

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
John Marshall Courts Building

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

CIVIL ACTION NO. \_\_\_\_\_

RECEIVED ANH ELLIOTT  
CIRCUIT COURT  
FEB 27 2014 3:57  
EDWARD F. JEWETT, CLERK  
BY \_\_\_\_\_ D.C.

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, Liberty Pawnshop & Gold, LLC ("Liberty" or the "Defendant"), has engaged constitute violations of § 6.2-1501 of the Virginia statutes applicable to consumer finance companies, § 6.2-2201 of the Virginia statutes applicable to motor vehicle title loans, and §§ 59.1-200(A)(51) 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 consumer finance companies statute, motor vehicle title loan statute and VCPA action pursuant to the authority set forth in § 6.2-1537, which provides, *inter alia*, that the Attorney General may bring an action to enjoin any violation of the consumer finance statutes; § 6.2-2226, which provides, *inter alia*, that the Attorney General may

bring an action to enjoin any violation of the motor vehicle title loan statutes; and pursuant to § 59.1-203 of the VCPA, which provides, *inter alia*, that the Attorney General may bring an action to enjoin any violation of the VCPA, which includes any violation of the statutes applicable to motor vehicle title lenders, in accordance with Virginia Code §§ 6.2-1829 and 59.1-200(A)(51).

2. The Circuit Court of the City of Richmond has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 6.2-1537, 6.2-2226, 8.01-620, 17.1-513 and 59.1-203

3. Venue is proper in this Court pursuant to the mandatory venue provision set forth in Virginia Code § 6.2-1537(A).

4. Pursuant to Virginia Code § 6.2-2226(A), the Attorney General has authority to seek to enjoin violations of motor vehicle title lender statutes after receiving a referral from the State Corporation Commission ("SCC"). On October 22, 2013, the Attorney General received from the SCC a referral outlining Liberty's conduct described in this Complaint.

5. Prior to the commencement of this action, the Plaintiff gave the Defendant written notice these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA or other statutes referenced above had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance, pursuant to Virginia Code § 59.1-203(B). The Defendant agreed to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth.

#### **PARTIES**

6. The Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Mark R. Herring, Attorney General of Virginia.

7. The Defendant, Liberty Pawnshop & Gold, LLC, is a Virginia limited liability company headquartered in Fredericksburg. Its Articles of Organization were issued by the SCC on July 6, 2009.

### **FACTS**

8. Liberty operates as a pawnbroker to consumers out of its two stores located in the Fredericksburg area. In connection with its pawnbroker business, Liberty makes closed-end loans to individual consumers for personal, family, household or other non-business purposes, which loans are secured by personal property owned by the consumers.

9. During the period from at least August 8, 2011 to February 23, 2013 (“the Relevant Period”), Liberty made non-purchase money loans secured by the borrowers’ motor vehicles at both of its pawnbroker locations in individual principal amounts of between \$100.00 and \$8,000.00. Liberty took possession of the consumers’ motor vehicle titles, and, with few exceptions, did not take physical possession of the borrowers’ motor vehicles as security for these loans.

10. At all relevant times, Liberty was not licensed by the SCC to make motor vehicle title loans as required by Virginia Code § 6.2-2201.

11. Liberty imposes finance charges of 120% annually on its motor vehicle title loans. The “finance charge” consists of an interest charge and a storage charge, both of which vary depending on the size of the loan. A copy of Liberty’s form contract is attached as Exhibit A.

### **CAUSE OF ACTION**

#### **COUNT I – VIRGINIA CODE § 6.2-1501**

12. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 11 above.

13. Virginia Code § 6.2-1501 prohibits any person from engaging in the business of making loans in any principal amount to individuals for personal, family, household or other non-

business purposes, and charging, contracting for or receiving, directly or indirectly, any interest, charges, compensation, consideration or expense which in the aggregate are greater than the rate otherwise permitted by § 6.2-303, unless authorized by a statutory exemption.

14. Pursuant to Virginia Code § 6.2-303, the contract rate of interest permitted on loans is 12% per year unless a higher rate of interest is authorized by some other section of the Code of Virginia.

15. Statutory exemptions to this 12% interest rate ceiling exist for, among other entities, licensed consumer finance companies (Va. Code § 6.2-1500 et seq.), licensed payday lenders (§ 6.2-1800 et seq.), licensed motor vehicle title lenders (§ 6.2-2200 et seq.), and bonafide pawnbroking businesses (§ 54.1-4000 et seq.). In addition, § 6.2-312 grants an exception to the 12% interest rate ceiling for open-end credit loans, which loans may not be secured by a non-purchase money interest in a motor vehicle.

