

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.)
)
FREDERICKSBURG PAWN, INC.)
d/b/a Fredericksburg Gold & Pawn,)
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, Fredericksburg Pawn, Inc. d/b/a Fredericksburg Gold & Pawn ("Fredericksburg 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 City of Fredericksburg has authority to entertain this action and to grant the relief requested pursuant to Virginia Code §§ 8.01-620, 17.1-513 and 59.1-203.

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 City of Fredericksburg. 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 City of Fredericksburg, and portions of the cause of action arose in the County of Fredericksburg.

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 has agreed to execute 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, Fredericksburg Pawn, is a Virginia corporation with its principal place of business in Fredericksburg, Virginia 22408 (Fredericksburg City). Its Articles of Incorporation were issued by the State Corporation Commission on June 14, 1989.

FACTS

7. During the period from at least June 14, 1989 through the present, the Defendant has operated as a pawnbroker to consumer borrowers out of its store located at 447 Jefferson Davis Highway, Fredericksburg, Virginia 22401 (Fredericksburg City). 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 January 4, 2016, the Defendant imposed a monthly finance charge of \$27.00 on a loan of \$150.00. A copy of the pawn ticket the Defendant issued on this loan is attached as Exhibit A.

9. The finance charges of \$27.00 that the Defendant imposed on the loan described in paragraph 8 above included: monthly interest at the rate of five percent (5%) totaling \$7.50, a monthly storage fee at the rate of five percent (5%) totaling \$7.50, and a monthly fee labeled "misc1" at the rate of eight percent (8%) totaling \$12.00.

CAUSES OF ACTION

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

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

11. 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.

12. 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.

13. Section 54.1-4009(C) 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.

14. 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.

15. Virginia law does not authorize the imposition of any other fees by a pawnbroker.

16. On a one-month pawn loan of \$150.00, the following interest and fees are permitted: (a) interest in the amount of \$7.50; (b) a storage fee in the amount of \$7.50; and (c) a service fee in the amount of \$3; the total allowable fee, accordingly, is \$18.00.

17. The five percent (5%) monthly storage fee in the amount of \$7.50 and the five percent (5%) interest charge in the amount of \$7.50 that the Defendant imposed on the \$150.00 loan described in paragraph 8 and evidenced in Exhibit A are consistent with the fees permitted by §§ 54.1-4008(A) and 54.1-4013(B) of the pawnbroker statutes.

18. The \$12.00 fee labeled “misc1.” the Defendant imposed on the \$150.00 loan described in paragraph 8 and evidenced in Exhibit A is an excessive fee 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).

19. On information and belief, the Defendant violated § 54.1-4008(A) on all or many of its loans during the period from at least June 1, 2015 through April 1, 2016 (the “Relevant Period”) because it charged excessive interest rates and illegal fees on all or many of its loans.

Count II – Virginia Consumer Protection Act

20. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1-19.

21. 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.

22. 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.

23. The Defendant willfully committed the violations described 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.

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

25. 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
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Richard S. Schweiker, Jr.
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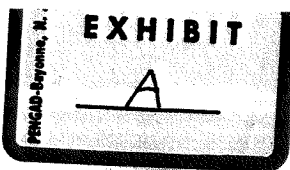
Consumer Protection Section
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2017, a copy of the foregoing **Complaint** was sent by first-class mail, postage prepaid, to Paul F. Nichols, Esquire, Nichols Zauzig Sandler, P.C. 12660 Lake Ridge Drive, Woodbridge, Virginia 22192, counsel for Fredericksburg Pawn, Inc.



