

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CULPEPER

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

Plaintiff,

v.

TEMPO VENTURE, INC.
d/b/a Culpeper Pawnbroker,
a Virginia corporation,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of the Attorney General of Virginia, Mark R. Herring (the "Plaintiff" or the "Commonwealth"), petitions this Court to declare that the activities in which the Defendant, Tempo Venture, Inc. d/b/a Culpeper Pawnbroker ("Culpeper Pawn" or the "Defendant"), has engaged constitute violations of § 54.1-4008(A) and 54.1-4014(B) of the Virginia pawnbroker statutes, as well as § 59.1-200(A)(33) of the Virginia Consumer Protection Act ("VCPA"). The Plaintiff prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to its authority in Virginia Code § 59.1-203, which provides, *inter alia*, that the Attorney General may bring an action to enjoin any violation of the VCPA, which includes, among others, any violation of the statutes applicable to pawnbrokers, in accordance with §§ 54.1-4014(B) and 59.1-200(A)(33).

2. The Circuit Court for the County of Culpeper has authority to entertain this action and to grant the relief requested pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205 and 59.1-206.

3. Venue in this Court is preferred, pursuant to Virginia Code § 8.01-261(15)(c), because some or all of the acts to be enjoined are, or were, being done in the County of Culpeper. Furthermore, venue is permissible in this Court pursuant to Virginia Code §§ 8.01-262(3) and (4) because the Defendant regularly conducts substantial business activity in the County of Culpeper, and portions of the cause of action arose in the County of Culpeper.

4. Prior to the commencement of this action, the Plaintiff gave the Defendant written notice that this cause of action was contemplated. In that written notice, the Defendant was afforded a reasonable opportunity to either appear before the Office of the Attorney General to demonstrate that it had not violated the VCPA or the pawnbroker statutes, or, to execute an Assurance of Voluntary Compliance (“Assurance”), pursuant to Virginia Code § 59.1-203(B). The Defendant agreed to enter into an Assurance that is acceptable to the Commonwealth.

PARTIES

5. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

6. The Defendant, Culpeper Pawn, is a Virginia corporation with its principal place of business in Culpeper, Virginia (Culpeper County). Its Articles of Incorporation were issued by the State Corporation Commission (“SCC”) on May 3, 2001.

FACTS

7. During the period from at least May 3, 2001 through the present, the Defendant has operated as a pawnbroker to consumer borrowers out of its store located at 255 Southgate Shopping Center, Culpeper, Virginia (Culpeper County). In this connection, the Defendant

makes and has made closed-end pawn loans to individual consumers for personal, family, household or other non-business purposes, which loans are secured by the consumers' personal property (the "pawn loans").

8. On a pawn loan it made on July 2, 2015, the Defendant imposed a monthly finance charge of \$21.00 on a loan of \$100.00. A copy of the pawn ticket the Defendant issued on this loan is attached as Exhibit A.

CAUSES OF ACTION

COUNT I – Virginia Code §§ 54.1-4008(A) and 54.1-4014(B)

9. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1-8.

10. Virginia Code § 54.1-4000 defines "pawnbroker" as:

"Pawnbroker" means any person who lends or advances money or other things for profit on the pledge and possession of tangible personal property, or other valuable things, other than securities or written or printed evidences of indebtedness or title, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

11. Section 54.1-4008(A) of the Virginia pawnbroker statutes provides that pawnbrokers may not demand interest greater than ten percent (10%) per month on a loan of \$25 or less, seven percent (7%) per month on a loan of more than \$25 and less than \$100, or five percent (5%) per month on a loan of \$100 or more.

12. Section 54.1-4009(C)(1) of the Virginia pawnbroker statutes provides that pawnbrokers may charge service fees that "shall not exceed five percent [5%] of the amount loaned on such item or paid by the pawnbroker for such item or \$3, whichever is less" for each loan or transaction for making daily electronic reports to the appropriate law-enforcement officers in compliance with § 54.1-4010, for creating and maintaining the required electronic records, and for investigating legal title to property being pawned, pledged, or purchased.

