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CONSUMER PROTECTION SECTION

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SPOTSYLVANIA

COMMONWEALTH OF VIRGINIA, *EX REL.* MARK R. HERRING, ATTORNEY GENERAL,	
Plaintiff,	
v.	**CIVIL ACTION NO.** CL17-479
SPOTSYLVANIA GOLD & PAWN, INC., a Virginia corporation,	
Defendant.	

ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY COMPLIANCE

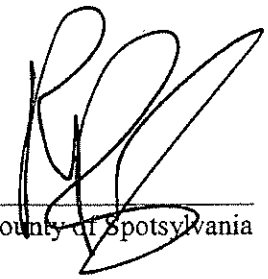
Upon review of the Complaint and Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Defendant Spotsylvania Gold & Pawn, Inc., and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court; and

2. The Clerk of this Court shall mail a certified copy of this Order to Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia 23219, and to Paul F. Nichols, Esquire, Nichols Zauzig Sandler, P.C., 12660 Lake Ridge Dr., Woodbridge, Virginia 22192.

CC: D. Edwin, M. Kubiak & P. Nichols
5/12/17
SAS

Enter: 5/11/17



Judge, Circuit Court for the County of Spotsylvania

WE ASK FOR THIS:

A COPY TESTE:
Christalyn M. Jett, Clerk
By: _____ Deputy Clerk

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

By: _____

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

SPOTSYLVANIA GOLD & PAWN, INC.

By: _____

Paul F. Nichols, Esquire (VSB No. 493507)
Nichols Zauzig Sandler, P.C.
12660 Lake Ridge Drive
Woodbridge, Virginia 22192
Phone: (703) 492-4200
Fax: (703) 492-4201

Counsel for Spotsylvania Gold & Pawn, Inc.

SPOTSYLVANIA GOLD & PAWN, INC.

By: Melissa Shiflett
Melissa Shiflett

Its: President
Title

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SPOTSYLVANIA

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

ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance ("Assurance") is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the "Attorney General" or the "Commonwealth"), and Spotsylvania Gold & Pawn, Inc. ("Spotsylvania Pawn").

1.1 Spotsylvania Pawn is a Virginia corporation headquartered in Fredericksburg, Virginia. Spotsylvania Pawn operates as a pawnbroker, as defined in Virginia Code § 54.1-4000, making closed-end loans to consumers out of its sole business location at 5049 Jefferson Davis Hwy., Fredericksburg, Virginia 22408 (Spotsylvania County), which loans are secured by the consumers' personal property that is left with Spotsylvania Pawn (the "pawn loans").

1.2 Spotsylvania Pawn does not contest that it has advertised to and served Virginia consumers. Spotsylvania Pawn consents to and waives all objections to this Court's jurisdiction for all matters relating to this Assurance's entry, execution, monitoring and enforcement.

Spotsylvania Pawn further waives all objections it may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in this Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that Spotsylvania Pawn 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 Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, offering and providing pawn loans to individual consumers residing in Virginia.

2.2 During the period from at least May 16, 1994 to the present, Spotsylvania Pawn offered to make, and made, pawn loans to Virginia consumers.

2.3 The Commonwealth contends that, during the period from at least June 1, 2015 through March 31, 2016 (the "Relevant Period"), Spotsylvania Pawn operated in violation of the Virginia statutes governing pawnbrokers, Virginia Code §§ 54.1-4000 through 54.1-4014, by charging excessive interest rates and/or fees on all or many of its pawn loans. Specifically, the Commonwealth contends that Spotsylvania Pawn charged interest and/or fees in amounts beyond the "permissible fees," as defined in § 6.2, *infra*.

2.4. The Commonwealth contends that, by violating the statutes applicable to pawnbrokers, Spotsylvania Pawn also operated in violation of the VCPA. *See* Va. Code Ann. §§ 54.1-4014(B) and 59.1-200(A)(33).

2.5 Spotsylvania Pawn informs the Commonwealth, and the Commonwealth understands, that Spotsylvania Pawn voluntarily altered its fee structure on or around March 31, 2016, to charge only such interest and fees as are specifically authorized under the pawnbroker statutes.

III. DEFENDANT'S POSITION

3.0 The statements contained in this Section III represent the position of Spotsylvania Pawn.

3.1 Spotsylvania Pawn does not contest the allegations contained in Sections 2.1 and 2.2 and denies the allegations contained in Sections 2.3 and 2.4 of this Assurance of Voluntary Compliance.

