

**VIRGINIA:**

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

**COMMONWEALTH OF VIRGINIA,** )  
**EX REL. MARK R. HERRING,** )  
**ATTORNEY GENERAL,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**B&B PAWNBROKERS, INC.,** )  
**a Virginia corporation,** )  
 )  
 )  
**SERVE: Robert J. Barlow, Esquire,** )  
**Registered Agent** )  
**3516 Plank Road** )  
**Suite 104** )  
**Fredericksburg, Virginia 22404** )  
 )  
**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, B&B Pawnbrokers, Inc. ("B&B" 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, §§ 54.1-4009(C) and 54.1-4014(B) of the Virginia statutes applicable to pawnbrokers, and § 59.1-200(A)(33) and (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, pawnbroker 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 § 59.1-203, 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 §§ 6.2-2227 and 59.1-200(A)(51) or 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 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 January 26, 2015, the Attorney General received from the SCC a referral outlining Defendant’s motor-vehicle-related lending 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 (“Assurance”), pursuant to Virginia Code § 59.1-203(B). The Defendant failed to demonstrate that no violations occurred, and failed to execute an Assurance that was 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, B&B Pawnbrokers, Inc., is a Virginia corporation headquartered in Fredericksburg. Its Articles of Incorporation were issued by the SCC on March 11, 1998.

### **FACTS**

8. During the period from at least March 11, 1998 through the present (the “Relevant Period”), B&B has operated as a pawnbroker to consumers out of its store located at 4420 Lafayette Boulevard, Fredericksburg, Virginia 22408. Since its inception, B&B makes, and has made, closed-end loans to individual consumers for personal, family, household or other non-business purposes, which loans are secured by the consumers’ personal property.

9. In connection with its loan agreements, B&B imposes, and has imposed, on each of its loans a “finance charge” in varying amounts, depending on the size of the loan, a five percent (5%) storage fee, and a ten percent (10%) monthly processing fee. A copy of B&B’s form contract is attached as Exhibit A.

10. During the period from at least October 1, 2010 to the present (“the Title Loan Period”), B&B made non-purchase-money loans secured by the borrowers’ motor vehicles in varying principal amounts. B&B took possession of the consumers’ motor vehicle titles as security for these loans, and, in some, but not all cases, took physical possession of the borrowers’ motor vehicles.

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

## **CAUSES OF ACTION**

### **COUNT I – VIRGINIA CODE §§ 6.2-2201 AND 6.2-2227**

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

13. During the Title Loan Period, the Defendant 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.

14. 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.

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

16. During the Title Loan Period, the Defendant 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-secured loans the Defendant made during the Title Loan Period was an illegal title loan made in violation of § 6.2-2201.

17. 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 II – VIRGINIA CODE §§ 54.1-4009(C) AND 54.1-4014**

18. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 17 above.

19. Virginia Code § 54.1-4000 defines “pawnbroker” as follows:

“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. (emphasis added).

20. Section 54.1-4008(A) 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.

21. Section 54.1-4013(B) provides that pawnbrokers may charge a storage fee of no greater than five percent (5%) of the amount loaned on an item requiring storage.

22. Section 54.1-4009(C) provides that pawnbrokers may charge service fees 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. This section further provides that the service fee “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.”

23. Aside from the pawnbroker interest and fees described in §§ 54.1-4008(A), 54.1-4013(B) and 54.1-4009(C), no other fees are authorized by statute.

24. The ten-percent “processing fee” charged by the Defendant in connection with its pawn loans is an excessive service fee that violates §§ 54.1-4009(C) and 54.1-4014(B). This ten-percent “processing fee” exceeds the five-percent limitation and, in nearly all cases, the \$3 absolute cap on service fees as set forth in § 54.1-4009(C). The Defendant therefore violated §§ 54.1-4009(C) and 54.1-4014(B) of the pawnbroker statutes by consistently charging excessive fees on its pawn loans.

25. Alternatively, the ten-percent “processing fee” is a fee that is not specifically authorized by statute, and therefore violates § 54.1-4014(B) of the pawnbroker statutes.

26. Pursuant to § 59.1-200(A)(33), The Defendant's violation of §§ 54.1-4009(C) and 54.1-4014(B) also constitutes a violation of the VCPA.

