2020, Advance Financial amended its Arbitration Provision, as set forth in Section 2.16, above, to clarify that either Advance Financial or consumers could litigate in small-claims court *or* general district court (if those courts have the power to hear a dispute).

3.8 Advance Financial has fully cooperated with the Attorney General in connection with its inquiry, including promptly and properly rectifying the Arbitration Provision via its amendment referenced in Section 3.7, above.

3.9 Advance Financial vigorously denies any allegation that it violated the VCPA or engaged in any misrepresentations.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission by Advance Financial for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Advance Financial enters into this Assurance without admitting any wrongdoing or liability and affirmatively states that its execution of this Assurance is for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Advance Financial enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Advance Financial and the Attorney General, in the interest of resolving the Attorney General's claims.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of Advance Financial's services or practices and Advance Financial shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by Advance Financial in violation of applicable federal, state or other laws.

4.6 Advance Financial agrees that this Assurance constitutes a legally-enforceable obligation of Advance Financial in accordance with its terms.

4.7 Except for the Complaint filed simultaneously with this Assurance with respect to the allegations set forth in Section II above and addressed by this Assurance, the Commonwealth shall not institute any civil proceeding or take any civil action against Advance Financial, or its officers, directors, members, managers, employees, agents, or other representatives under the Consumer Financial Protection Act, 12 U.S.C. §§ 5301 et seq. or the VCPA for any conduct that occurred prior to the date this Assurance is signed by all Parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service, practice or conduct addressed in this Assurance. The Parties agree that if Advance Financial, or its employees, agents, members, managers, officers, directors, or other representatives, as found by the Court, materially misrepresented to the Commonwealth any information relied upon by the Attorney General for the administration of Sections V and VI of the Assurance, this provision shall be null and void.

4.8 This Assurance constitutes the entire agreement of the Parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the Parties hereto.

V. ASSURANCES

5.0 Advance Financial voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 Advance Financial agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the VCPA in Paragraphs 2.3 through 2.15 of Section II of this Assurance, and Advance Financial agrees that engaging in such acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined by the Court, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 Advance Financial agrees to refrain from and to be permanently enjoined from engaging in any and all practices alleged in Section II of this Assurance to be in violation of the VCPA, as it now exists, or as amended in the future.

5.3 Advance Financial agrees to make available and disclose the provisions of this Assurance to (a) its officers, directors, and members and (b) to the managers and supervisory employees designated to handle the administration of the restitution and debt forbearance activities described in Section VI, within five (5) days of the last execution date of this Assurance, or the date this Assurance is filed with the Court, whichever is later.

5.4 Advance Financial shall institute supervisory procedures that are reasonably designed to ensure its compliance with this Assurance including designating an employee to oversee and supervise Advance Financial's compliance with its obligations under this Assurance.

5.5 Advance Financial agrees to be permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, limited liability company, sole proprietorship, or any other legal structures, for the purpose of evading compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.6 Subject to Section 4.7, above, Advance Financial agrees that it shall not represent that the Attorney General approves of or endorses Advance Financial's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION AND DEBT FORBEARANCE

6.0 Advance Financial agrees to provide restitution as set forth below.

Category I Lawsuits

6.1 "Category I Lawsuits" shall mean all lawsuits that Advance Financial filed against a consumer in a Virginia general district court on or before February 1, 2020, where the matter was not reduced to a judgment.

6.2 Advance Financial agrees to nonsuit or dismiss without prejudice all Category I Lawsuits.

6.3 As of August 19, 2020, Advance Financial has nonsuited or dismissed without prejudice all Category I Lawsuits.

6.4 Within 30 days of the Effective Date, Advance Financial agrees to provide the Attorney General with a verified spreadsheet, as of August 19, 2020, containing:

6.4.1 The first and last name, last known email address, last known physical address, and last known telephone number of each consumer who was named in a Category I Lawsuit; and

6.4.2 The county or city in which the lawsuit against the consumer was filed.

The verified spreadsheet in this Section 6.4 shall be accompanied by an affidavit, signed by a member, manager, or other officer of Advance Financial, that says: "To the best of my knowledge and belief the attached spreadsheet dated August 19, 2020 is accurate and complete."

