

IN THE CIRCUIT COURT COOK COUNTY
COUNTY DEPARTMENT—CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS and)
THE ILLINOIS DEPARTMENT OF FINANCIAL)
AND PROFESSIONAL REGULATION *ex rel.*,)
LISA MADIGAN, Attorney General of the)
State of Illinois)

Plaintiffs,)

vs.)

BD PDL SERVICES, LLC)

Defendant.)

2014CH05914
CALENDAR/ROOM 04
TIME 00:00
INSTRUCTION

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COME the Plaintiffs, THE PEOPLE OF THE STATE OF ILLINOIS and
THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL
REGULATION, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and
bring this action complaining of Defendant BD PDL SERVICES, LLC, and state as
follows:

PUBLIC INTEREST

1. The Illinois Attorney General believes this action to be in the public
interest of the citizens of the State of Illinois and brings this lawsuit pursuant to the
Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(a) and
the Payday Loan Reform Act, 815 ILCS 122/1.

CIRCUIT COURT
COUNTY ILLINOIS
CHANCERY DEPARTMENT
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JURISDICTION AND VENUE

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, *ex rel.* LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, pursuant to the provisions of the Consumer Fraud and Deceptive Practices Act (“Consumer Fraud Act”), 815 ILCS 505/1 *et seq.*, the Payday Loan Reform Act, 815 ILCS 122/1 *et seq.*, and the common law authority of the Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Cook County, Illinois, pursuant to Section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, in that some of the transactions out of which this action arose occurred in Cook County.

PARTIES

4. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Consumer Fraud Act, 815 ILCS 505/7.

5. Plaintiff, THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION is authorized to enforce the Payday Loan Reform Act and to refer matters to other law enforcement agencies for prosecution under the Payday Loan Reform Act, 815 ILCS 122/4-10.

6. Defendant BD PDL SERVICES, LLC is purportedly incorporated to conduct business in St. Kitts and Nevis.

7. Defendant BD PDL SERVICES, LLC is an on-line payday lender, owned and operated by Joshua Mitchem, with its principal place of business at 4551 W. 107th Street, Overland Park, Kansas, 66207.

8. Defendant BD PDL SERVICES, LLC (hereinafter referred to as "Defendant") markets, offers, sells and/or arranges payday loans to Illinois consumers through Defendant's online website and Internet solicitations despite the fact that Defendant is not authorized to conduct business in Illinois.

9. For purposes of this Complaint for Injunctive and Other Relief, any references to the act and practices of Defendant shall mean that such acts and practices are by and through the acts of Defendant's officers, members, owners, directors, employees, salespersons, representatives and/or other agents.

TRADE & COMMERCE

10. Subsection 1(f) of the Consumer Fraud Act defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

815 ILCS 505/1(f).

11. Defendant was at all times relevant hereto, engaged in trade and commerce in the State of Illinois by advertising, offering or making payday loans over the Internet to Illinois consumers.

DEFENDANT'S COURSE OF CONDUCT

12. Since at least 2012, Defendant advertises and offers payday loans over the Internet.

13. Defendant offers, sells, markets, promotes, and/or provides payday loans through its website at www.bottomdollarpayday.com.

14. Defendant makes loans to consumers exclusively online using the Internet.

15. Defendant has offered and executed contracts online with Illinois residents for short-term or payday loans, and Defendant has collected and/or attempted to collect payment from Illinois consumers pursuant to these contracts.

16. However, Defendant fails to disclose that Defendant is not licensed to offer payday loans in Illinois.

17. Due to being unlicensed, Defendant does not comply with the consumer protections in the Payday Loan Reform Act, 815 ILCS 122/1, *et. seq.*

Background

18. In 2005, the Illinois legislature passed the Payday Loan Reform Act ("PLRA") to protect consumers against long-term cycles of debt associated with short-term payday loans.

19. Prior to 2005, there were very few consumer protections for borrowers of short-term loans. For instance, there were no limits on finance charges or the number of loans that a consumer could simultaneously borrow.

20. The PLRA requires any entity acting as a payday lender in Illinois to be licensed by the Department of Financial and Professional Regulation ("Department"). 815 ILCS 122/3-3.

