

RECEIVED

JAN 19 2016

OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATIVE DIVISION

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.)
)
MONEYKEY - VA, INC.,)
a Delaware corporation,)
)
Defendant.)

CIVIL ACTION NO. CLIS-5255-5

**ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY
COMPLIANCE**

Upon review of the Complaint and the Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Defendant MoneyKey - VA, Inc., and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court;
and
2. The Clerk of this Court shall mail a certified copy of this Order to Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219, and to John F. Kozak, Esquire, Katten Muchen Rosenman, LLP, 2900 K St., NW, North Tower - Suite 200, Washington, DC 20007.

Enter: 1,6,16

Beverly W. Smith
Judge, Circuit Court for the 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
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

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

MONEYKEY - VA, INC.

By: John F. Kozak

John F. Kozak, Esquire (VSB No. 87719)
Katten Muchin Rosenman, LLP
2900 K St., NW
North Tower - Suite 200
Washington, DC 20007
Phone: (202) 625-3560
Fax: (202) 298-7570

Counsel for MoneyKey - VA, Inc.

A Copy
Teste: EDWARD F. JEWETT, CLERK
BY: Edward F. Jewett 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.)
)
MONEYKEY – VA, INC.,)
a Delaware corporation,)
)
Defendant.)
_____)

CIVIL ACTION NO. _____

RECEIVED AND FILED
CIRCUIT COURT
DEC 18 2015
EDWARD F. JEWETT, CLERK
BY _____ D.C.

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 Moneykey – VA, Inc. (“MoneyKey” or the “Defendant”).

1.1 MoneyKey is a Delaware corporation headquartered in Wilmington, Delaware. MoneyKey operates as a lender, making open-end loans to consumers in Virginia via the Internet.

1.2 MoneyKey does not contest that it has advertised to and served Virginia consumers. MoneyKey consents to and waives all objections to this Court’s jurisdiction for all matters relating to this Assurance’s entry, execution, monitoring and enforcement. MoneyKey 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 this Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that MoneyKey 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 loans to individual consumers residing in Virginia.

2.2 During the period from at least May 2013 to July 10, 2015 (the "Relevant Period"), MoneyKey offered to make, and made, open-end loans to Virginia consumers via the Internet.

2.3 The Commonwealth contends that MoneyKey operated in violation of Virginia's statutes governing consumer finance, Virginia Code §§ 6.2-1500 to 6.2-1543, by charging, contracting for, or receiving interest in excess of the statutory limit of twelve percent (12%) per year set forth in Virginia Code §§ 6.2-303 and 6.2-1501.

2.4 MoneyKey advertised its loans as compliant with Virginia's open-end credit plan statute, Virginia Code § 6.2-312, which operates as an exception to the Virginia consumer finance statutes. Section 6.2-312 permits lenders, in connection with open-end credit plans, to charge finance charges and other fees at agreed-upon rates, provided that a finance charge is not assessed without the application of a minimum twenty-five day grace period during which the borrower may repay the advance without incurring a finance charge.

2.5 Though MoneyKey's open-end credit plans were advertised as being compliant with the open-end credit plan statute, they were not. During the Relevant Period, Moneykey imposed, on

each of its open-end credit borrowers, a “cash-advance fee” amounting to fifteen-percent (15%) of the principal balance (a finance charge), without the application of an appropriate finance charge grace period. If the principal balance and cash-advance fee were not repaid in full by the first billing due date, MoneyKey otherwise charged interest at an annual percentage rate of 399% on its cash advance loans.

2.6 By failing to provide its borrowers with an applicable finance-charge grace period, MoneyKey’s lending conduct fell squarely within the 12% annual interest rate cap set forth in §§ 6.2-303 and 6.2-1501, which it violated by charging interest and other charges in excess of the 12% annual limit.

2.7 MoneyKey also included on its Internet website a copy of its Certificate of Authority to Transact Business in the Commonwealth in the portion of the website titled “License Information,” suggesting that the company was licensed and regulated as a lender in Virginia. However, lenders offering open-end loans pursuant to § 6.2-312 are not required to be licensed with the Virginia State Corporation Commission or any other regulatory authority. The Certificate of Authority to Transact Business in Virginia is merely a requirement of all foreign business organizations transacting business in Virginia. *See, e.g.*, Va. Code § 13.1-757.

