

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CULPEPER

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.)
)
PAWN-MART, INC.)
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, Pawn-Mart, Inc. ("Pawn-Mart"), 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 County of Culpeper has authority to entertain this action and to grant the relief requested pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

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 County of Culpeper. Furthermore, venue is permissible in this Court pursuant to Virginia Code §§ 8.01-262 (3) and (4) because the Defendant Pawn-Mart regularly conducts substantial business activity in the County of Culpeper, and portions of the cause of action arose in the County of Culpeper.

4. The Plaintiff certifies that, prior to commencement of this action, it 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 enter into an Assurance of Voluntary Compliance 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. Defendant Pawn-Mart, Inc. is a Virginia corporation with its principal place of business in Culpeper, Virginia. Its Articles of Incorporation were issued by the Virginia State Corporation Commission (“SCC”) on July 22, 1994.

FACTS

7. The Defendant is a corporate entity that engaged in business as a “pawnbroker,” as that term is defined in Virginia Code § 54.1-4000.

8. During the period from at least July 22, 1994 through the present, Defendant Pawn-Mart has operated as a “pawnbroker” to consumer borrowers, as that term is defined in Virginia Code § 54.1-4000. At all relevant times, it has operated, and presently continues to operate, out of one location: 641 James Madison Highway, Culpeper, Virginia 22701. Through this location, Defendant Pawn-Mart 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”).

9. On a \$900 pawn loan Defendant Pawn-Mart made on July 2, 2015 from its sole business location, it imposed a monthly finance charge of \$98. A copy of the pawn ticket Defendant Pawn-Mart issued on this loan is attached as Exhibit A.

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 \$900, the following interest and fees are permitted: (a) interest in the amount of \$45; (b) a storage fee in the amount of \$45; and (c) a service fee in the amount of \$3; the total allowable fee, accordingly, is \$93.

17. The finance charge assessed by the Defendant in the loan described in Paragraph 9 above exceeded the amounts permitted by the pawnbroker statutes. Accordingly, the finance charge described in Paragraph 9 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, these charges constitute disguised interest in violation of §§ 54.1-4008(A) and 54.1-4014(B).

18. On information and belief, the Defendant violated § 54.1-4008(A) on all or many of its loans at various times during the period from June 8, 2015 through June 7, 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

19. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1-18.

20. The Defendant is now, and was at all relevant times, a “supplier” of “goods” or “services,” and was 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.

21. Pursuant to § 59.1-200(A)(33), the Defendant’s previously-described violations of § 54.1-4008(A) and 54.1-4014(B) of the pawnbroker statutes also constitute violations of the VCPA.

22. The Defendant willfully committed the violations 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.

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

24. 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
Civil Litigation Division

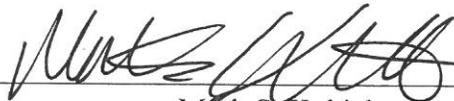
Richard S. Schweiker, Jr.
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Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General

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 25th day of September, 2018, a copy of the foregoing **Complaint** was sent by first-class mail, postage prepaid, to Christopher T. Whelan, Esquire, Morrison, Ross and Whelan, 31 Garrett Street, Warrenton, Virginia 20186, counsel for Pawn-Mart, Inc.



Mark S. Kubiak

304-2177

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PURCHASER /CREDITOR

PANAMOUNT, INC.
 641 JAMES MADISON HWY., CULPEPER, VA 22701-
 BILL OF SALE WITH OPTION TO REPURCHASE.
 SELLER'S NAME: WILLIAM MOYNE MOODY
 ADDRESS: 847 FRANKLIN VILLAGE CT CULPEPER, VA 22701-
 TEL: 540-929-2274

PHONE ITEM	DESCRIPTION: Seller is giving Purchaser a security interest in the below described property.	DUE DATE	AMOUNT
01 GOLD	SOLD SILVER AND 3 LAK RINGO 54'S DWT	08/02/2007	500.00
<p>EACH TRANSACTION WILL BE CHARGED A \$5.00 LOAN APPLICATION FEE.</p> <p>See your contract document for any additional information concerning non-payment, default, and prepayment refunds or penalties.</p>			<p>AMOUNT FINANCED. The amount of cash given directly to you.</p>
<p>PAYMENT SCHEDULE: TOTAL OF PAYMENTS is due on Due Date shown above.</p>			<p>FINANCE CHARGE. The dollar amount the credit will cost you.</p>
<p>PREPAYMENT: If you pay off early, you will not be entitled to a refund of part of the finance charge.</p>			<p>TOTAL OF PAYMENTS. Amount required to repurchase property on Due Date.</p>
<p>This is Bill of Sale with an option to repurchase. This is not a loan. The above disclosures are required by federal law. By signing, I am stating that I AM THE SOLE AND EXCLUSIVE OWNER OF THE PROPERTY THAT IS THE SUBJECT OF THIS TRANSACTION AND HAVE THE RIGHT TO SELL IT, and that I have read and agree to all terms and conditions on the front and back and acknowledge receipt of a completely filled in copy of this Bill of Sale.</p>			<p>ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate.</p>

NOTICE: See Reverse Side

X *William W. Moody*
 Seller's Signature

Repurchaser's Signature

100-2774