21. In addition to licensure requirements PLRA imposes a number of statutory requirements on entities offering payday loans to Illinois consumers, including but not limited to the following:

- a. A lender may charge no more than \$15.50 per \$100 loaned on any payday loan over the term of the loan, 815 ILCS 122/2-5(e-5);
- b. A lender cannot make a payday loan to a consumer if the loan would result in the consumer's being in debt to one or more payday lenders for more than 45 consecutive days, 815 ILCS 122/2-5(b);
- c. After a consumer pays off the balance of all payday loans he or she took out in a 45 consecutive day period, a lender must wait seven calendar days before issuing that consumer a new payday loan, 815 ILCS 122/2-5(b);
and
- d. A lender cannot make a payday loan to a consumer who has an outstanding balance on two loans, 815 ILCS 122/2-5(e).

22. Illinois law further requires entities offering payday loans to Illinois consumers to use a "commercially reasonable method of verification" to verify that each proposed loan agreement is permissible. 815 ILCS 122/2-15(a)

23. A "commercially reasonable method of verification" is defined as a consumer reporting service database certified by the Department and made available to licensees. 815 ILCS 122/1-10

24. The consumer reporting service database is not accessible to unlicensed payday lenders.

Defendant's Payday Loan Product

25. Defendant advertises and offers payday loans over the Internet.

26. Defendant offers, sells, markets, promotes, and/or provides payday loans through its website at www.bottomdollarpayday.com.

27. Defendant's website further indicates that BD PDL Services, LLC is a lender:

The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If BottomDollarPayday.com does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The Terms & Conditions and Privacy Policy displayed on this website apply to customers who receive their loan directly from www.BottomDollarPayday.com; BDP PDL Services LLC.

28. Defendant's website claims that "BottomDollarPayday.com does not provide payday loan services to those who live in the following states: Arkansas, Colorado, Georgia, Kansas, Missouri, New York, Pennsylvania, and West Virginia."

29. The website fails to advise Illinois consumers that Defendant is not licensed to make payday loans to Illinois consumers.

30. Defendant's website states:

We are among the best when it comes to getting cash to the borrower fast. Bottom Dollar Payday is dedicated to helping payday loan consumers across America bridge the gap between pay dates, all from the privacy and comfort of their own home. Our short-term advance loan services are a quick solution for anyone's immediate financial needs. Here is why we are on top of the competition;

* Funds deposited into your account in 1 Hour!

* Approval in 5 minutes

* No Credit Checks

* No Faxing Required

* Safe and Secure Application Process

Years of experience funding short-term loans has shown that our customers want the money they need as quickly as possible with no hassles and that is what Bottom Dollar delivers. Get the cash you need with the service you deserve today!

31. Defendant offers and extends payday loans to Illinois consumers without obtaining a license from the Department.

32. Defendant offers payday loans to first time applicants for amounts up to \$500.00. Defendant further offers to increase consumer's loan amount up to \$1500 for subsequent loans.

33. The repayment due date on Defendant's loan is the consumer's next payday.

34. Defendant charges a finance fee of 30% each due date the consumer carries a balance.

35. Defendant accepts payments of the loan through automatic bank debits from the borrower's bank account.

36. During at least part of the relevant time period, the website for Bottom Dollar Payday further provides, "In most cases, the finance fee will be 30% of the balance, or \$30 per \$100 borrowed."

37. During part of the relevant time period, Defendant's website also explained how fees are charged:

Typically, if your next payday is 11 days away or more, you will pay the full fee. If your payday is in 10 days or less, then you'll typically only pay a half fee, or \$15 per \$100 borrowed. With these assumptions, the APR can range from 547.50% up to 995.45% if Bottom Dollar Payday is your lender.

38. In one instance, Defendant charged an Illinois consumer a finance fee of \$150.00 on a \$500.00 loan.

39. As an unlicensed entity, Defendant is unable to verify that payday loan agreements with Illinois consumers are permissible by checking one of the consumer reporting service databases certified by the Department.

40. As a result of failing to obtain a license, and thereby failing to verify that loan agreements are permissible, Defendant is unable to ensure that Defendant will not offer payday loans to Illinois consumers who had a balance on two or more payday loans at the time that Defendant made the loan.

41. Prior to making a payday loan, Defendant fails to provide consumers a pamphlet of disclosures prepared by the Secretary of the Department, as required by the PLRA. 815 ILCS 122/2-20(a)

42. Defendant fails to provide consumers with a written agreement that details certain disclosures, as required by the PLRA. 815 ILCS 122/2-20(b)

43. Defendant has collected and/or attempted to collect payment from Illinois consumers pursuant to these acts and practices.