16. Because Liberty did not have an applicable license during the Relevant Period, it cannot claim any of the aforementioned statutory exemptions with respect to any loans made during the Relevant Period. Liberty cannot claim exception under Virginia Code § 6.2-312 because its contracts were for closed-end loans secured by motor vehicle titles, rather than for open-end credit loans. Further, Liberty cannot claim exception because its loans were not bona fide pawnbroking business transactions. See Virginia Code Ann. §§ 6.2-1503 and 54.1-4000. As a result, pursuant to § 6.2-1501, Liberty was properly subject to the 12% APR interest rate ceiling set by § 6.2-303 during the Relevant Period, on all motor-vehicle secured loans it made.

17. During the Relevant Period, by charging and receiving interest well in excess of 12% APR on loans extended for personal, family, household or other non-business purposes, Liberty violated the interest rate prohibitions of Virginia Code §§ 6.2-303 and 6.2-1501. Any nonexempt loan Liberty made during the Relevant Period that had an interest rate in excess of 12% was made in violation of §§ 6.2-303 and 6.2-1501.

18. Pursuant to Virginia Code § 6.2-1541, at all relevant times mentioned herein, any loan contract was and is void if any act was done in the making or collection thereof that violates § 6.2-1501, and the lender cannot collect, receive or retain any principal, interest or charges whatsoever on said loan. Every such loan is subject to the enforcement and remedy provisions of § 6.2-1537.

19. Any and all of the motor vehicle title loans made by Liberty during the Relevant Period for which Liberty charged, contracted for or received interest or other compensation in excess of 12% per year, and where physical possession of the motor vehicle was not taken by Liberty, were and are null and void. Liberty may not collect, receive or retain any principal, interest or other charges whatsoever on any such loans.

**COUNT II – VIRGINIA CODE §§ 6.2-2201 AND 6.2-2227**

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

21. During the Relevant Period, Liberty made “motor vehicle title loans,” as defined in § 6.2-2200 because its motor-vehicle loans were secured by non-purchase money security interests in motor vehicles.

22. Unless exempt from its provisions, Virginia Code § 6.2-2201 prohibits any person or entity from making motor vehicle title loans without first having obtained a license from the SCC.

23. Statutory exemptions to this licensing requirement exist pursuant to § 6.2-2202 for banks, savings institutions, credit unions, and licensed consumer finance companies.

24. During the Relevant Period, Liberty was subject to the licensing requirement of § 6.2-2201 because it was making motor vehicle title loans to consumers, and was not exempt pursuant to § 6.2-2202 as a bank, savings institution, credit union, or licensed consumer finance company. Therefore, each of the motor vehicle title loans Liberty made during the Relevant Period was made in violation of § 6.2-2201.

25. Pursuant to Virginia Code § 6.2-2227, any violation of the Virginia statutes applicable to motor vehicle title loans (including § 6.2-2201) constitutes a prohibited practice in accordance with § 59.1-200 of the VCPA and is subject to the enforcement and remedy provisions of the VCPA.

**COUNT III – VIRGINIA CONSUMER PROTECTION ACT**

26. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 25 above.

27. Liberty is now, and 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 VCPA, by advertising, offering, and providing motor vehicle title loans to consumers.

28. Because each of the motor vehicle title loans Liberty made during its Relevant Period violated § 6.2-2201, each of these loans also violated § 59.1-200(A)(51) of the VCPA.

29. 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 violation (§ 59.1-206), investigative costs and reasonable expenses not to exceed \$1,000 per violation, and attorney’s fees (§ 59.1-206).

