

CIRCUIT COURT
STAFFORD VIRGINIA

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CLERK OF COURT

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
))
Plaintiff,)
))
v.)
))
ALL STAR PAWN & GOLD, LLC,)
a Virginia limited liability company,)
))
Defendant.)
_____)

CIVIL ACTION NO. 17-240

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 All Star Pawn & Gold, LLC, 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, 202 North 9th Street, Richmond, Virginia 23219, and to Christian B. Franklin, Esquire, Parrish Snead Franklin Simpson, PLC, P.O. Box 7166, Fredericksburg, Virginia 22404.

Enter: 3 / 3 / 2017

Judge, Circuit Court for the County of Stafford
Page 1 of 2

A COPY TESTE:

Kathleen M. Sterne, CLERK
CIRCUIT COURT OF STAFFORD

WE ASK FOR THIS:

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

ALL STAR PAWN & GOLD, LLC

By: 

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P.O. Box 7166
Fredericksburg, Virginia 22404
Phone: (540) 373-3500
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Counsel for All Star Pawn & Gold, LLC

ALL STAR PAWN & GOLD, LLC

By: 

Kevin Jones

Its: Managing member

Title

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD

<u>COMMONWEALTH OF VIRGINIA,</u>)	
<i>EX REL.</i> MARK R. HERRING,)	
ATTORNEY GENERAL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. _____
)	
ALL STAR PAWN & GOLD, LLC,)	
a Virginia limited liability company,)	
)	
Defendant.)	
_____)	

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 All Star Pawn & Gold, LLC (“All Star”).

1.1 All Star is a Virginia limited liability company headquartered in Stafford County, Virginia. All Star operates as a pawnbroker, as defined in Virginia Code § 54.1-4000, making closed-end loans to consumers out of its sole business location at 736 Warrenton Road, Suite # 108, Fredericksburg, Virginia 22406 (Stafford County), which loans are secured by the consumers’ personal property that is left with All Star (the “pawn loans”).

1.2 All Star does not contest that it has advertised to and served Virginia consumers. All Star consents to and waives all objections to this Court’s jurisdiction for all matters relating to this Assurance’s entry, execution, monitoring and enforcement. All Star 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 All Star 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 pawn loans to individual consumers residing in Virginia.

2.2 During the period from at least February 13, 2013 to the present, All Star offered to make, and made, pawn loans to Virginia consumers.

2.3 The Commonwealth contends that, during the period from at least February 13, 2013 through November 17, 2015 (the "Relevant Period"), All Star operated in violation of the Virginia statutes governing pawnbrokers, Virginia Code §§ 54.1-4000 through 54.1-4014, by charging excessive interest rates and/or fees on all or many of its pawn loans. Specifically, the Commonwealth contends that All Star charged interest and/or fees in amounts beyond the "permissible fees," as defined in § 6.2, *infra*.

2.4. The Commonwealth contends that, by violating the statutes applicable to pawnbrokers, All Star also operated in violation of the VCPA. *See* Va. Code Ann. §§ 54.1-4014(B) and 59.1-200(A)(33).

2.5 All Star informs the Commonwealth, and the Commonwealth understands, that All Star voluntarily altered its fee structure on or around November 17, 2015, to charge only such interest and fees as are specifically authorized under the pawnbroker statutes.

III. ALL STAR'S POSITION

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

3.1 All Star does not contest the allegations contained in Sections 2.1 and 2.2 and denies the allegations contained in Sections 2.3 and 2.4 of this Assurance of Voluntary Compliance.

3.2 All Star asserts that its fully disclosed service and appraisal fees were allowable collateral charges not specifically prohibited by the Virginia statutes governing pawnbrokers, Virginia Code §§ 54.1-4000 through 54.1-4014.