3.2 Spotsylvania Pawn denies that it has engaged in any acts and practices that violate any Virginia law, including, but not limited to, the Virginia pawnbroker statutes and the VCPA.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission or waiver by Spotsylvania Pawn for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Spotsylvania Pawn enters into this Assurance without admitting any wrongdoing or liability and affirmatively states that its execution of this Assurance is for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Spotsylvania Pawn enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Spotsylvania Pawn and the Attorney General, in the interest of resolving the Attorney General's claims.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of Spotsylvania Pawn's services or practices and Spotsylvania Pawn shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by Spotsylvania Pawn in violation of applicable federal, state or other laws.

4.6 Spotsylvania Pawn agrees that this Assurance constitutes a legally-enforceable obligation of Spotsylvania Pawn in accordance with its terms.

4.7 The Commonwealth shall not subsequently institute any civil proceeding or take any civil action against Spotsylvania Pawn, its officers, directors, employees or agents under Virginia pawnbroker statutes or the VCPA for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if Spotsylvania Pawn, or its employees, agents, officers, or directors provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this provision shall be null and void.

4.8 The Commonwealth, through its Attorney General, releases and discharges Spotsylvania Pawn from all potential liability for law violations that the Commonwealth has or might have asserted based on practices alleged by the Attorney General, to the extent such practices occurred before the Effective date and the Attorney General knew about them as of the Effective Date. Notwithstanding this release, the Attorney General may use the practices alleged in the Complaint in future enforcement actions against Spotsylvania Pawn or its affiliates to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Attorney General to determine and ensure compliance with the Order by which this Assurance is approved and adopted by this Court or to seek penalties for any violation of the Order.

4.9 The Parties agree that, if Spotsylvania Pawn files for bankruptcy within ninety (90) days of any required payment under this Assurance, the release appearing in Paragraphs 4.7 and 4.8 shall be null and void.

4.10 This Assurance applies to Spotsylvania Pawn, together with its officers, directors, employees, assigns and agents.

4.11 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto.

V. ASSURANCES

5.0 Spotsylvania Pawn voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 Spotsylvania Pawn agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the Virginia pawnbroker statutes in Paragraph 2.3 of Section II of this Assurance, and Spotsylvania Pawn agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 Spotsylvania Pawn agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the Virginia pawnbroker statutes, as they now exist, or as amended in the future.

5.3 Spotsylvania Pawn agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the VCPA in Paragraph 2.4 of Section II of

this Assurance, and Spotsylvania Pawn agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.4 Spotsylvania Pawn agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the VCPA, as it now exists, or as amended in the future.

5.5 Spotsylvania Pawn agrees to make available and to disclose the provisions of this Assurance to its officers, directors, employees, agents and representatives within five (5) days of the last execution date of this Assurance, or the date this Assurance is filed with the Court, whichever is later.

5.6 Spotsylvania Pawn shall institute supervisory compliance procedures that are reasonably designed to ensure compliance with this Assurance, including, without limitation, a) the training of relevant employees and b) revisions to and/or development of appropriate training materials and internal procedures.

5.7 Spotsylvania Pawn agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.8 Spotsylvania Pawn agrees that it shall not represent that the Attorney General approves of or endorses Spotsylvania Pawn's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 "Restitution Period" means the period from June 1, 2015 through March 31, 2016.

6.1 "Restitution-Eligible Consumers" means all borrowers who received one or more pawn loans from Spotsylvania Pawn during the Restitution Period from whom Spotsylvania Pawn collected impermissible fees as described in Paragraph 6.3, *infra*.

6.2 "Permissible fees" means the fees specifically permitted by Virginia Code §§ 54.1-4008(A) (interest of ten percent per month on a loan of $25 or less; seven percent per month on a loan of more than $25 and less than $100; and five percent per month on a loan of $100 or more); 54.1-4009(C) (a five-percent service fee for making daily electronic reports to the appropriate law-enforcement officers, not to exceed $3); and 54.1-4013(B) (a five-percent monthly storage fee).

6.3 "Impermissible fees" means any fee or fees charged by Spotsylvania Pawn in addition to the permissible fees specifically authorized by Virginia Code §§ 54.1-4008(A), 54.1-4009(C) or 54.1-4013(B). For purposes of calculating restitution in this Section, "impermissible fees" means the difference between the aggregate fees actually charged by Spotsylvania Pawn, and the aggregate permissible fees described in Paragraph 6.2.

