

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

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

Plaintiff,

v.

FUTURE INCOME PAYMENTS, LLC, *et al.*,

Defendants.

Civil Action No. CL18000527-00

PERMANENT INJUNCTION AND FINAL JUDGMENT

On November 14, 2018, the Plaintiff, Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General (the “Plaintiff” or the “Commonwealth”), by counsel, brought on for hearing its Motion for Entry of Default Judgment against the Corporate Defendants, Future Income Payments, LLC and FIP, LLC (collectively, “FIP”); and the Individual Defendant, Scott Kohn (collectively, “Defendants”). Based on the Commonwealth’s Complaint; the documentary evidence; the Affidavit of Kaci C. Sutherlin; the argument of counsel for the Commonwealth; the lack of any pleadings filed by Defendants in timely response to the Commonwealth’s Complaint; and the lack of any appearance made, either in person, by counsel after this Court allowed withdrawal of Defendants’ prior counsel, or in writing, by Defendants,

The Court finds as follows:

1. On March 6, 2018, the Commonwealth filed the above-captioned enforcement action alleging that Defendants had deceived Virginia consumers through an illegal “pension

sale” lending scheme in violation of the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207.

2. During the period from June 2011 through at least April 2018 (the “Relevant Period”), Defendants advertised to and solicited at least 1,042 Virginia consumers, and made at least 1,058 loans to Virginia consumers. FIP’s marketing efforts targeted veterans in particular, but reached consumers with pensions from public service and the private sector.

3. Defendants made the following, willful violations of the VCPA in connection with each solicitation of a Virginia consumer:

- a. Misrepresenting that FIP’s “Purchase and Sale Agreement[s]” or similarly-titled agreements were sales and not loans in violation of Virginia Code § 59.1-200(A)(5) and (14);
- b. Misrepresenting that the “Purchase Price” or a similar phrase was an amount FIP would pay to Virginia consumers as part of a “sale,” rather than the principal amount of the loans extended by FIP to Virginia consumers, in violation of Virginia Code § 59.1-200(A)(5) and (14);
- c. Misrepresenting that the phrases “Purchased Asset,” “Payment Amounts,” or similar phrases referred to FIP’s “purchase” of pension payments from Virginia consumers rather than the amount to be repaid by Virginia consumers on their loans with FIP, in violation of Virginia Code § 59.1-200(A)(5) and (14);
- d. Misrepresenting the payment of interest on Virginia consumers’ loans with FIP as a “Discount” of the “Purchase Price” in violation of Virginia Code § 59.1-200(A)(5) and (14);
- e. Misrepresenting the payment of loan origination fees on Virginia consumers’ loans with FIP as “Set-up fee[s]” in violation of Virginia Code § 59.1-200(A)(5) and (14); and
- f. Misrepresenting that Virginia consumers would incur tax liability by “selling” their pension payments, despite the

fact they did not incur any tax liability by taking out loans with FIP, in violation of Virginia Code § 59.1-200(A)(5) and (14).

4. Defendants employed the misrepresentations listed in ¶ 3(a) to (f) of this Permanent Injunction and Final Judgment to effectuate an illegal lending scheme in which FIP attempted to disguise its closed-end, installment loans as purported “sales” of pension payments. Defendants disguised those loans as sales to attempt to avoid Virginia and federal consumer lending laws, including, but not limited to, the Virginia usury statutes, Virginia Code §§ 6.2-300 to 329.

5. Due to six misrepresentations made by FIP in connection with the offering and making of each loan, due to Mr. Kohn’s ownership and management of FIP, and due to Mr. Kohn’s active participation in FIP’s illegal conduct, Defendants are jointly and severally liable for 6,348 discrete violations of § 59.1-200(A)(5) and (14)—a total of 12,696 VCPA violations.

6. The Corporate Defendants did not qualify for any exception to the 12% annual interest limitation prescribed by Virginia Code § 6.2-303(A), and, as a consequence, all loans the Corporate Defendants made to Virginia consumers during the Relevant Period that call for the payment of more than 12% interest per annum are usurious.