30. Liberty willfully committed the violations of §§ 6.2-2201 and 59.1-200(A)(51).

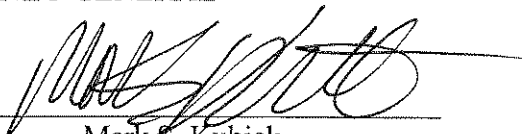
31. Individual consumers have suffered monetary damages as a result of the aforesaid violations by Liberty.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court enter the Order Approving and Adopting Assurance of Voluntary Compliance filed simultaneously therewith

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

By: \_\_\_\_\_



Mark S. Kubiak

Mark R. Herring  
Attorney General

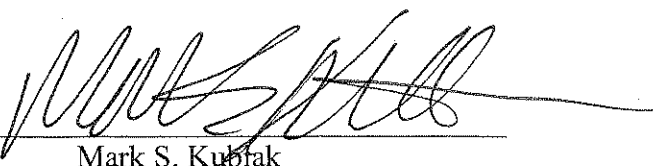
Cynthia E. Hudson  
Chief Deputy Attorney General

Rhodes B. Ritenour  
Deputy Attorney General  
Civil Litigation Division

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of February, 2014, a true copy of the foregoing Complaint was mailed, postage prepaid, to Franklin R. Cragle, III, Esquire, Hirschler Fleischer, P.C., 2100 East Cary Street, Richmond, VA 23223, counsel for Liberty Pawnshop & Gold, LLC.



\_\_\_\_\_  
Mark S. Kubiak



Pawnbroker, Creditor / Lender



5026 PLANK ROAD  
FREDERICKSBURG VA 22407  
(540) 548-3200

### LOAN

Pledgor's Name & Address 		Original Loan No. LT-LP1005550															
Identification Type & No. 		D.O.B. 11/25/1974	<table border="1"> <tr> <th>Eyes</th> <th>Race</th> <th>Hair</th> <th>Height</th> <th>Weight</th> <th>Sex</th> </tr> <tr> <td>BLU</td> <td>WHT</td> <td>BRN</td> <td>5'9"</td> <td></td> <td>M</td> </tr> </table>	Eyes	Race	Hair	Height	Weight	Sex	BLU	WHT	BRN	5'9"		M		
Eyes	Race	Hair	Height	Weight	Sex												
BLU	WHT	BRN	5'9"		M												
<p>You are giving a Security Interest in the following Pledged Property: TRUCK: DODGE MODEL 2004 RAM 1500, SERIAL NUMBER 1D7HA16N24I236387, 4WD: 2WD</p>		<table border="1"> <tr> <td>MATURITY DATE</td> <td>7/18/2012</td> </tr> <tr> <td>AMOUNT FINANCED. <small>The amount of cash advanced or credit extended to you.</small></td> <td>\$2,000.00</td> </tr> <tr> <td>FINANCE CHARGE. <small>The dollar amount the credit will cost you.</small></td> <td>\$200.00</td> </tr> <tr> <td>TOTAL OF PAYMENTS. <small>Amount required to redeem property on maturity date.</small></td> <td>\$2,200.00</td> </tr> <tr> <td>ANNUAL PERCENTAGE RATE. <small>The cost of your credit as a yearly rate.</small></td> <td>120.0%</td> </tr> <tr> <td>PAYMENT SCHEDULE 1 @ \$</td> <td>\$2,200.00</td> </tr> <tr> <td colspan="2">PREPAYMENT: <small>If you pay off early you will not be entitled to a refund of part of the finance charge.</small></td> </tr> </table>		MATURITY DATE	7/18/2012	AMOUNT FINANCED. <small>The amount of cash advanced or credit extended to you.</small>	\$2,000.00	FINANCE CHARGE. <small>The dollar amount the credit will cost you.</small>	\$200.00	TOTAL OF PAYMENTS. <small>Amount required to redeem property on maturity date.</small>	\$2,200.00	ANNUAL PERCENTAGE RATE. <small>The cost of your credit as a yearly rate.</small>	120.0%	PAYMENT SCHEDULE 1 @ \$	\$2,200.00	PREPAYMENT: <small>If you pay off early you will not be entitled to a refund of part of the finance charge.</small>	
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<p><small>See your contract for any additional information concerning nonpayment and default and prepayment refunds or penalties.</small></p> <p>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.</p> <p>By signing, I am stating that I agree to all terms and conditions on the front and back and acknowledge receipt of a copy of this agreement. I also state, <i>Under penalty of perjury</i>, I have read the foregoing document, and the facts stated in it are true.</p>																	
<p><b>X</b> </p>		<p></p>															
Pledgor's Signature		Pawnbroker's Signature															

NOTICE: See Reverse Side



In consideration of and to secure the amount identified as the Total of Payments, Pledgor hereby deposits with the issuer of this pawn ticket the pledged property described on the reverse hereof.