3.3 As a result, All Star denies that it has engaged in any acts and practices that violate any Virginia law, including, but not limited to, the Virginia pawnbroker statutes and the VCPA.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission or waiver by All Star for any purpose of any fact or of a violation of any state or federal law, rule or regulation. All Star 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. All Star 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 All Star 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 All Star's services or practices and All Star 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 All Star in violation of applicable federal, state or other laws.
- 4.6 All Star agrees that this Assurance constitutes a legally-enforceable obligation of All Star in accordance with its terms.
- 4.7 The Commonwealth shall not institute any civil proceeding or take any civil action against All Star, its members, managers, employees or agents under Virginia pawnbroker 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 All Star, or its employees, agents, members, or managers provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this provision shall be null and void.
- 4.8 The Parties agree that, if All Star files for bankruptcy within ninety (90) days of any required payment under this Assurance, the release appearing in Paragraph 4.7 shall be null and void.
- 4.9 This Assurance applies to All Star, together with its members, managers, employees, assigns and agents who are engaged in any aspect of All Star's lending activities, but All Star's members, managers, employees, assigns and agents shall not be individually liable or responsible for the payment obligations set forth in this Assurance.
- 4.10 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 All Star voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 All Star agrees to refrain from and to be permanently enjoined, subject to the provisions and exception set forth in Paragraph 5.9 of Section V of this Assurance, from engaging in those acts and practices alleged to be violations of the Virginia pawnbroker statutes in Paragraph 2.3 of Section II of this Assurance, and All Star 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 All Star agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the Virginia pawnbroker statutes, as they now exist, or as amended in the future.

5.3 All Star agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the VCPA in Paragraph 2.4 of Section II of this Assurance, and All Star 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 All Star 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 All Star agrees to make available and to disclose the provisions of this Assurance to its members, managers, 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 All Star 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 All Star 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 All Star agrees that it shall not represent that the Attorney General approves of or endorses All Star's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

5.9 Nothing in this Assurance shall be construed to prohibit All Star from imposing fees different from, or in addition to, the permissible fees described in Paragraph 6.2, *infra*, in connection with its pawnbroking activities, provided that such additional or different fees are consistent with: (a) any subsequent change in the pawnbroker statutes enacted by the Virginia General Assembly, or (b) an opinion issued in connection with a litigated matter by (i) an appropriate Virginia appellate court; (ii) a Virginia circuit court in a jurisdiction in which All Star has a physical business location; or (iii) a Virginia circuit court where the Attorney General

was a party to the litigation or otherwise had an opportunity to weigh in through the filing of an amicus brief or similar pleading.

VI. RESTITUTION

6.0 “Restitution Period” means the period from June 3, 2015 through November 17, 2015.

6.1 “Restitution-Eligible Consumers” means all borrowers who received one or more pawn loans from All Star during the Restitution Period from whom All Star collected impermissible fees as described in Paragraph 6.3, *infra*.

6.2 “Permissible fees” means the fees specifically permitted by Virginia Code §§ 54.1-4008(A) (interest of ten percent per month on a loan of \$25 or less; seven percent per month on a loan of more than \$25 and less than \$100; and five percent per month on a loan of \$100 or more); 54.1-4009(C) (a five-percent service fee for making daily electronic reports to the appropriate law-enforcement officers, not to exceed \$3); and 54.1-4013(B) (a five-percent monthly storage fee).

6.3 “Impermissible fees” means any fee or fees charged by All Star in addition to the permissible fees specifically authorized by Virginia Code §§ 54.1-4008(A), 54.1-4009(C) or 54.1-4013(B). For purposes of calculating restitution in this Section, “impermissible fees” means the difference between the aggregate fees actually charged by All Star, and the aggregate permissible fees described in Paragraph 6.2.

6.4 Simultaneously with the execution of this Assurance, All Star 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 date the loan was fully repaid (if it was repaid), the initial principal amount loaned, the total amount paid on account of finance charges and other fees and charges, the total aggregate amount of permissible fees, and the total

restitution due subject to the per-individual restitution floor described in Paragraph 7.0, *infra* [where such amount is equal to the total amount paid on account of finance charges and other fees and charges minus the total aggregate permissible fees allowable for that transaction]. The verified spreadsheet shall be accompanied by an affidavit in the attached form.