2.8 The Commonwealth contends that MoneyKey violated § 59.1-200(A)(2), (5), and (14) of the VCPA by misrepresenting that its loans were compliant with § 6.2-312, and by misrepresenting its licensure status in the Commonwealth of Virginia.

2.9 MoneyKey informs the Commonwealth, and the Commonwealth understands, that MoneyKey voluntarily and temporarily suspended the origination of new loans to Virginia consumers on July 10, 2015, pending the outcome of the Attorney General’s investigation into MoneyKey’s practices.

2.10 MoneyKey has cooperated fully with the Office of the Attorney General in connection

with its inquiry.

III. DEFENDANT'S POSITION

3.0 The statements contained in this Section III represent the position of MoneyKey.

3.1 MoneyKey does not contest the allegations contained in Sections 2.1 and 2.2 and denies the allegations contained in Sections 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8 of this Assurance of Voluntary Compliance.

3.2 MoneyKey denies that it has engaged in any acts and practices that violate any Virginia law, including, but not limited to, the consumer finance statutes and the VCPA.

3.3 Moreover, MoneyKey asserts that it places a priority on its efforts to provide quality products and customer service.

3.4 MoneyKey contends that Virginia Code § 6.2-312 applies to the period between a consumer's billing date and due date, and in respect of all billing cycles.

3.5 In addition, MoneyKey informs the Commonwealth, and the Commonwealth understands that, upon receipt of its notice and subsequent telephonic discussions with the Attorney General, MoneyKey revised its operations to provide for the finance charge "grace period", in accordance with the Attorney General's interpretation of Virginia Code § 6.2-312.

3.6 MoneyKey included on its Internet website a copy of its Certificate of Authority to Transact Business in the Commonwealth in the portion of the website titled "License Information," notwithstanding that MoneyKey is not required to be licensed with the Virginia State Corporation Commission or any other regulatory authority in Virginia. MoneyKey's intention was to demonstrate to any visitor to its Internet website that MoneyKey was permitted to conduct business in the Commonwealth of Virginia. MoneyKey's position is that the display of the Certificate was made in good faith with no intent to indicate that it had a lending license.

3.7 In addition, MoneyKey informs the Commonwealth, and the Commonwealth understands

that, immediately upon receipt of its notice and the subsequent telephonic discussion with the Attorney General, its Certificate of Authority to Transact Business in the Commonwealth was removed from its website.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission by MoneyKey for any purpose of any fact or of a violation of any state or federal law, rule or regulation. MoneyKey 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. MoneyKey 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 MoneyKey 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 MoneyKey's services or practices and MoneyKey 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 MoneyKey in violation of applicable federal, state or other laws.

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

4.7 The Commonwealth shall not institute any civil proceeding or take any civil action against MoneyKey, its officers, directors, employees or agents under consumer finance statutes 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 or practice addressed in this Assurance. The Parties agree that if MoneyKey, or its employees, agents, officers or directors, provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this provision shall be null and void.

4.8 This Assurance applies to MoneyKey, together with its officers, directors, employees, assigns and agents who are engaged in any aspect of the Defendant's lending activities.

4.9 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 MoneyKey voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 MoneyKey agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the consumer finance statutes in Section II of this Assurance, and MoneyKey agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later

determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 MoneyKey agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the consumer finance statutes, as they now exist, or as amended in the future.

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

5.4 MoneyKey agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the VCPA, as it now exists, or as amended in the future.

5.5 MoneyKey agrees to make available and to disclose the provisions of this Assurance to its employees, agents and representatives 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.

5.6 MoneyKey shall institute supervisory compliance procedures that are reasonably designed to ensure compliance with this Assurance, including, without limitation, a) the training of relevant employees and b) revisions to and/or development of appropriate training materials and internal procedures.

5.7 MoneyKey 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 avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.8 MoneyKey agrees that it shall not represent that the Attorney General approves of or endorses Defendant's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 "Restitution-Eligible Consumers" means all borrowers who received a cash advance from MoneyKey during the Relevant Period, who paid a finance charge, and who repaid their cash advance in full by the close of the second billing cycle.