6.4 Simultaneously with the execution of this Assurance, Spotsylvania Pawn agrees to provide the Attorney General's Office with a verified spreadsheet containing the first and last name, home address, and phone number for all Restitution-Eligible Consumers. Such spreadsheet also shall include for each Restitution-Eligible Consumer the loan date, the date the loan was fully repaid (if it was repaid), the initial principal amount loaned, the total amount paid on account of finance charges and other fees and charges, the total aggregate amount of permissible fees, and the total restitution due subject to the per-individual restitution floor described in Paragraph 7.0, *infra* [where such amount is equal to the total amount paid on account of finance charges and other fees and charges minus the total aggregate permissible fees

allowable for that transaction]. The verified spreadsheet shall be accompanied by an affidavit in the attached form.

6.5 Within 60 days of the Effective Date, Spotsylvania Pawn shall set aside in an escrow account a sum total of Eighteen Thousand Four Hundred Fifty-Eight Dollars and Thirty Cents (18,458.30), which represents fifty percent (50%) of the total amount potentially due for restitution to all Restitution-Eligible Consumers. Spotsylvania Pawn shall provide verification of deposit to the Attorney General, in the form of copies of a deposit slip and bank statement. If the amount in escrow is depleted to $1,000.00 or less, Spotsylvania shall, on a rolling basis, replenish the escrow account back to the amount in the initial deposit or the amount needed to satisfy all outstanding claims, whichever is less.

6.6 After the Effective Date, Spotsylvania Pawn shall issue claim forms to the Restitution-Eligible Consumers with a letter explaining this settlement and stating that such consumers are entitled to a refund in the amount of the impermissible fees they paid. Spotsylvania Pawn also may require Restitution-Eligible Consumers to release claims relating to the allegations described in this Assurance. The form and substance of the letter and any required release shall be approved in advance by the Attorney General. Spotsylvania Pawn shall issue claim/release forms to all Restitution-Eligible Consumers within sixty (60) days of the Effective Date. Spotsylvania Pawn shall issue a single claim/release form (and, ultimately, a single refund check) to Restitution-Eligible Consumers who received multiple loans during the Restitution Period.

6.7 Spotsylvania Pawn shall manage and conduct the mailing of refund checks to Restitution-Eligible Consumers who return executed claim/release forms. Spotsylvania Pawn shall issue each refund check no later than sixty (60) days after receipt of an executed claim/release form from Restitution-Eligible Consumers, and shall issue refund checks to Restitution-Eligible

Consumers who return completed claim/release forms that are postmarked within two hundred seventy (270) days of the Effective Date. With exception of the circumstances described in Paragraph 6.9 below, Spotsylvania Pawn will not be obligated to issue restitution checks to Restitution-Eligible Consumers who return completed claim/release forms that are postmarked later than two hundred seventy (270) days after the Effective Date.

6.8 Spotsylvania Pawn shall track and compile the identity of those Restitution-Eligible Consumers: (a) whose claim/release forms are returned to Spotsylvania Pawn for incorrect or insufficient address or any other reason; (b) who return signed claim/release forms; (c) who deposit the refund checks; (d) who do not deposit the refund checks; and (e) whose refund checks are returned to Spotsylvania Pawn for incorrect or insufficient address or for any other reason. Spotsylvania Pawn agrees to cover all costs related to such mailing, tracking, and compiling.

6.9 Spotsylvania Pawn shall, between one hundred twenty (120) days of the Effective Date and one hundred fifty (150) days from the Effective Date and at least once every sixty (60) days thereafter through four hundred twenty (420) days from the Effective Date, provide all information compiled pursuant to Paragraph 6.8 above to the Office of the Attorney General so that the Attorney General may engage in further efforts to locate the Restitution-Eligible Consumers whose claim/release forms are returned for incorrect or insufficient address, or for any other reason. Spotsylvania Pawn agrees that it also will use reasonable efforts to locate such Restitution-Eligible Consumers. The Attorney General may direct Spotsylvania Pawn to send claim/release forms at any time up to two hundred seventy (270) days after the Effective Date to any Restitution-Eligible Consumer for whom a more current address is found, and Spotsylvania Pawn shall issue refund checks to such Restitution-Eligible Consumers whose claim/release forms are postmarked within three hundred sixty (360) days of the Effective Date. Once all

approved claims are paid, any remainder of the funds in the escrow account may be returned to Spotsylvania Pawn.

6.10 In the event a Restitution-Eligible Consumer signs and returns a claim and release form to Spotsylvania Pawn and the consumer's refund check is returned to Spotsylvania Pawn for any reason after being mailed, Spotsylvania Pawn will forward the amount due to that consumer to the Office of the Attorney General. If the Office of the Attorney General is not successful in locating any such Restitution-Eligible Consumer, such amounts will be forwarded to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55-210.9 and 55-210.2 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 to 55-210.30.

