

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. CL18001408-00

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

Upon review of the Complaint and Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Defendant Tempo Venture, Inc. d/b/a Culpeper Pawnbroker, 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 M. Andrew Gayheart, Esquire, Gayheart & Willis, P.C., 142 E. Davis Street, Culpeper, Virginia 22701.

Enter: 1/02/19

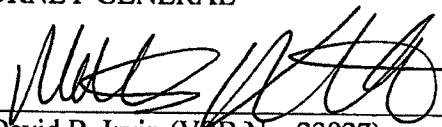


Judge, Circuit Court for the County of Culpeper

WE ASK FOR THIS:

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

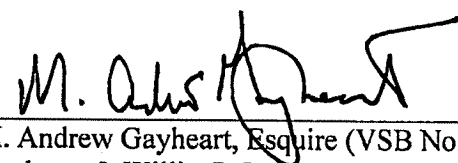
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By: 
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

TEMPO VENTURE, INC.

**COPY
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1/9/19**

By: 
M. Andrew Gayheart, Esquire (VSB No. 26385)
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Phone: (540) 825-3200

Counsel for Tempo Venture, Inc.

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CL18001408-00
 FILED IN THE CLERK'S OFFICE
 OF THE CIRCUIT COURT OF THE
 CULPEPER CIRCUIT COURT

DATE: 12/07/2018 @15:04:29

TESTE: *Blayssman*
 CLERK/DEPUTY CLERK

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 Tempo Venture, Inc. d/b/a Culpeper Pawnbroker ("Culpeper Pawn").

1.1 Culpeper Pawn is a Virginia corporation headquartered in Culpeper, Virginia. Culpeper Pawn 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 255 Southgate Shopping Center, Culpeper, Virginia 22701 (Culpeper County). Culpeper Pawn's loans (the "pawn loans") are secured by the consumers' personal property that is left with Culpeper Pawn.

1.2 Culpeper Pawn does not contest that it has advertised to and served Virginia consumers. Culpeper Pawn consents to and waives all objections to this Court's jurisdiction for all matters

relating to this Assurance's entry, execution, monitoring and enforcement. Culpeper Pawn 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 Culpeper Pawn 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 May 3, 2001 to the present, Culpeper Pawn offered to make, and made, pawn loans to Virginia consumers.
- 2.3 The Commonwealth contends that, during the period from at least May 3, 2015 through February 27, 2016 (the "Relevant Period"), Culpeper Pawn 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 Culpeper Pawn 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, Culpeper Pawn also operated in violation of the VCPA. *See* Va. Code Ann. §§ 54.1-4014(B) and 59.1-200(A)(33).
- 2.5 Culpeper Pawn informs the Commonwealth, and the Commonwealth understands, that Culpeper Pawn altered its fee structure on or around February 27, 2016, to charge only such

interest and fees as are specifically authorized under the pawnbroker statutes.

III. DEFENDANT'S POSITION

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

3.1 Culpeper Pawn 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 This Agreement is intended to affect a compromise and settlement of all claims, liabilities and responsibilities in an effort to reduce costs and avoid litigation between Culpeper Pawn and the Commonwealth, and nothing contained herein shall be construed as an admission by Culpeper Pawn of any liability of any kind to any of the customers or consumers of the services of Culpeper Pawn.

3.3 Culpeper Pawn 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 Culpeper Pawn for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Culpeper Pawn 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. Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn's services or practices and Culpeper Pawn 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 Culpeper Pawn in violation of applicable federal, state or other laws.
- 4.6 Culpeper Pawn agrees that this Assurance constitutes a legally-enforceable obligation of Culpeper Pawn in accordance with its terms.
- 4.7 The Commonwealth shall not institute any subsequent civil proceeding or take any civil action against Culpeper Pawn, its officers, directors, 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 Culpeper Pawn, 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 The Parties agree that, if Culpeper Pawn 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 Culpeper Pawn, together with its officers, directors, employees, assigns and agents.

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

5.1 Culpeper Pawn agrees to refrain from and to be permanently enjoined 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 Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn agrees to make available and to disclose the provisions of this Assurance to its officers, directors, 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 Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn agrees that it shall not represent that the Attorney General approves of or endorses Culpeper Pawn's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 "Restitution Period" means the period from May 3, 2015 through February 27, 2016.

6.1 "Restitution-Eligible Consumers" means all borrowers who received one or more pawn loans from Culpeper Pawn during the Restitution Period from whom Culpeper Pawn 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 Culpeper Pawn 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 Culpeper Pawn, and the aggregate permissible fees described in Paragraph 6.2.