6.1 By the later of November 13, 2015 or the execution of this Assurance, MoneyKey agrees to provide the Attorney General's Office with a verified spreadsheet containing the first and last name, home address, and phone number for all Restitution-Eligible Consumers. Such spreadsheet also shall include for each Restitution-Eligible Consumer the loan date, the initial principal amount loaned, the total amount paid on account of cash advance fees, interest, and other finance charges, and the dollar amount of restitution owed (which amount shall equal the total amount paid on account of cash advances, interest and other finance charges assessed during the first billing cycle). The verified spreadsheet shall be accompanied by an affidavit in the attached form.

6.2 Within sixty (60) days of the Effective Date, MoneyKey shall issue refund checks totaling \$18,293.99 to the Restitution-Eligible Consumers with a letter explaining this settlement and stating that such consumers are entitled to a refund in the amount of the cash advances, interest, and other finance charges they were charged and paid during the first billing cycle. MoneyKey may require that, by depositing the refund checks, the Restitution-Eligible Consumers release MoneyKey from any and all liability arising from this Assurance. The form and substance of the letter and any release language shall be approved in advance by the Attorney General.

6.3 MoneyKey shall manage and conduct the mailing of refund checks to the Restitution-Eligible Consumers and track and compile the identity of those consumers: (a) who deposited the refund checks; (b) who did not deposit the refund checks; and (c) whose refund checks are returned to MoneyKey for incorrect or insufficient address or any other reason. MoneyKey agrees to cover all costs related to such mailing, tracking, and compiling.

6.4 MoneyKey shall provide all information compiled pursuant to Paragraph 6.3 above to the Office of the Attorney General within one hundred twenty (120) days of the Effective Date so that the Attorney General may engage in further efforts to locate the Restitution-Eligible Consumers whose refund checks are returned for incorrect or insufficient address, or any other reason. MoneyKey agrees that it also will use reasonable efforts to locate such Restitution-Eligible Consumers. The Attorney General may direct MoneyKey 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, MoneyKey shall not have any further liability with respect to any refund checks that have not been deposited.

6.5 MoneyKey agrees to use its current toll-free number and staff it to handle consumer inquiries relating to the settlement. MoneyKey agrees to staff the telephone number from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding United States federal and banking holidays, for at least two hundred ten (210) days after the Effective Date. The individuals designated to handle such consumer inquiries shall be knowledgeable of the terms of the Assurance and have ready access to the spreadsheets required in Paragraphs 6.1, 7.2, 7.3 and 8.1, and be prepared to inform consumers of the relief they are eligible to receive pursuant to this Assurance, if any.

VII. FORBEARANCES

7.0 “Forbearance-Eligible Consumers” means all borrowers who received a cash advance from MoneyKey during the Relevant Period, who continue to make payments on a cash advance, who continue to have an open balance on their line of credit account, or who defaulted on their cash advance line of credit account.

7.1 “Forbearance-Eligible/Restitution-Eligible Consumers” means all Forbearance-Eligible Consumers from whom MoneyKey collected any amounts in excess of the principal amounts loaned after November 3, 2015.

7.2 With respect to all Forbearance-Eligible Consumers, MoneyKey agrees to cease all collection efforts once the principal amounts borrowed have been recouped. If, as of November 3, 2015, MoneyKey has recouped from any Forbearance-Eligible Consumer amounts that exceed the principal amounts borrowed, all collection efforts must cease, but no restitution is required. By the later of November 13, 2015 or the execution of this Assurance, MoneyKey agrees to provide the Office of the Attorney General with a spreadsheet containing the name, address, telephone number, total amount loaned, current outstanding balance, total amount paid to date on account of principal, cash advances or other interest, and fees, and, as appropriate, the amount of any balance that remains subject to collection [where total loaned minus total paid to date is a positive number], and the amount of any portion of the current outstanding balance which MoneyKey is agreeing to forbear [where total paid exceeds total loaned, this will be the entire outstanding balance; where total paid is less than total loaned, this will be the current outstanding balance minus the difference between the amount loaned and paid], with respect to each Forbearance-Eligible Consumer. The verified spreadsheet shall be accompanied by an affidavit in the attached form.

7.3 With respect to all Forbearance-Eligible/Restitution Eligible Consumers, all amounts collected by MoneyKey in excess of the principal amounts owed after November 3, 2015 must be refunded. By the later of November 13, 2015 or the execution of this Assurance, MoneyKey agrees to provide the Office of the Attorney General with a spreadsheet containing the name, address, telephone number, total amount loaned, total amount paid to date on account of principal or interest, and amount to be refunded to each Forbearance-Eligible/Restitution-Eligible Consumer. The verified spreadsheet shall be accompanied by an affidavit in the attached form. If no amounts in excess of the principal amounts loaned were collected from this category of borrowers after November 3, 2015, MoneyKey may, in lieu of the spreadsheet described in this Paragraph, provide the Office of the Attorney General with written confirmation that no such collections occurred.