6.5 Within thirty (30) days of the Effective Date, All Star shall set aside in an escrow account, to be opened and maintained by All Star, a sum total of One Thousand Seven Hundred Fourteen Dollars and Thirty-Seven Cents (\$1,714.37), which represents twenty-five percent (25%) of the total Six Thousand Eight Hundred Fifty-Seven Dollars and Forty-Nine Cents (\$6,857.49) potentially due for restitution. All Star shall provide verification of deposit to the Attorney General, in the form of copies of a deposit slip and bank statement. If the amount in the escrow account is depleted to One Thousand Dollars (\$1,000), All Star shall, on a rolling basis, replenish the escrow account back to the amount of the initial deposit, or the amount necessary to satisfy all outstanding claims, whichever is less.

6.6 After the Effective Date, All Star shall issue claim forms 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 impermissible fees they paid. All Star also may require Restitution-Eligible Consumers to release claims relating to the allegations described in this Assurance. The form and substance of the letter and any required release shall be approved in advance by the Attorney General. All Star shall issue claim/release forms within thirty (30) days of the Effective Date to no fewer than half of the consumers who received pawn loans from All Star during the period from June 3, 2015 through November 17, 2015. All Star shall be required to issue claim/release forms to the remainder of the borrowers by no later than sixty (60) days of the Effective Date. All Star shall issue a single claim/release form (and, ultimately, a single refund

check) to Restitution-Eligible Consumers who received multiple loans during the Restitution Period.

6.7 All Star shall manage and conduct the mailing of refund checks to Restitution-Eligible Consumers who return executed claim/release forms. All Star shall issue each refund check no later than thirty (30) days after receipt of an executed claim/release form from Restitution-Eligible Consumers, and shall issue refund checks to Restitution-Eligible Consumers who return completed claim/release forms that are postmarked within one hundred fifty (150) days of the Effective Date. With exception of the circumstances described in Paragraph 6.9 below, All Star will not be obligated to issue restitution checks to Restitution-Eligible Consumers who return completed claim/release forms that are postmarked later than one hundred fifty (150) days after the Effective Date.

6.8 All Star shall track and compile the identity of those Restitution-Eligible Consumers: (a) whose claim/release forms are returned to All Star for incorrect or insufficient address or any other reason; (b) who return signed claim/release forms; (c) who deposit the refund checks; (d) who do not deposit the refund checks; and (e) whose refund checks are returned to All Star for incorrect or insufficient address or for any other reason. All Star agrees to cover all costs related to such mailing, tracking, and compiling.

6.9 All Star shall, between one hundred twenty (120) days of the Effective Date and one hundred fifty (150) days from the Effective Date, provide all information compiled pursuant to Paragraph 6.8 above to the Office of the Attorney General so that the Attorney General may engage in further efforts to locate the Restitution-Eligible Consumers whose claim/release forms are returned for incorrect or insufficient address, or for any other reason. All Star agrees that it also will use reasonable efforts to locate such Restitution-Eligible Consumers. The Attorney General may direct All Star to send claim/release forms at any time up to two hundred ten (210)

days after the Effective Date to any Restitution-Eligible Consumer for whom a more current address is found, and All Star shall issue refund checks to such Restitution-Eligible Consumers whose claim/release forms are postmarked within two hundred seventy (270) days of the Effective Date. Once all approved claims are paid, any remainder of the funds in the escrow account may be returned to All Star.

6.10 In the event a Restitution-Eligible Consumer signs and returns a claim and release form to All Star and the consumer's refund check is returned to All Star for any reason after being mailed, All Star will forward the amount due to that consumer to the Office of the Attorney General. If the Office of the Attorney General is not successful in locating any such Restitution-Eligible Consumer, such amounts will be forwarded to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55-210.9 and 55-210.2 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 to 55-210.30. With the exception of any consumer refund check that is returned to All Star for any reason after being mailed, All Star is not obligated to pay any refund check that is not deposited or cashed within one hundred twenty (120) days of mailing.