The Department's Cease and Desist Order to Defendant

44. After conducting an examination of Defendant's activities, the Department issued a Cease and Desist Order ("Order") to Defendant and Joshua Mitchem on June 19, 2013, pursuant to the PLRA. (See Order attached as Exhibit 1)

45. The Department's Order stated that Defendant offered and arranged payday loans to Illinois consumers without a license.

46. The Order directed Defendant to cease and desist offering and arranging payday loans to Illinois consumers.

47. The Department further ordered Defendant to produce certain documents in connection to the accounts with Illinois consumers.

48. The Order was sent to Joshua Mitchem at 4551 W. 107th Street, Overland Park, Kansas, 66207, via certified mail and was returned to the Department unclaimed.

APPLICABLE STATUTES

49. Section 2 of the Consumer Fraud Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2.

50. Section 2Z of the Consumer Fraud Act provides, "Any person who knowingly violates . . . the Payday Loan Reform Act . . . commits an unlawful practice within the meaning of this Act." 815 ILCS 505/2Z.

51. Subsection 1-15(a) of the Payday Loan Reform Act, 815 ILCS 122/1-15(a), provides that the Act "applies to any lender that offers or makes a payday loan to a consumer in Illinois."

52. Defendants meet the definition of "lender" set forth in the Payday Loan Reform Act, 815 ILCS 122/1-10.

53. "Lender" is defined in the Payday Loan Reform Act, 815 ILCS 122/1-10,

as:

any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act.

54. Section 1-10 of the Payday Loan Reform Act provides:

"Commercially reasonable method of verification" or "certified database" means a consumer reporting service database certified by the Department as effective in verifying that a proposed loan agreement is permissible under this Act, or, in the absence of the Department's certification, any reasonably reliable written verification by the consumer concerning (i) whether the consumer has any outstanding payday loans, (ii) the principal amount of those outstanding payday loans, and (iii) whether any payday loans have been paid in full by the consumer in the preceding 7 days.

815 ILCS 122/1-10

55. The Payday Loan Reform Act, 815 ILCS 122/1-10, defines "payday loan" as "a loan with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which . . . [a] lender accepts one or more authorizations to debit a consumer's bank account."

56. The Payday Loan Reform Act, 815 ILCS 122/2-15(a), provides, "Before entering into a loan agreement with a consumer, a lender must use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under this Act."

57. Section 2-20 of the Payday Loan Reform Act provides

(a) Before a payday loan is made, a lender shall deliver to the consumer a pamphlet prepared by the Secretary that:

(1) explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a payday loan transaction;

(2) includes a toll-free number to the Secretary's office to handle concerns or provide information about whether a lender is licensed, whether complaints have been filed with the Secretary, and the resolution of those complaints; and

(3) provides information regarding the availability of debt management services.

(b) Lenders shall provide consumers with a written agreement that may be kept by the consumer. The written agreement must include the following information in English and in the language in which the loan was negotiated:

(1) the name and address of the lender making the payday loan, and the name and title of the individual employee who signs the agreement on behalf of the lender;

(2) disclosures required by the federal Truth in Lending Act;

(3) a clear description of the consumer's payment obligations under the loan;

(4) the following statement, in at least 14-point bold type face: "You cannot be prosecuted in criminal court to collect this loan." The information required to be disclosed under this subdivision (4) must be conspicuously disclosed in the loan document and shall be located immediately preceding the signature of the consumer; and

(5) the following statement, in at least 14-point bold type face:

"WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

815 ILCS 122/2-20(a)(b)

58. The Payday Loan Reform Act, 815 ILCS 122/2-5(e-5), provides, in part:

Except as provided in subsection (c)(i), no lender may charge more than \$15.50 per \$100 loaned on any payday loan, or more than \$15.50 per \$100 on the initial principal balance and on the principal balances scheduled to be outstanding during any installment period on any installment payday loan.

59. The Payday Loan Reform Act, 815 ILCS 122/3-3, requires "a person or entity acting as a payday lender" to be licensed by the Department of Financial and Professional Regulation.

60. The Payday Loan Reform Act, 815 ILCS 122/4-10(b), provides, "Any material violation of this Act, including the commission of an act prohibited under Section 4-5, constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act."