13. Section 54.1-4013(B) of the Virginia pawnbroker statutes provides that pawnbrokers may charge a monthly storage fee for any items requiring storage, which fee shall not exceed five percent (5%) of the amount loaned on such item.

14. Virginia law does not authorize the imposition of any other fees by a pawnbroker incident to the making of a loan.

15. On a one-month pawn loan of \$100.00, the following interest and fees are permitted: (a) interest in the amount of \$5.00; (b) a storage fee in the amount of \$5.00; and (c) a service fee in the amount of \$3.00; the total allowable fee, accordingly, is \$13.00.

16. Because the Defendant charged \$21.00 in fees when only \$13.00 was permitted, the excess \$8.00 in fees charged constitute excess interest not specifically authorized by §§ 54.1-4008(A), 54.1-4009(C), 54.1-4013(B), or any other pawnbroker statute. Accordingly, this charge constitutes disguised interest in violation of §§ 54.1-4008(A) and 54.1-4014(B).

17. On information and belief, the Defendant violated § 54.1-4008(A) on all or many of its loans during the period from at least May 3, 2015 through February 27, 2016 because it charged excessive interest rates and illegal fees on all or many of its loans.

Count II – Virginia Consumer Protection Act

18. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1-17.

19. The Defendant is now, and was at all relevant times, a “supplier” of “goods” or “services,” and engaged in “consumer transactions,” as those terms are defined in § 59.1-198 of the VCPA, by advertising, offering, and providing pawn loans to consumers.

20. Pursuant to § 59.1-200(A)(33), each of the Defendant’s previously described violations of §§ 54.1-4008(A) and 54.1-4014(B) of the pawnbroker statutes also constitutes a violation of the VCPA.

21. The Defendant willfully committed the violations of §§ 54.1-4008(A), 54.1-4014(B), and 59.1-200(A)(33) because, on information and belief, it knew of its obligations and limitations under the aforementioned pawnbroker statutes yet chose to impose illegal fees.

22. Individual consumers have suffered monetary damages as a result of the aforesaid violations by the Defendant.

23. The VCPA authorizes the Attorney General to seek, among other relief, restitution (§ 59.1-205) for any amounts that might have been acquired from persons by means of a violation of § 59.1-200, civil penalties of not more than \$2,500 per willful violation (§ 59.1-206), investigative costs and reasonable expenses not to exceed \$1,000 per violation, and attorneys' fees (§ 59.1-206).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court enter the Order Approving and Adopting Assurance of Voluntary Compliance filed herewith.

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

By: _____

Mark S. Kubiak

Mark R. Herring
Attorney General

Cynthia E. Hudson
Chief Deputy Attorney General

Samuel T. Towell
Deputy Attorney General
Civil Litigation Division

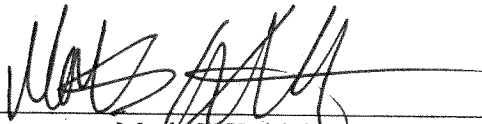
Richard S. Schweiker, Jr.
Chief and Senior Assistant Attorney General

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General

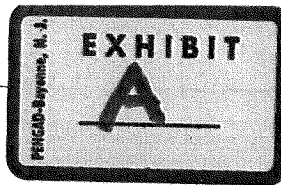
Consumer Protection Section
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of December, 2018 a copy of the foregoing **Complaint** was sent by first-class mail, postage prepaid, to M. Andrew Gayheart, Esquire, Gayheart & Willis, P.C., P.O. Box 1583, Culpeper, Virginia 22701, counsel for Tempo Venture, Inc.



Mark S. Kubiak



Culpeper Pawnbroker

30 Day Repurchase Option No. **110369**

255 Southgate Shopping Center,
Culpeper VA 22701
(540) 829-7296

Date Made: **07/02/2015**
Time Made: **3:01 PM**
Previous No. **None**
Original No. **110369**

Pledgor:
ID:
Address:

Description of all items pawned

1/. 1 - electronic Hp pavillion g6 w/core i5 processor Hewlett Packard G6
Serial#5CG1380QQG