Mark S. Kubiak



Fredericksburg Gold & Pawn

30 Day Pawn No. **216240**

447 Jefferson Davis Hwy.,
Fredericksburg VA 22401
(540)371-7800 Fax: (540)372-9818

Date Made: 01/04/2016
Time Made: 11:15 AM
Previous No. None
Original No. 216240
Pledgor: [Redacted]
ID: [Redacted]
Address: [Redacted]

Description of all items pawned

1/ 1 - Drum Set 3 piece drum set with stands foot pedal and 3 metal hcs symbols. Blue glitter. Pearl EXPORT SERIES Serial#NA

Ticket No 216240
Date 3/2/2016 Pmt Type Pickup
Fredericksburg Gold & Pawn
You are giving
Amount Next Pmt Due \$177.00
Payment Receipt
Pmt Next Pmt Due 3/4/2016
Thank you

TERMS AND CONDITIONS

TRUTH IN LENDING	
MATURITY DATE	03-Feb-16
AMOUNT FINANCED <small>The amount of credit provided to you</small>	\$150.00
FINANCE CHARGE <small>The dollar amount the credit will cost you</small>	\$27.00
TOTAL OF PAYMENTS <small>Amount to redeem pawn on maturity date</small>	\$177.00
ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate</small>	120.00%
PAYMENT SCHEDULE <small>If you pay off your loan early you will not be entitled to a refund of part of the finance charge</small>	\$177.00

(CASH ONLY) (CASH ONLY) (CASH ONLY) (CASH ONLY)
No Checks, No Credit Cards, Money Order

Late Fee Charge: In addition to the late fee charge on all tickets more than 5 calendar days regarding the pawn shop. There is an additional late fee charge on all tickets more than 5 calendar days regarding the pawn shop. There is an additional late fee charge on all tickets more than 5 calendar days regarding the pawn shop. There is an additional late fee charge on all tickets more than 5 calendar days regarding the pawn shop.

Privacy Statement

We the lender 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.

1. LIMITATION OF LIABILITY: Fredericksburg Gold & Pawn is not responsible for the loss, theft or damage of pawned items. 2. The pawn ticket must accompany all transactions. The pawned property may be delivered to any person presenting this ticket. (EXCEPT FIREARMS) 3. All pawns are for 30 days. 4. All lost tickets require a \$3.00 Fee. 5. Without original pawn ticket, only the original pawned can pick up items pawned with proper identification (Current Picture Identification, I, the Pledgor represent and warrant that the pledged property is not stolen, rented or leased and that there are no liens or encumbrances against the property. I also attest to be the rightful owner of the pledged property, and that I have the right to pledge the property by signing. I am stating that I agree to all terms and conditions and acknowledge receipt of a copy of this agreement. I also state Under penalty of perjury, I have read the foregoing document, and the facts stated are true.

Amount given to you directly	Amount refinanced
\$150.00	\$0.00

Firearm Pawn - All Firearm Pawn transactions shall require the individual to first, to include a (state mandated \$2 call-in fee) and pawn shop \$5 processing fee, then complete the Virginia (VA) state and United States federal firearm forms prior to Fredericksburg Pawn obtaining the information to the proper authorities and for Fredericksburg Pawn to receive a favorable go-ahead from the proper authorities prior to the firearm being turned over to the individual. The individual that Pawned the Firearm is the only individual that may pick-up said firearm. If the individual is denied, no family member, no friend, no one else is authorized to redeem the firearm for the pawned owner. The individual must present a current and valid picture Virginia drivers license and/or Virginia picture identification Card that states the individuals name and home address. Post office boxes are not allowed. The individual must also present a 2nd current and valid identification that contains the same name and address as the picture ID.

Breakdown/Explanation of Finance Charges				
setup1	interest1	Service1	misc1	=finance1 charge
	7.50	7.50	12.00	\$27.00

Amount needed to redeem loan each month				
Up to & Including 2/3/2016		\$177.00		
n/a		n/a		
n/a		n/a		
n/a		n/a		
n/a		n/a		
n/a		n/a		

Payment Receipt				
2nd Ticket No	216240			
Virginia are	Date	Pmt Type	Amount	Next Pmt Due
	2/3/2016	Renewal	\$27.00	3/4/2016

Merchandise not redeemed or renewed by 2/3/2016 will be forfeited

Customer signature You can change this text or omit it

Signature upon redemption of above items

X [Signature] 3/4/2016

Pa-vnbrok
(MORNING)

Licensed Pawnbrokers.
Hours 9:30 - 7:00, Mon-Fri, 9:00 - 6:00 Sat, Sun Closed
Major Credit Cards Accepted for Sales Only. Unredeemed pledges for sale.