VIOLATIONS

COUNT I:

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

61. The People re-allege and incorporate by reference the allegations in Paragraphs 1 to 60.
62. While engaged in trade or commerce, the Defendant has committed unfair and/or deceptive acts or practices declared unlawful under Section 2Z of the Consumer Fraud Act, 815 ILCS 505/2Z, by knowingly violating the Payday Loan Reform Act, 815 ILCS 122/1-1, *et. seq.*, in the following ways:
- a. offering and making online payday loans to Illinois consumers without licensure by the Illinois Department of Financial and Professional Regulation, in violation of 815 ILCS 122/3-3(a);
 - b. offering or making on-line payday loans to Illinois consumers with a finance fee of more than \$15.50 per \$100 on the initial principal balance, in violation of 815 ILCS 122/2-5(e-5);
 - c. failing to use a commercially reasonable method of verification to verify that each proposed loan agreement is permissible under the Act, as required by 815 ILCS 122/2-15(a);
 - d. failing to provide Illinois consumers a pamphlet that provides certain required disclosures, as required by 815 ILCS 122/2-20(a); and
 - e. failing to provide Illinois consumers a written contract that details certain required disclosures, as required by 815 ILCS 122/2-20(b).
63. While engaged in trade or commerce, the Defendant has committed unfair and/or deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:
- a. misrepresenting, expressly or by implication, with the intent that consumers rely on such misrepresentation, that Defendant is licensed and authorized to offer payday loans to Illinois consumers; and

- b. failing to disclose to Illinois consumers that Defendant is not licensed and authorized to offer payday loans to Illinois consumers, with the intent that consumers rely of such omission.

STATUTORY REMEDIES

64. Section 7 of the Consumer Fraud Act provides:

Whenever the Attorney General ... has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may bring an action in the name of the People of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction; revocation; forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General...may request and the Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

815 ILCS 505/7.

65. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides, “In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff prays that this honorable court enter an order:

- A. Finding that Defendant is a “lender” as defined by the Payday Loan Reform Act, 815 ILCS 122/1-10;
- B. Finding that Defendant engaged in trade or commerce in Illinois by offering and making online payday loans to Illinois consumers;

C. Finding that Defendant engaged in acts or practices in violation of Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by advertising and offering payday loans over the Internet to Illinois consumers;

D. Finding that Defendant engaged in unlawful activities pursuant to Section 2Z of the Consumer Fraud Act, 815 ILCS 505/2Z, by knowingly violating the Payday Loan Reform Act, 815 ILCS 122/1-1, *et. seq*;

E. Permanently enjoining Defendant, acting alone or in concert with others, from making, offering, or arranging online payday loans to Illinois consumers, unless Defendant becomes licensed by the Department;

F. Assessing a civil penalty in the amount of Fifty Thousand Dollars (\$50,000) per violation of the Consumer Fraud Act found by the Court to have been committed by the Defendant with the intent to defraud; if the Court finds the Defendant has engaged in methods, acts or practices declared unlawful by the Consumer Fraud Act, without the intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars (\$50,000), all as provided in Section 7 of the Consumer Fraud Act 815 ILCS 505/7;

G. Requiring Defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act 815 ILCS 505/10; and

H. Providing such other and further equitable relief as justice and equity may require.

COUNT II:

PAYDAY LOAN REFORM ACT

66. Plaintiffs re-allege and incorporate the allegations in Paragraphs 1 to 65.

67. Defendant has materially violated the Payday Loan Reform Act and committed unfair or deceptive acts or practices declared unlawful under Section 3-3, 815 ILCS 122/3-3, by offering online payday loans to Illinois consumers without licensure by the Illinois Department of Financial and Professional Regulation.

68. Defendant has materially violated the Payday Loan Reform Act and committed unfair or deceptive acts or practices declared unlawful under Section 2-5(e-5), 815 ILCS 122/2-5(e-5), by offering online payday loans to Illinois consumers with a finance fee of more than \$15.50 per \$100 on the initial principal balance.

69. Defendant has materially violated the Payday Loan Reform Act and committed unfair or deceptive acts or practices declared unlawful under Section 2-15(a), 815 ILCS 122/2-15(a), by offering online payday loans while failing to use a commercially reasonable method of verification to verify that each proposed loan agreement is permissible.