6.11 All Star agrees to use its current telephone number and staff it to handle consumer inquiries relating to the settlement. All Star agrees to staff the telephone number during its normal business hours for at least two hundred seventy (270) days after the Effective Date. For purposes of complying with this requirement, All Star agrees to accept collect telephone calls from consumers who are calling from outside of its local calling area. The individuals designated to handle such consumer inquiries shall be knowledgeable of the terms of the Assurance and have ready access to the spreadsheet required in Paragraph 6.4, and be prepared to inform consumers of the relief they are eligible to receive pursuant to this Assurance, if any.

VII. RESTITUTION FLOOR/CY PRES

7.0 All Star shall not mail a claim/release form or a restitution check to a Restitution-Eligible Consumer if the total aggregate restitution due to that particular consumer is less than Four Dollars (\$4) (the "Non-Restitution Consumers"). The total aggregate restitution due to all Non-Restitution Consumers is One Hundred Dollars and Thirty-Five Cents (\$100.35) (the "Cy Pres Funds").

7.1 The Attorney General will distribute the Cy Pres Funds to one or more nonprofit organization(s) that specialize in credit counseling, debt relief, or other related purpose in Stafford County and surrounding geographic areas. The specific organization(s) to receive these funds shall be selected by the Attorney General, in his sole discretion.

VIII. MISCELLANEOUS

8.0 All Star agrees not to destroy any loan records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer. This prohibition shall lapse after a period of three (3) years from the Effective Date, provided that All Star satisfies the requirements in Section VI, *supra*.

8.1 To the extent that All Star has provided any negative information, to any credit reporting agency concerning any Restitution-Eligible Consumer, All Star agrees to contact the credit reporting agency to request removal of the adverse information upon the request of such Restitution-Eligible Consumer.

IX. ATTORNEYS' FEES

9.0 The Commonwealth shall recover from All Star, and All Star agrees to pay the Commonwealth, the sum of Two Thousand Eight Hundred Ninety-Nine Dollars and Sixty-Five

Cents (\$2,899.65), for reimbursement of the Commonwealth's reasonable expenses, costs and attorneys' fees in investigating and preparing this action. The Attorney General maintains that said reasonable expenses, costs and attorneys' fees are recoverable by the Commonwealth pursuant to § 59.1-206(C) of the VCPA and any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

X. PAYMENT TO THE COMMONWEALTH¹

10.0 Simultaneously with the execution of this Assurance, All Star agrees to make payment of the Three Thousand Dollars (\$3,000) required by Sections VII and IX, *supra*, by delivering to the Commonwealth a certified or cashier's check, in the amount of Three Thousand Dollars (\$3,000), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219.

XI. SIGNATURES

11.0 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 12th day of March, 2017.

¹ The Commonwealth will hold the funds referenced in this Section in escrow pending the Court's approval of this Assurance. In the event the Court declines to approve this Assurance, the Commonwealth will return the funds referenced in this Section to All Star.

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

ALL STAR PAWN & GOLD, LLC

By: 

Christian B. Franklin, Esquire (VSB No. 45378)
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Fredericksburg, Virginia 22404
Phone: (540) 373-3500
Fax: (540) 899-6394

Counsel for All Star Pawn & Gold, LLC

ALL STAR PAWN & GOLD, LLC

By: 

Kevin Jones

Its: Managing member

Title

AFFIDAVIT VERIFYING SPREADSHEETS

The undersigned has supervised a complete search and examination of all files and loan records of All Star Pawn & Gold, LLC (“All Star”) for the period from June 3, 2015 through November 17, 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.

All Star Gold & Pawn, LLC

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 _____, 2017.

Notary Public

My commission expires: / /