7. Prior to filing its Complaint, the Commonwealth offered Defendants the opportunity to explain that no violations of the VCPA occurred or to execute an Assurance of Voluntary Compliance (“AVC”). Defendants failed to demonstrate that no violations occurred and did not agree to resolve the matter through execution of an AVC that was acceptable to the Commonwealth.

8. Former counsel for Defendants accepted service of the Commonwealth’s Complaint on behalf of all Defendants on March 12, 2018.

9. On April 9, 2018, FIP filed a Demurrer, and Mr. Kohn filed a Motion to Dismiss for Lack of Personal Jurisdiction. After reviewing the parties' memoranda and giving all parties an opportunity for oral argument, this Court entered two orders on September 11, 2018: (A) "Order Overruling Demurrer," which overruled all aspects of FIP's Demurrer and required FIP to answer the Complaint within twenty-one (21) days; and (B) "Order Denying Motion to Dismiss," which denied each jurisdictional argument raised by Mr. Kohn and required Mr. Kohn to answer or to respond otherwise to the Complaint within twenty-one (21) days.

10. Despite awareness of, and prior participation in, these proceedings, Defendants failed to answer or to respond otherwise to the Commonwealth's Complaint. Defendants are therefore in default by operation of Rule 3:19(a) of the Rules of the Supreme Court of Virginia.

WHEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that:

1. Pursuant to Virginia Code § 59.1-203 of the VCPA, Defendants and the Corporate Defendants' members, managers, officers, employees, agents, successors, and assigns are hereby permanently enjoined from violating § 59.1-200 of the VCPA.

2. Pursuant to §§ 59.1-203 and 59.1-205 of the VCPA, all contracts entered into by Virginia consumers and Defendants are hereby declared usurious to the extent such contracts were made at rates exceeding 12% interest per annum.

3. Pursuant to §§ 59.1-203 and 59.1-205 of the VCPA, Defendants and the Corporate Defendants' members, managers, officers, employees, agents, successors, and assigns are hereby permanently enjoined from collecting usurious interest on all loans made to Virginia consumers, which amount totals **\$20,098,159.63**.

4. Pursuant to § 59.1-205 of the VCPA, the Commonwealth, as trustee, shall have judgment against and recover from Defendants, jointly and severally, the sum of **\$414,473.72**,

with interest from the date of this Permanent Injunction and Final Judgment at the judgment rate of 6% per annum, for the use and benefit of, and restitution to, those Virginia consumers who were identified through the Affidavit of Kaci C. Sutherlin and its exhibits and whose losses were proven at trial.

5. Pursuant to § 59.1-205 of the VCPA, the Court shall retain jurisdiction of this matter for 200 days after entry of this Permanent Injunction and Final Judgment for the purpose of entering, upon motion of the Attorney General, such additional orders as are necessary to restore to all other victims identified within 180 days the monies they have lost due to violations of the VCPA.

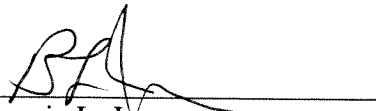
6. Pursuant to § 59.1-206 of the VCPA, the Commonwealth shall have judgment against and recover from Defendants, jointly and severally, the sum of \$ 31,740,000.00 for civil penalties, with interest from the date of this Permanent Injunction and Final Judgment at the judgment rate of 6% per annum.

7. Pursuant to Virginia Code § 59.1-206, the Commonwealth shall have judgment against and recover from Defendants, jointly and severally, the sum of \$ 198,000.00 for its costs and attorneys' fees, with interest from the date of this Permanent Injunction and Final Judgment at the judgment rate of 6% per annum.

8. This matter is continued on the active docket for 200 days, after which time, in the absence of further orders, it shall then be stricken from the active docket and placed among the ended causes, with leave granted to the Commonwealth to reinstate it for enforcement.

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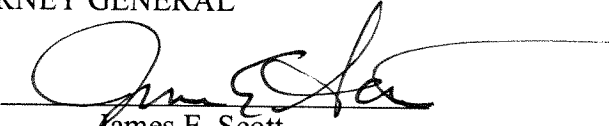
11 / 14 / 2018



Hon. Bonnie L. Jones
Judge, Circuit Court for the City of Hampton

I ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX. REL. MARK R. HERRING,
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Linda Batchelor Smith, Clerk

By: 
Deputy Clerk