### **COUNT III – VIRGINIA CONSUMER PROTECTION ACT**

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

28. The Defendant 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 pawn loans to consumers.

29. Because each of the motor vehicle title loans the Defendant made during the Title Loan Period violated §§ 6.2-2201 and 6.2-2227, each of these loans also violated § 59.1-200(A)(51) of the VCPA. Pursuant to § 59.1-200(A)(33), each of the Defendant's violations of §§ 54.1-4009(C) and 54.1-4014(B) of the pawnbroker statutes also constitutes a violation of the VCPA.

30. 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 attorneys' fees (§ 59.1-206).

31. The Defendant willfully committed the violations of §§ 6.2-2201, 6.2-2227, 54.1-4009(C), 54.1-4014(B), and 59.1-200(A)(33) and (51).

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

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

33. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 32 above.

34. 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.

35. 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.

36. 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 bona fide 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.

37. The Defendant cannot claim any statutory exemption for its motor-vehicle-lending activities. The Defendant 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, on all motor vehicle title loans where the Defendant did not take physical possession of the motor vehicles, the Defendant cannot claim exception because its loans were not bona fide pawnbroking business transactions. *See* Virginia Code Ann. §§ 6.2-1503(3) *and* 54.1-4000. Accordingly, pursuant to § 6.2-1501, the Defendant was properly subject to the 12% APR interest rate ceiling set by § 6.2-303 during the Title Loan Period, on all motor-vehicle-secured loans it made where physical possession of the motor vehicle was not taken by the Defendant.

38. As an exception to the 12% annual interest rate limitation, pawnbrokers are permitted to charge only the interest and fees outlined in Virginia Code §§ 54.1-4008(A), 54.1-

4013(B), and 54.1-4009(C); no other fees are permitted. *See supra* ¶¶ 20-23. The 10% processing fee charged by the Defendant violates §§ 54.1-4009(C) and 54.1-4014(B) of the pawnbroker statutes and also constitutes unlawful excessive interest in violation of §§ 6.2-303 and 6.2-1501 of the Code of Virginia.

39. 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, the Defendant violated the interest rate prohibitions of Virginia Code §§ 6.2-303 and 6.2-1501. Any nonexempt loan the Defendant 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.

40. 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.

41. Any and all of the motor vehicle title loans made by the Defendant during the Title Loan Period for which the Defendant 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 the Defendant, and during the Relevant Period where the excessive processing/service fees were charged, were and are null and void. The Defendant may not collect, receive or retain any principal, interest or other charges whatsoever on any such loans.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Preliminarily and permanently enjoin the Defendant and its officers, directors, managers, members, employees, agents, successors, and assigns from violating §§ 6.2-1501,



6.2-2201, 6.2-2227, 54.1-4009(C), 54.1-4014(B), and 59.1-200(A)(33) and (51) of the Code of Virginia;

B. Declare as null and void all loans made in violation of Virginia Code § 6.2-1501, pursuant to §§ 6.2-1537 and 6.2-1541 of the Code of Virginia;

C. Preliminarily and permanently enjoin the Defendant and its officers, directors, managers, employees, agents, successors, and assigns from any attempt to collect any monies from borrowers to whom loans were made or contracted to be made in violation of Virginia § 6.2-1501, pursuant to §§ 6.2-1537(A) and 6.2-1541(B) of the Code of Virginia;

D. Grant judgment against the Defendant, and award to the Commonwealth, as trustee for the use and benefit of all aggrieved borrowers, an amount equal to the aggregate of their repayment of principal and interest, pursuant to §§ 6.2-1537(C) and 6.2-1541(B) of the Code of Virginia.

E. Grant judgment against the Defendant, and award to the Commonwealth, as trustee, for the use and benefit of all aggrieved borrowers, all sums necessary to restore to any consumers the money or property acquired from them by the Defendants in connection with their violations of §§ 6.2-2201, 6.2-2227, 54.1-4009(C), 54.1-4014(B), and 59.1-200(A)(33) and (51) of the Code of Virginia, pursuant to Virginia Code § 59.1-205;

F. Grant judgment against the Defendant and award to the Commonwealth civil penalties of up to \$2,500 per willful violation of §§ 59.1-200(A)(33) and (51), pursuant to Virginia Code § 59.1-206(A), with the exact number of violations to be proven at trial;

G. Grant judgment against the Defendant and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per violation of § 59.1-200(A)(33) and (51) of the VCPA, and its attorneys' fees, pursuant to Virginia Code §§ 59.1-206(C) and 6.2-1537(D); and

H. Order such other and further relief as may be deemed proper and just.

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

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