Category II Lawsuits

6.5 "Category II Lawsuits" shall mean all lawsuits that Advance Financial filed against a consumer in a Virginia general district court on or before February 1, 2020, where it obtained a judgment, and where it has not collected any funds after entry of the judgment.

6.6 Advance Financial shall provide a credit of \$215 to each judgment balance, as ordered by the court, which was the subject of a Category II Lawsuit.

6.7 Advance Financial agrees not to collect any attorneys' fees or filing fees granted in connection with the judgment in a Category II Lawsuit.

6.8 The "Adjusted Balance" shall mean the consumer's judgment balance, as ordered by the court, minus the judgment credit in Paragraph 6.6 and minus the waiver of attorneys' fees and filing fees in Paragraph 6.7.

6.9 Within 30 days following the Effective Date, Advance Financial agrees to notify in writing, via email, each consumer who was named in a Category II Lawsuit of the Adjusted Balance on his or her account.

6.10 The form and substance of the written notification in Section 6.9 shall be as follows:

Dear _____:

Shiva Finance, LLC dba Advance Financial ("Advance Financial") previously obtained a judgment against you for monies owed under a prior Flex Loan transaction. Recently, Advance Financial and the Virginia Office of the Attorney General's Consumer Protection Section ("VA Office") reached a final settlement of an investigation conducted by the VA Office. As part of this settlement, your judgment is being reduced by \$215.00. Additionally, Advance Financial shall not collect any attorneys' fees or filing fees awarded. Your judgment balance is now \$ _____. If you should have any questions or wish to remit payment of your new balance, please contact us at _____. Thank you.

6.11 Within 30 days following the Effective Date, Advance Financial agrees to provide the Attorney General with a verified spreadsheet, as of August 19, 2020, containing:

6.11.1 The first and last name, last known email address, last known physical address, and last known telephone number of each consumer who was named in a Category II Lawsuit;

6.11.2 The consumer's judgment amount (including any attorneys' fees and costs that had been awarded in the judgment), the applicable credit in Section 6.6, the amount of the attorneys' fees and filing fees waived in Section 6.7, and the Adjusted Balance; and

6.11.3 The county or city in which the lawsuit against the consumer was filed.

The verified spreadsheet in this Section 6.11 shall be accompanied by an affidavit, signed by a member, manager, or other officer of Advance Financial, that says: "To the best of my knowledge and belief the attached spreadsheet dated August 19, 2020 is accurate and complete."

Category III Lawsuits

6.12 "Category III Lawsuits" shall mean all lawsuits that Advance Financial filed against a consumer in a Virginia general district court on or before February 1, 2020, where it obtained a judgment, initiated judgment collection proceedings, and where it collected funds

from the proceedings (including any voluntary payments or payments received from garnishment proceedings).

6.13 Advance Financial shall provide a credit of \$300 for the purposes of restitution to customers who were the subject of a Category III Lawsuit.

6.14 Advance Financial agrees not to collect any attorneys' fees or filing fees granted in connection with the judgment in a Category III Lawsuit.

6.15 The "Adjusted Balance" shall mean the consumer's judgment balance, as ordered by the court, minus any payments made by the consumer against the judgment, minus the judgment credit in Paragraph 6.13, and minus the waiver of attorneys' fees and filing fees in Paragraph 6.14.

6.16 Within 30 days following the Effective Date, Advance Financial agrees to notify in writing, via email, each consumer who was named in a Category III Lawsuit of the Adjusted Balance on his or her account.

6.17 If the judgment which is the subject of a Category III Lawsuit has an Adjusted Balance of less than \$0 (the "negative balance"), then Advance Financial agrees to provide a cash restitution payment in the form of a check to the consumer in the amount of the negative balance but in no event to exceed \$300. Such payment will be made no later than thirty (30) days after the date on which the consumer contacts Advance Financial and furnishes the consumer information set forth in the notice in Section 6.20 below (or where such information is not furnished by the consumer, payment shall be made as provided in Sections 6.22 or 6.23, as the case may be). The consumers who are eligible for such payments are defined as "Restitution Eligible Consumers."

6.18 If the account which is the subject of a Category III Lawsuit has an Adjusted Balance of \$0 or a negative balance, Advance Financial also agrees to take all necessary action to notify the appropriate court that the judgment has been satisfied within thirty (30) days after the Effective Date.