6.11 At its option, Spotsylvania Pawn can provide a separate phone number to be provided in the letter to Restitution Eligible Consumers or use its current telephone number and staff to handle consumer inquiries relating to the settlement. Spotsylvania Pawn agrees to staff the telephone number during its normal business hours for at least one year after the Effective Date. For purposes of complying with this requirement, Spotsylvania Pawn agrees to accept collect telephone calls from consumers who are calling from outside of its local calling area. The individuals designated to handle such consumer inquiries shall be knowledgeable of the terms of the Assurance and have ready access to the spreadsheet required in Paragraph 6.4, and be prepared to inform consumers of the relief they are eligible to receive pursuant to this Assurance, if any.

VII. RESTITUTION FLOOR/CY PRES

7.0 Spotsylvania Pawn shall not mail a claim/release form or a restitution check to a Restitution-Eligible Consumer if the total aggregate restitution due to that particular consumer is less than Four Dollars ($4) (the "Non-Restitution Consumers"). The total aggregate restitution

due to all Non-Restitution Consumers is Three Hundred Twenty-Nine Dollars and Eighty-Five Cents ($329.85) (the "Cy Pres Funds").

7.1 The Attorney General will distribute the Cy Pres Funds to one or more nonprofit organization(s) that provide consumer finance or credit counseling education to citizens of Spotsylvania County or surrounding geographic areas. The specific organization(s) to receive these funds shall be selected by the Attorney General, in his sole discretion.

VIII. MISCELLANEOUS

8.0 Spotsylvania Pawn agrees not to destroy any loan records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer. This prohibition shall lapse after a period of three (3) years from the Effective Date, provided that Spotsylvania Pawn satisfies the requirements in Section VI, *supra*.

8.1 To the extent that Spotsylvania Pawn has provided any negative information, to any credit reporting agency concerning any Restitution-Eligible Consumer, Spotsylvania Pawn agrees to contact the credit reporting agency to request removal of the adverse information upon the request of such Restitution-Eligible Consumer.

IX. ATTORNEYS' FEES

9.0 The Commonwealth shall recover from Spotsylvania Pawn, and Spotsylvania Pawn agrees to pay the Commonwealth, the sum of Six Thousand One Hundred Seventy Dollars and Fifteen Cents ($6,170.15), for reimbursement of the Commonwealth's reasonable expenses, costs and attorneys' fees in investigating and preparing this action. The Attorney General maintains that said reasonable expenses, costs and attorneys' fees are recoverable by the Commonwealth pursuant to § 59.1-206(C) of the VCPA and any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

X. PAYMENT TO THE COMMONWEALTH

10.0 Simultaneously with the execution of this Assurance, Spotsylvania Pawn agrees to make payment of the Six Thousand Five Hundred Dollars ($6,500.00) required by Sections VII and IX, *supra*, by delivering to the Commonwealth a certified or cashier's check, in the amount of Six Thousand Five Hundred Dollars ($6,500.00), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219.

XI. SIGNATURES

11.0 Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 5th day of May, 2017.

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

By: _____

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

SPOTSYLVANIA GOLD & PAWN, INC.

By: _____

Paul F. Nichols, Esquire (VSB No. 493507)
Nichols Zauzig Sandler, P.C.
12660 Lake Ridge Drive
Woodbridge, Virginia 22192
Phone: (703) 492-4200
Fax: (703) 492-4201

Counsel for Spotsylvania Gold & Pawn, Inc.

SPOTSYLVANIA GOLD & PAWN, INC.

By: Melissa Shiflett
Melissa Shiflett

Its: president
Title

AFFIDAVIT VERIFYING SPREADSHEETS

The undersigned has supervised a complete search and examination of all files and loan records of Spotsylvania Gold & Pawn, Inc. for the period from June 1, 2015 through March 31, 2016, and, based on this search and examination, has prepared the attached spreadsheets to provide the loan information required by the Assurance of Voluntary Compliance. The attached spreadsheets are accurate and complete to the best of my knowledge.

Spotsylvania Gold & Pawn, Inc.

By: _____

_____
Printed Name

Title: _____

STATE/COMMONWEALTH OF _____:

CITY/COUNTY OF _____:

Sworn to and subscribed before me, a notary public in and for the jurisdiction aforesaid, this ___ day of _____, 2017.

_____
Notary Public

My commission expires: / /