7.4 In the event a Forbearance-Eligible Consumer voluntarily submits a payment to the Defendant after the Effective Date, where such payment causes the consumer's total aggregate payments to exceed the principal amounts loaned, the Defendant agrees to return the excess payment [where such excess payment is equal to the difference between the total amount paid and the principal amounts loaned] to the consumer simultaneously with a letter explaining the relevant terms of the Assurance within ten (10) business days of receipt of the consumer's payment. The form and substance of any letter used under these circumstances shall be approved in advance by the Attorney General.

7.5 With respect to all Forbearance-Eligible Consumers from whom MoneyKey has recouped at least the principal amounts loaned, if any debt owed has been turned over by the Defendant to a debt collector, the Defendant agrees to provide notice to the debt collector requiring the debt collector to cease all further collection efforts. The Defendant shall provide notice to debt collectors within fifteen (15) days of the Effective Date.

VIII. MISCELLANEOUS

8.0 “Non-Relief Consumers” means all borrowers who received a cash advance from MoneyKey during the Relevant Period, who were assessed a finance charge, and who repaid their cash advance line of credit account in full after the close of the second billing cycle.

8.1 By the later of November 13, 2015 or the execution of this Assurance, MoneyKey agrees to provide the Office of the Attorney General with a verified spreadsheet containing the name, home address, and telephone number of each Non-Relief Consumer. Such spreadsheet also shall include for each Non-Relief Consumer the loan date, the initial principal amount loaned, and the total amount paid on account of principal, cash advances or other interest, and fees.

8.2 MoneyKey agrees not to destroy any loan records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer, Forbearance-Eligible Consumer, or Non-Relief Consumer.

8.3 If MoneyKey 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.

8.4 To the extent that the Defendant has provided any negative information, knowingly or unknowingly, directly or indirectly, to any credit reporting agency concerning any Restitution-Eligible Consumer, Forbearance-Eligible Consumer, or Non-Relief Consumer, the Defendant agrees to contact the credit reporting agency to request removal of the adverse information.

IX. ATTORNEYS' FEES

9.0 The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of Thirty Thousand Dollars (\$30,000), pursuant to § 59.1-206(C) of the VCPA and § 6.2-1537(D) of the consumer finance statutes, 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.

9.1 MoneyKey agrees to pay the amount set forth in this Section simultaneously with its execution of this Assurance by delivery of a cashier's or certified check in the amount of Thirty Thousand Dollars (\$30,000) payable to "Treasurer of Virginia," and remitted to the Office of the Attorney General, Consumer Protection Section, Attn: Mark S. Kubiak, 900 East Main Street, Richmond, Virginia 23219.

X. SIGNATURES

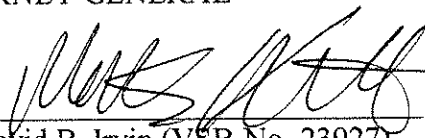
10.0 Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 18th day of December, 2015.

FOR THE PLAINTIFF:

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

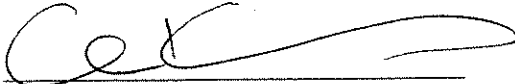
By: _____


David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

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

FOR THE DEFENDANT:

MONEYKEY – VA, INC.

By: 
Clive Kinross

Its: President and Chief Executive Officer

AFFIDAVIT VERIFYING SPREADSHEET

The undersigned has supervised a complete search and examination of all files and loan records of MoneyKey-VA, Inc. ("MoneyKey") for the period from May 2013 through July 15, 2015, and, based on this search and examination, has prepared the attached spreadsheets to provide the loan information required by the Assurance of Voluntary Compliance. The attached spreadsheets are accurate and complete to the best of my knowledge.

MoneyKey-VA, Inc.

By: _____

Printed Name

Title: _____

STATE/Commonwealth OF _____:

CITY/COUNTY OF _____:

Sworn to and subscribed before me, a notary public in and for the jurisdiction aforesaid, this ___ day of _____, 2015.

Notary Public

My commission expires: / /