6.19 If the judgment which is the subject of a Category III Lawsuit has an Adjusted Balance of more than \$0, then Advance Financial agrees to notify in writing, via email, each such consumer who was named in a Category III Lawsuit of the Adjusted Balance on his or her account. The form and substance of the written notification pursuant to this Section 6.18 shall be as follows:

Dear _____:

Shiva Finance, LLC dba Advance Financial ("Advance Financial") previously obtained a judgment against you and collected funds against such judgment bringing your judgment balance down to \$ _____. Recently, Advance Financial and the Virginia Office of the Attorney General's Consumer Protection Section ("VA Office") reached a final settlement of an investigation conducted by the VA Office. As part of this settlement, your judgment balance is being reduced by \$300.00 and any amounts awarded in the judgment for attorneys' fees and filing fees. Your judgment balance is now \$ _____. If you should have any questions or wish to remit payment of your new balance, please contact us at _____. Thank you.

6.20 In accordance with Section 6.17 above, and with respect to Restitution Eligible Consumers only, the form and substance of the written notification shall be as follows.

Dear _____:

Shiva Finance, LLC dba Advance Financial ("Advance Financial") previously obtained a judgment against you and collected funds against such judgment. Recently, Advance Financial and the Virginia Office of the Attorney General's Consumer Protection Section ("VA Office") reached a final settlement of an investigation conducted by the VA Office. Under the terms of this settlement, you are entitled to receive a check in the amount of \$ _____.

Please contact us at _____ with your full name, last four digits of your SSN and a preferred mailing address for the remittance of the check. Should we not

hear from you, and should the VA Office not be able to locate you, please be aware that ultimately your check will be delivered to the Unclaimed Property Division of the Department of Treasury as required under Virginia laws. Thank you.

6.21 Within 30 days following the Effective Date, Advance Financial agrees to provide the Attorney General with a verified spreadsheet, as of August 19, 2020, containing:

6.21.1 The first and last name, last known e-mail address, last known mailing address (if available), and last known telephone number of each consumer who was named in a Category III Lawsuit;

6.21.2 The consumer's judgment amount (including any attorneys' fees and costs that had been awarded in the judgment), the applicable credit or restitution payment in Section 6.13, the amount of any attorneys' fees and filing fees waived in Section 6.14, any payments the consumer has made or that Advance Financial has collected on the judgment balance, the Adjusted Balance, and whether the consumer is entitled to a check and for how much; and

6.21.3 The county or city in which the lawsuit against the consumer was filed.

The verified spreadsheet in this Section 6.21 shall be accompanied by an affidavit, signed by a member, manager, or other officer of Advance Financial, that says: "To the best of my knowledge and belief the attached spreadsheet dated August 19, 2020 is accurate and complete."

6.22 The Attorney General may use the spreadsheet in 6.21 to engage in further efforts to locate the Restitution Eligible Consumers who have not contacted Advance Financial, or whose restitution checks are returned for incorrect address or insufficient address or any other reason. Advance Financial shall inform the Attorney General of these events no later than one hundred twenty (120) days after the Effective Date, and also provide the Attorney General with

the Restitution Eligible Consumer's date of birth and driver's license number, if such information is known to Advance Financial. The Attorney General may direct Advance Financial to send refund checks at any time up to one hundred eighty (180) days after the Effective Date to any Restitution Eligible Consumer for whom a more current address is found. After one hundred eighty (180) days after the Effective Date, except for its obligations described in paragraph 6.23 below, Advance Financial shall not have any further liability with respect to any refund checks that have not been deposited.

6.23 For any amounts due to Restitution Eligible Consumers that are not deposited through the process described, Advance Financial will forward the aggregate amounts due to such Restitution Eligible Consumers, together with a list of the affected consumers' names, to the Attorney General no later than two hundred forty (240) days after the Effective Date. If the Attorney General is not successful thereafter in locating such Restitution Eligible Consumers, the Attorney General will forward such amounts to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55.1-2517 and 55-2501 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55.1-2500 to 55.1-2545.

