VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SPOTSYLVANIA

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| **COMMONWEALTH OF VIRGINIA,** *EX REL.* **MARK R. HERRING, ATTORNEY GENERAL,** | ) | |
| **Plaintiff,** | ) | |
| **v.** | ) | **CIVIL ACTION NO. _____** |
| **SPOTSYLVANIA GOLD & PAWN, INC., a Virginia corporation,** | ) | |
| **Defendant.** | ) | |

## 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, Spotsylvania Gold & Pawn, Inc. ("Spotsylvania 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 County of Spotsylvania 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 County of Spotsylvania. 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 County of Spotsylvania, and portions of the cause of action arose in the County of Spotsylvania.

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, Spotsylvania Pawn, is a Virginia corporation with its principal place of business in Fredericksburg, Virginia 22408 (Spotsylvania County). Its Articles of Incorporation were issued by the State Corporation Commission on May 16, 1994.

## FACTS

7. During the period from at least May 16, 1994 through the present, the Defendant has operated as a pawnbroker to consumer borrowers out of its store located at 5049 Jefferson Davis Hwy., Fredericksburg, Virginia 22408 in Spotsylvania County. 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 25, 2016, the Defendant imposed a monthly finance charge of $20.50 on a loan of $105.00. A copy of the pawn ticket the Defendant issued on this loan is attached as Exhibit A.

9. The finance charges of $20.50 that the Defendant imposed on the loan described in paragraph 8 above included: monthly interest at the rate of five percent (5%) totaling $5.25, a monthly storage fee at the rate of five-percent (5%) totaling $5.25, and a monthly $10 fee labeled "App."

## 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 $105.00, the following interest and fees are permitted: (a) interest in the amount of $5.25; (b) a storage fee in the amount of $5.25; and (c) a service fee in the amount of $3; the total allowable fee, accordingly, is $13.50.

17. The five percent (5%) monthly storage fee in the amount of $5.25 and the five percent (5%) interest charge in the amount of $5.25 that the Defendant imposed on the $105.00 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 $10 fee labeled "App." the Defendant imposed on the $105.00 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 March 31, 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

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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 5th day of May, 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 Spotsylvania Gold & Pawn, Inc.

Mark S. Kubiak

EXHIBIT A

PENGAD-Bayonne, N. J.

# Spotsylvania Gold & Pawn

5049 Jefferson Davis Hwy.,
Fredericksburg VA 22408
(540) 786-2500 Fax: (540) 891-5059

**30 Day Pawn Ticket**

**116787**

Date Made: 1/25/2016
Time Made: 5:26 PM

| | | | | | |
|---|---|---|---|---|---|
| Pledgor: | [redacted] | SEX: | [redacted] | WEIGHT: [redacted] | BEARD: ☐ |
| ID: | [redacted] | RACE: | WHITE | EYES: HAZ | MUSTACHE: ☑ |
| Address: | [redacted] | DOB: | [redacted] | HEIGHT: [redacted] | GLASSES: ☐ |
| | [redacted] | EMPLOYER: | | | |
| | | EMPLOYER PHONE: | | | |

**Description of all items pawned**

1/. 1 - Jewelry 1 10k gold bracelet with heart charm 7 Yellow 10k 2.6dwt

2/. 1 - Jewelry 1 14k gold bracelet with cz 43 stones 8 Yellow 14k 6.1dwt

You are giving us a security interest in the above-described goods

**TRUTH IN LENDING**

| | |
|---|---|
| MATURITY DATE | 24-Feb-16 |
| AMOUNT FINANCED<br>The amount of credit provided to you | $105.00 |
| FINANCE CHARGE<br>The dollar amount the credit will cost you | $20.50 |
| TOTAL OF PAYMENTS<br>Amount to redeem pawn on maturity date | $125.50 |
| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate | 120.00% |
| PAYMENT SCHEDULE: 1 @ | $125.50 |

If you pay off your loan early you will not be entitled to a refund of part of the finance charge

| | |
|---|---|
| Amount To Extend Pawn For 30 Days | $20.50 |

Breakdown/Explanation of Finance Charges

| Setup | Interest | Storage | App | Finance |
|---|---|---|---|---|
| | 5.25 | 5.25 | 10.00 | $20.50 |

**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.

**TERMS AND CONDITIONS. Your signature below constitutes acceptance.**

In consideration of and to secure the amount identified as the Amount financed,Pledgor hereby deposits with the issuer of this pawn ticket the Pledged items,described on the reverse hereof. The pledgor of this item attests that it is not stolen,ithas no liens or encumbrances against it,and the pledgor has the right to sell or pawn the item. Pledgor also attests that the pledged item(s) are not rented or leased and that Pledgor is not in voluntary bankruptcy of any type. Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of not less than 15 days past the date of the pawn transaction,renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods. A pawnbroker may contract for and receive a pawnshop charge not to exceed three percent per month of the principal Amount advanced (AmountFinanced) plus afee for storage and services. The pawnshop charge shall be deemed earned,due,and owing as of the date of the pawn transaction and a like sum shall be deemed earned,due, and owning on the same day of the next succeeding month. This item is redeemable only by the pledgor to whom the receipt was issued,or any person identified in written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to persons other than the orginal pledgor must be maintained along with original transaction record. If this pawn ticket is lost,destroyed or stolen,you should immediately so advise the issuing pawnbroker,in writing. The owner of a loaned firearm is the only person that receive the firearm out of pawn. Background checks are required for any pawn redemption. **For purchasing or receiving a loan on a firearm if the person is denied on a submitted application the applicant will receive store credit only.** Your personal information left on any electronic device is your responsibility and Spotsylvania Gold & Pawn will not be responsible for any private data/pictures of any kind as it is the pledgors sole responsibility to remove all said data/pictures.

*NO PERSONAL CHECKS ACCEPTED*
*NO GOODS SENT C.O.D.*
*NO GOODS SHOWN FOR REDEMPTION UNLESS PAID IN ADVANCE*
*$5.00 LATE FEE*
*$5.00 LOST TICKET FEE*
*CASH ONLY FOR PICK UP*
*TRIGGER LOCKS ARE REQUIRED ON PISTOLS LEAVING STORE*
*$2.00 APP FEE FOR GUN PURCHASE/LOANS OR TRANSFERED WEAPONS*

+ 3.18.16

I agree to all the terms and conditions of this contract

I hereby Pawn/Loan/Sell the items listed herein for the sum of: $105.00

Customer Signature 1/25/2016

Buy - Sell - Pawn - Trade
Hours 9:30 - 7:00, Mon-Friday 9:00 - 6:00 Saturday
VISA/MASTER Cards Accepted for Sales Only. Unredeemed pledges for sale.

Signature upon redemption of above items

Dealer: Brian

Permit: N/A

X

BUYER/DEALER/EMPLOYEE SIGNATURE

*116787*