You May Repurchase Items within 30 days

TRUTH IN LENDING	
MATURITY DATE	08/01/2015
AMOUNT FINANCED	\$100.00
BUY BACK CONTRACT SELLING PRICE	
FINANCE CHARGE	\$21.00
BUY BACK CONTRACT OPTION FEE	
TOTAL OF PAYMENTS	\$121.00
THE REPURCHASE PRICE	
ANNUAL PERCENTAGE RATE	156.00%
PAYMENT SCHEDULE: 1 @	\$121.00
<small>If you reclaim the property early you will not be entitled to a refund of part of the finance charge.</small>	

Privacy Statement

We respect your privacy by keeping the information you share with us secure. At no time do we disclose any non-public personal information about you, the customer, to any third party, except as mandated by law.

U.S. currency given directly to you

\$100.00 **\$0.00**

Breakdown/Explanation of Finance Charges

Interest	Service	Misc	Finance Chg
5.00	5.00	3.00	\$13.00

TERMS AND CONDITIONS. Your signature below constitutes acceptance.

BUY BACK CONTRACT TERMS AND CONDITIONS:

Seller hereby SELLS TO Culpeper Pawnbroker ("Purchaser"), the property described on this contract for the fair market value as "SELLING PRICE". The Seller is hereby granted an option to void this sale and reclaim the property described in this contract within a 30 day period by returning the SELLING PRICE and paying the finance charge as agreed upon with the Purchaser. The Purchaser shall hold the property for a period of not less than thirty (30) days and shall not sell or otherwise dispose of or encumber the property during the contract or any valid extension of the contract. The property described shall become the property of the Purchaser at the end of the original contract period or at the end of any extension of the contract unless this contract is exercised or extended prior to the end of the original Buy Back Contract period or the end of any valid extension of the contract. Upon the expiration of the Buy Back Contract or any extension, the Purchaser is immediately free to sell publicly or privately any and all property documented by this contract with no obligation and/or requirement for published notice of sale or public auction and without further notice to Seller. All proceeds from the sale of purchased item(s) belong to the Purchaser. The Seller represents that he/she is the sole and legal owner of the property described in this contract and has the right to sell, transfer and deliver this property to the Purchaser.

The seller further represents that there are no liens, debts, or pledges against the property being transferred to the Purchaser. If it is later determined that the seller misrepresented their ownership/title to the property being pledged to the Purchaser, the Seller agrees to reimburse the Purchaser for any and all costs required to make the purchaser whole (i.e. Original Loan Amount, All Finance Charges, Court Costs, Attorney Fees, etc.) The Seller hereby expressly and unconditionally relieves the Purchaser from any and all legal obligations, under the code of Virginia, to hold the property for a period beyond the original Buy Back Contract period and/or any extension of the Buy Back Contract. The Purchaser is not responsible for loss due to theft, civil disturbances, riots, fire, terrorism, acts of nature or any circumstances beyond the control of the Purchaser. The Seller agrees to the following: (1) The original customer copy of the Buy Back Contract must accompany all remittances and/or exercise of Buy Back Contract extensions. (2) Property may be delivered without liability to any person presenting the customers copy of the Buy Back Contract. (3) Buy Back Contract extensions are in thirty (30) day increments. (4) The Purchaser has no obligation to notify Seller upon expiration of the (30) day contract period or extensions or the ultimate disposition of property once the contract period or extensions have expired. (5) The Purchaser is not obligated to accept payment in any form except U.S. currency for Seller obligated payments to the Purchaser. There is a 15 day grace period. It is the Sellers responsibility to contact the Purchser by the 15th day or the Buy Back Contract or any extension of the Buy Back Contract will be in default. The Sellers signature below is confirmation that the Seller has read and understands the terms and conditions of the Buy Back Contract. _____.

Merchandise not repurchased or renewed by 8/8/2015 May Not be repurchased.

I acknowledge receipt of a true copy of this contract and accept the terms and conditions.
Sellers signature:

I am Voiding This Sale and Reclaiming the Property.
Seller's Signature:

X

7/2/2015

Pawnbroke
(RYAN/RYAN)

Hours 9:30 - 6:00, Mon - Fri. 10:00 - 4:00 Saturday
Visa, Mastercard, & Discover Credit Cards Accepted for Sales Only.