6.24 With respect to Category II and Category III consumers who have an active or discharged bankruptcy at the time notice is to be issued under this Section 6 ("Bankruptcy Consumer"), Advance Financial shall not be required under this Assurance to issue such notices; provided, however, Advance Financial will issue notices pursuant to Section 6.20 to Restitution Eligible Consumers who have an active or discharged bankruptcy and, further provided, that Advance Financial shall provide the Commonwealth with a list of the Bankruptcy Consumers within 30 days following the Effective Date. However, with respect to the 36 Bankruptcy

Consumers who made a bankruptcy filing and for which a proof of claim was filed by or on behalf of Advance Financial, Advance Financial will file or cause to be filed amendments to modify the proofs of claim so as to reflect the corresponding Adjusted Balance of each such Bankruptcy Consumer, as reflected in the verified spreadsheet, as of August 19, 2020. Advance Financial will make or cause such filings to be made within 30 days after the Effective Date.

VII. MISCELLANEOUS

7.0 Advance Financial agrees to maintain loan records, whether in electronic or hard copy form, relating to any consumers named in Category I, II, and III Lawsuits for a period of one year and six months after the Effective Date.

7.1 If Advance Financial files for bankruptcy within ninety (90) days of any payment made pursuant to this Assurance, the Commonwealth may, at its option, void any provision of this Assurance, or void this Assurance in its entirety.

VIII. CIVIL PENALTY AND ATTORNEYS' FEES

8.0 The Commonwealth shall recover from Advance Financial, and Advance Financial agrees to pay the Commonwealth, the sum of Ten Thousand Dollars (\$10,000), pursuant to § 59.1-206(C), for reimbursement of the Commonwealth's reasonable expenses, costs and attorneys' fees in investigating and preparing this action. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

8.1 The Commonwealth shall recover from Advance Financial, and Advance Financial agrees to pay the Commonwealth, the sum of Ten Thousand Dollars (\$10,000), pursuant to § 59.1-206(A) of the VCPA, as a civil penalty for alleged violations of the VCPA.

Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

8.2 Advance Financial agrees to pay the amounts set forth in this Section no later than ten (10) days after the Effective Date by delivery of a cashier's or certified check (or by a company check from Williams Mullen on behalf of Advance Financial) in the amount of Twenty Thousand Dollars (\$20,000) payable to "Treasurer of Virginia," and remitted to the Office of the Attorney General, Consumer Protection Section, Attn: David B. Irvin, 202 North Ninth Street, Richmond, Virginia 23219.

IX. SIGNATURES

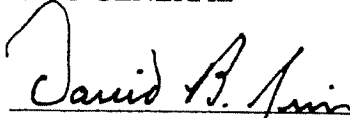
9.0 Each undersigned individual represents that he or she is fully authorized to legally bind such Party to the terms and conditions of this Assurance.

Signed this 25th day of September, 2020.

FOR THE PLAINTIFF:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By:



David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Erin E. Witte (VSB No. 81096)
Assistant Attorney General
Office of the Attorney General
Consumer Protection Section
202 North Ninth Street
Richmond, Virginia 23219
Phone: (703) 359-6716
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR ADVANCE FINANCIAL:

SHIVA FINANCE, LLC

By: Brendan D. O'Toole

Brendan D. O'Toole (VSB No. 71329)

Charles E. James, Jr. (VSB No. 46310)

Williams Mullen

200 South 10th Street, Suite 1600

P.O. Box 1320 (23218-1320)

Richmond, Virginia 23219

Phone: (804) 420-6588

Fax: (804) 420-6507

Counsel for Shiva Finance, LLC, d/b/a Advance Financial

SHIVA FINANCE, LLC

By: Scott J. Bojczuk

Scott J. Bojczuk

Its: Secretary

Secretary

EDWARD F. JEWETT, CLERK
Circuit Court of the City of Richmond
John Marshall Courts Building
400 North 9th Street
Richmond, Virginia 23219-1540

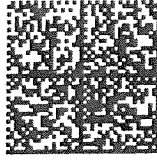
RECEIVED
OCT 07 2020

RECEIVED
OCT 07 2020

CONSUMER PROTECTION SECTION

David B. Irvin, Esq.
Senior Assistant Attorney General
Consumer Protection Section
202 N 9th Street
Richmond, VA 23219

FIRST-CLASS



PMNEY BOWIES ***
02 7H
0001301883 OCT 05 2020
MAILED FROM ZIP CODE 23219
US POSTAGE
\$ 000.95⁰

2321903424 0005