6.4 Simultaneously with the execution of this Assurance, Culpeper Pawn 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 [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 a form acceptable to the Attorney General.

6.5 Within thirty (30) days of the Effective Date, Culpeper Pawn shall set aside in an escrow account, to be opened and maintained by Culpeper Pawn, a sum total of Seven Thousand Seven Hundred Ninety-Six Dollars and Seventy-Six Cents (\$7,796.76), which represents slightly more

than half of the Fifteen Thousand Five Hundred Ninety-Three Dollars and Fifty-One Cents (\$15,593.51) potentially due for restitution. Culpeper Pawn 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) or less, Culpeper Pawn shall 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, Culpeper Pawn 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. Culpeper Pawn 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. Culpeper Pawn shall issue claim/release forms to all Restitution-Eligible Consumers within sixty (60) days of the Effective Date. Culpeper Pawn 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 Culpeper Pawn shall manage and conduct the mailing of refund checks to Restitution-Eligible Consumers who return executed claim/release forms. Culpeper Pawn shall issue each refund check no later than sixty (60) 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 two hundred seventy (270) days of the Effective Date. With exception of the circumstances described in Paragraph 6.9 below, Culpeper Pawn will not be obligated to issue restitution checks to Restitution-Eligible Consumers who return completed claim/release forms that are postmarked later than two hundred seventy (270) days after the Effective Date.

6.8 Culpeper Pawn shall track and compile the identity of those Restitution-Eligible Consumers: (a) whose claim/release forms are returned to Culpeper Pawn 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 Culpeper Pawn for incorrect or insufficient address or for any other reason. Culpeper Pawn agrees to cover all costs related to such mailing, tracking, and compiling.

6.9 Culpeper Pawn shall, between one hundred twenty (120) days of the Effective Date and one hundred fifty (150) days from the Effective Date and at least once every sixty (60) days thereafter through four hundred twenty (420) 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. Culpeper Pawn agrees that it also will use reasonable efforts to locate such Restitution-Eligible Consumers. The Attorney General may direct Culpeper Pawn to send claim/release forms at any time up to two hundred seventy (270) days after the Effective Date to any Restitution-Eligible Consumer for whom a more current address is found, and Culpeper Pawn shall issue refund checks to such Restitution-Eligible Consumers whose claim/release forms are postmarked within three hundred sixty (360) days of the Effective Date. Once all approved claims are paid, any remainder of the funds in the escrow account may be returned to Culpeper Pawn.

6.10 In the event a Restitution-Eligible Consumer signs and returns a claim and release form to Culpeper Pawn and the consumer's refund check is returned to Culpeper Pawn for any reason after being mailed, Culpeper Pawn 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.

6.11 Culpeper Pawn agrees to use its current telephone number and staff it to handle consumer inquiries relating to the settlement. Culpeper Pawn agrees to staff the telephone number during its normal business hours for at least one year after the Effective Date. For purposes of complying with this requirement, Culpeper Pawn 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. MISCELLANEOUS

7.0 Culpeper Pawn 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 Culpeper Pawn satisfies the requirements in Section VI, *supra*.

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

VIII. ATTORNEYS' FEES

8.0 The Commonwealth shall recover from Culpeper Pawn, and Culpeper Pawn agrees to pay the Commonwealth, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) 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.

8.1 Simultaneously with the execution of this Assurance, Culpeper Pawn agrees to make payment of the amount required by Paragraph 8.0 above, by delivering to the Commonwealth a certified or cashier's check, in the amount of Three Thousand Five Hundred Dollars (\$3,500.00), 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.

IX. SIGNATURES

9.0 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 6th day of December, 2018.

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

By: 

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

TEMPO VENTURE, INC.

By:

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Phone: (540) 825-3200

Counsel for Tempo Venture, Inc.

TEMPO VENTURE, INC.

By:

Ryan Chapman
ryan chapman

Its: ~~Vice~~ President

VIRGINIA: IN CULPEPER COUNTY CIRCUIT COURT CLERK'S OFFICE
I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION
IS AFFIXED IS A TRUE COPY OF A RECORD IN THE CULPEPER COUNTY
CIRCUIT COURT, THAT I HAVE CUSTODY OF SAID RECORD, AND THAT I AM
THE CUSTODIAN OF THAT RECORD.

GIVEN UNDER MY HAND AND THE SEAL OF THE COURT THIS
DAY OF January 2019
TESTE: JANICE J. CORBIN, CLERK

BY: [Signature] DEPUTY CLERK