70. Defendant has materially violated the Payday Loan Reform Act and committed unfair or deceptive acts or practices declared unlawful under Section 2-20(a), 815 ILCS 122/2-20(a), by offering online payday loans while failing to provide Illinois consumers the statutorily required pamphlet of disclosures and information.

71. Defendant has materially violated the Payday Loan Reform Act and committed unfair or deceptive acts or practices declared unlawful under Section 2-20(b),

815 ILCS 122/2-20(b), by offering online payday loans while failing to provide consumers with a written agreement that details certain disclosures.

REMEDIES

72. Sec. 4-10 of the Payday Loan Reform Act, 815 ILCS 122/4-10, provides: (a) The remedies provided in this Act are cumulative and apply to persons or entities subject to this Act.

(b) Any material violation of this Act, including the commission of an act prohibited under Section 4-5, constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act.

(c) If any provision of the written agreement described in subsection (b) of Section 2-20 violates this Act, then that provision is unenforceable against the consumer.

(d) Subject to the Illinois Administrative Procedure Act, the Secretary may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have the power to issue fines of up to \$10,000 per violation, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act. All proceedings shall be open to the public.

(e) The Secretary may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. The cease and desist order permitted by this subsection (e) may be issued prior to a hearing.

The Secretary shall serve notice of his or her action, including, but not limited to, a statement of the reasons for the action, either personally or by certified mail, return receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

Within 10 days of service of the cease and desist order, the licensee or other person may request a hearing in writing. The Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

If it is determined that the Secretary had the authority to issue the cease and desist order, he or she may issue such orders as may be reasonably necessary to correct, eliminate, or remedy the conduct.

The powers vested in the Secretary by this subsection (e) are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this subsection (e) shall be construed as requiring that the

Secretary shall employ the power conferred in this subsection instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

...

(h) Notwithstanding any other provision of this Section, if a lender who does not have a license issued under this Act makes a loan pursuant to this Act to an Illinois consumer, then the loan shall be null and void and the lender who made the loan shall have no right to collect, receive, or retain any principal, interest, or charges related to the loan.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court enter an Order:

- A. Finding that Defendant is a “lender” as defined by the Payday Loan Reform Act, 815 ILCS 122/1-10, without first having obtained a license under the Payday Loan Reform Act;
- B. Permanently enjoining Defendant, acting alone or in concert with others, from making or offering online payday loans to Illinois consumers, unless Defendant becomes licensed by the Department;
- C. Finding that the Defendant has materially violated Sections 2-5(e-5), 2-15(a), 2-20(a), 2-20(b), and 3-3 of the Payday Loan Reform Act, 815 ILCS 122/2, *et seq.*, and thereby violated the Consumer Fraud Act, by engaging in but not limited to, the unlawful acts and practices alleged herein;
- D. Declaring that all payday loan contracts entered into between Defendant and Illinois consumers are null and void pursuant to §4-10(h) of the Payday Loan Reform Act, 815 ILCS 122/4-10(h); and requiring that full restitution be made to said consumers;
- E. Requiring Defendant to pay all costs for the prosecution and investigation of this action; and
- F. Providing such other and further equitable relief as justice and equity may require.

PEOPLE OF THE STATE OF ILLINOIS
BY LISA MADIGAN,
ATTORNEY GENERAL OF ILLINOIS

BY:


SUSAN ELLIS

Bureau Chief
Consumer Fraud Bureau



SARAH ALIPOURIAN POULIMAS

Assistant Attorney General
Consumer Fraud Bureau



KHARA COLEMAN WASHINGTON

Assistant Attorney General
Consumer Fraud Bureau

LISA MADIGAN
Illinois Attorney General

SUSAN ELLIS, Bureau Chief
Consumer Fraud Bureau

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(312) 814-3000

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL & PROFESSIONAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS**

In the Matter of)
Bottom Dollar Payday) No. 13 CC 395
)

To: Bottom Dollar Payday Joshua Mitchem
3543 Broadway 4551 West 107th Street
Kansas City, MO 64111 Overland Park, KS 66207

CEASE AND DESIST ORDER

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, DIVISION OF FINANCIAL INSTITUTIONS ("Department"), is statutorily charged with administration of the Payday Loan Reform Act, 815 ILCS 122/§1 *et seq.*, and the Financial Institutions Code, 20 ILCS 1205/§1 *et seq.* Pursuant to its authority under Illinois law, the Department has reviewed information relative to the activities of Bottom Dollar Payday ("Bottom Dollar") to determine if Bottom Dollar has engaged in, or is about to engage in, acts or practices constituting violations of the Payday Loan Reform Act. Based upon its review, the Department hereby issues the following CEASE AND DESIST ORDER as a result of the findings alleged herein.