The Pledgor represents and warrants that the pledged property is not stolen, rented, or leased, and that there are no liens or encumbrances against the property. Pledgor also attests to have good title to the pledged property, that Pledgor has the right to pledge the property, and is at least 18 years of age. Pledgor also attests that the Pledgor is not in voluntary or involuntary bankruptcy of any type and is not anticipating filing a bankruptcy proceeding of any type.

In this pawn transaction a Pawnbroker may contract for and receive a monthly Finance Charge consisting of an interest charge of 10% per month on loans of \$25 or less, 7% per month on loans more than \$25 and less than \$100, 5% per month on loans \$100 or more, plus a Pawnbroker may charge a monthly storage fee for any items requiring storage, which fee shall not exceed five percent of the amount loaned on such item. In addition to the interest and storage fees a pawnbroker may charge a service fee (ERM) for making the daily electronic reports to the appropriate law-enforcement officers required by § 54.1-4010, creating and maintaining the electronic records required under this section, and investigating the legal title to property being pawned or pledged. Such fee shall not exceed five percent of the amount loaned on such item or three dollars, whichever is less. The Finance Charge is deemed earned on the date of the loan and a like amount will be earned on the same day of each succeeding month during any subsequent extensions or grace periods.

If the Pledgor fails to redeem or extend this loan on or before the fifteenth (15) day following the Maturity Date, the pledged property shall be automatically forfeited to the Pawnbroker, and absolute right, title, and interest in and to the pledged property vests in and is deemed conveyed to the Pawnbroker, and no further notice is necessary. This loan may be extended upon mutual agreement of both parties.

If this loan contract is lost, destroyed, or stolen, the Pledgor must immediately advise the issuing Pawnbroker in writing by certified or registered mail, return receipt requested, or in person to protect Pledgor's pledged property. Fee for lost ticket and statement: \$5.00.

Proper identification required on all redemptions. Firearms redeemable only by the original Pledgor. Any person presenting this loan contract may, at Pawnbroker's option, redeem pledged property by payment of all principal and finance charges due unless Pawnbroker has received written notice that the loan contract had been lost, stolen or destroyed. The Pawnbroker is not liable to the original Pledgor for allowing the redemption of the pledged property by another person. Any person redeeming the pledged property must sign the Pledgor's copy of the pawnbroker transaction form, which the pawnbroker will retain as evidence of the person's receipt of the pledged property.

It is agreed to and understood that the pawnbroker does not insure pledged property for the benefit of the Pledgor. Pawnbroker is not liable for loss or damage caused by an Act of God, burglary, theft, robbery, fire, typical wear and deterioration resulting from handling and storage or other unforeseen casualty beyond the control of the Pawnbroker.

No oral representation shall in any way change or modify these written conditions, and such oral representations shall in no way be binding upon the issuer of this pawn ticket. Customer Privacy Notice: We collect nonpublic personal information about you as a consumer, customer or former customer from the following sources: information we receive from you on our pawn forms, loan documents, sales documents, or other forms; information about your transactions with us, our affiliates, or others. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except to our affiliates and as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain safeguards that restrict access to your nonpublic personal information.

**VERBAL AGREEMENTS FOR ADDITIONAL DAYS ARE NOT BINDING • NO CHECKS ACCEPTED**

**NO GOODS SHOWN FOR REDEMPTION UNLESS PAID IN ADVANCE • NO GOODS SENT COD • NOTICE: See Reverse Side**

LOST PAWN TICKET STATEMENT		I hereby acknowledge receipt of my Pledged Property	
Lost Ticket Fee: \$5.00	Date	Pledgor's Redemption Signature	Date
My ticket was lost, destroyed, stolen (Circle proper word)			
Pledgor <input checked="" type="checkbox"/>		<b>IDENTIFICATION OTHER THAN ORIGINAL PLEDGOR</b>	
		Name (Last Name First)	
I have verified I.D. and description as on other side			
Employee/PS			

hp #10-4801 VA 6/24/2011 Bravo Store Systems

Reorder from Burrell Printing Co., Inc. 800-531-5234

In consideration of and to secure the amount identified as the Total of Payments, Pledgor hereby deposits with the issuer of this pawn ticket the pledged property described on the reverse hereof.

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**VERBAL AGREEMENTS FOR ADDITIONAL DAYS ARE NOT BINDING • NO CHECKS ACCEPTED**

**NO GOODS SHOWN FOR REDEMPTION UNLESS PAID IN ADVANCE • NO GOODS SENT COD**

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hp #10-4801 VA 6/24/2011 Bravo Store Systems

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