STATUTORY PROVISIONS

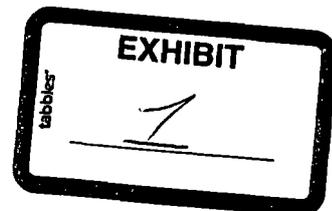
A. Payday Loan Reform Act ("PLRA")

1. Section 1-15(a) of the PLRA states, in pertinent part:

[T]his Act applies to any lender that offers or makes a payday loan to a consumer in Illinois. 815 ILCS 122/§1-15(a).

2. Section 1-10 of the PLRA states, in pertinent part:

"Lender" and "licensee" mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act. 815 ILCS 122/§1-10.



3. Section 3-3(a) of the PLRA states, in pertinent part:

[A] person or entity acting as a payday lender must be licensed by the Department as provided in this Article. 815 ILCS 122/§3-3(a).

4. Section 4-10(e) of the PLRA states, in pertinent part:

The Secretary may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. 815 ILCS 122/§4-10(e).

B. Financial Institutions Code ("FIC")

5. Section 4(d) of FIC states, in pertinent part:

"Financial institution" means ambulatory and community currency exchanges, credit unions, guaranteed credit unions, persons engaged in the business of transmitting money to foreign countries, or buying and selling foreign money, pawnshops, societies, title insuring or guaranteeing companies, and persons engaged in the business of making loans of \$800 or less, all as respectively defined in the laws referred to in Section 6 of this Act. 20 ILCS 1205/§4(d).

6. Section 18 of FIC states, in pertinent part:

The Director shall have the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing regarding the operation of any financial institution. Any person who fails to appear in response to a subpoena or to answer any question or produce any books and papers pertinent to such investigation or hearing, or who knowingly gives false testimony therein, is guilty of a Class A Misdemeanor. 20 ILCS 1205/§18.

FACTUAL FINDINGS

7. On or about December 5, 2011, Bottom Dollar was engaged in the business of offering, making, or arranging payday loans to Illinois consumers.
8. On or about January 16, 2013, an Illinois consumer filed a complaint with the State of Illinois regarding Bottom Dollar's payday lending activities.
9. As of the date of this Order, Bottom Dollar continues to offer, make, or arrange payday loans to Illinois consumers through its website, www.bottomdollarpayday.com.
10. Bottom Dollar has never been licensed by the Department to offer, make, or arrange payday loans to consumers in Illinois.

LEGAL FINDINGS

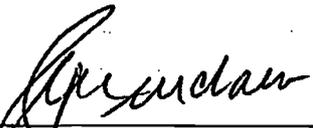
11. Bottom Dollar violated Section 3.3 of PLRA by offering, making, or arranging payday loans to Illinois consumers without obtaining the required license.

NOW IT IS HEREBY ORDERED:

- I. Pursuant to Section 4-10(e) of PLRA, Bottom Dollar shall immediately **CEASE AND DESIST** offering, making, or arranging payday loans to consumers in Illinois.
- II. Pursuant to Section 18 of FIC, Bottom Dollar is ordered to **PRODUCE DOCUMENTS** to the Department consisting of any and all records, files, account statements, and documents containing information relevant to the accounts of all active and inactive Illinois consumers. Bottom Dollar shall provide copies of all advertisements, mailings, electronic communications, fliers, and any other type of solicitation that Bottom Dollar is using or has used to solicit Illinois consumers. All documents requested pursuant to this paragraph shall be produced by **July 9, 2013**, and delivered to the Consumer Credit Supervisor at the Illinois Department of Financial and Professional Regulation, Division of Financial Institutions, 100 W. Randolph Street, 9th Floor, Chicago, IL 60601.

Pursuant to Section 4-10(e) of PLRA, notice shall be made by certified mail and by sending a copy of the notice by electronic mail. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. mail. Bottom Dollar may request, in writing, a hearing on the Order within 10 days after the date of service.

Dated this 19 day of June 2013



Francisco Menchaca, Acting Director
Division of Financial Institutions