

STATE OF VERMONT
SUPERIOR COURT, WASHINGTON UNIT

State of Vermont)	
Plaintiff,)	
)	Civil Division
v.)	Docket No. _____
)	
A-1 Premium Budget, Inc.,)	
d/b/a Cash in a Wink, and)	
Paul Silverman,)	
Defendants.)	

COMPLAINT

Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Protection Act against Defendants for making unlicensed loans to Vermont consumers, and charging usurious interest rates. It is a violation of the Consumer Protection Act to make any consumer loan unless the lender is in full compliance with Vermont's lender requirements. The Attorney General seeks injunctive relief, restitution and other compensation to consumers, civil penalties, fees and costs, and other appropriate relief.

Parties and Jurisdiction

2. Defendant A-1 Premium Budget, Inc., d/b/a/ Cash in a Wink, is a Delaware corporation with offices located at 3422 Old Capitol Trail Suite 1109, Wilmington, DE 19808 and 8304 Wornall Road, Kansas City, MO 64114-5810.
3. Defendant Paul Silverman is the manager and owner of A-1 Premium Budget, Inc., and resides at 6944 Edgevale Road, Kansas City, MO 64103.

4. The Vermont Attorney General is authorized under the Vermont Consumer Protection Act, 9 V.S.A. § 2458(b), to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.
5. This Court has personal jurisdiction over Defendants and is the proper venue for this action, based on Defendants' solicitation and making of loans to Vermont residents throughout Vermont.
6. This action is in the public interest.

Statutory Framework

7. The Vermont Consumer Protection Act ("the Act") authorizes the Attorney General to take actions to restrain unfair and deceptive acts in commerce. 9 V.S.A. §§ 2453, 2458.
8. On May 18, 2012, the Vermont Legislature added section 2481w to the Act, to address unlicensed loan transactions. 9 V.S.A. § 2481w.
9. Under section 2481w(b), it is an unfair and deceptive act in commerce for any lender to solicit or make loans in Vermont unless the lender is in compliance with all statutory requirements under Vermont's lending and banking laws, contained in Title 8, chapter 73 of the Vermont Statutes Annotated.
10. Chapter 73 of Title 8 requires all persons making loans of money or credit to obtain a license from the state Department of Financial Regulation ("DFR") before making any such loans. 8 V.S.A. § 2201. DFR is the state agency charged with licensing and supervising lenders. 8 V.S.A. § 11(a).
11. Chapter 73 of Title 8 also requires that all loans made in Vermont comply with the interest rate limits contained in Title 9, chapter 4. 8 V.S.A. § 2233(b).

12. Violations of the Consumer Protection Act are subject to a civil penalty of not more than \$10,000 per violation, plus restitution to consumers and attorneys' fees and costs to the State of investigating and prosecuting the action. 9 V.S.A. § 2458(b).
13. Chapter 4 of Title 9 caps the interest any person may charge on loans at between 12-24% per annum, depending on the type of loan. 9 V.S.A. § 41a. For the kinds of loans made by Defendants, an annual interest rate of 18% would apply.
14. Under 11A V.S.A. § 15.01(a), an out-of-state corporation "may not transact business in" Vermont without first obtaining a "certificate of authority from the secretary of state." The Attorney General is authorized to enforce this provision and collect appropriate penalties. 11A V.S.A. § 15.02(d)(3) & (e).
15. Under 11 V.S.A. § 1621(a), a nonresident person, whether an individual or corporate, must also register with the Secretary of State before "doing business" in Vermont. *See also* 1 V.S.A. § 128.

Facts

16. Defendants make short-term, high-interest consumer loans via the Internet (www.cashinawink.com). Loans are typically electronically funded by crediting a borrower's account. Defendants then electronically debit that same account, often using a third-party payment processor in order to collect on the loan.
17. On information and belief, Paul Silverman is, and has been at all relevant times, the owner and manager of Cash in a Wink, and has knowledge and control of Cash in a Wink's lending activities described herein.

18. On June 10, 2010, after receiving a consumer complaint, DFR¹ sent a letter to Cash in a Wink ordering it to cease and desist from making loans in Vermont until the company complied with all lending requirements, including obtaining a state lender's license. *See Exhibit A.*
19. Cash in a Wink continued to solicit and make loans in Vermont, and after another consumer complaint, DFR sent another letter on November 15, 2011, reiterating the same violations of unlicensed lending. DFR also requested a list of all loans made in Vermont. *See Exhibit B.*
20. On January 12, 2012, Cash in a Wink responded to DFR, claiming that it was a Delaware company and that Vermont had no jurisdiction over Defendant's activities. In that letter, Cash in a Wink agreed to cease future lending to Vermont consumers. However, the company never provided its list of all consumer loans in Vermont.
21. On November 21, 2013, the Attorney General served a Civil Investigate Demand ("CID") on Cash in a Wink pursuant to 9 V.S.A. § 2460, to investigate the full scope of Cash in a Wink's lending and other unlawful activities.
22. To date, Cash in a Wink has not provided responses to the CID, and has withheld information necessary to ascertain the full scope of Defendants' unlicensed and usurious lending in Vermont and any other unlawful activities.
23. In a response to the Attorney General's inquiry, Cash in a Wink stated that it made a total of eleven (11) loans to Vermont consumers.

¹ DFR was formerly known as the Vermont Banking, Insurance, Securities, and Health Care Administration ("BISHCA"). BISHCA is listed on the attached letters, but it is the same agency.

24. By way of example, Cash in a Wink issued one consumer a loan on June 17, 2011, for \$400. Within five (5) months, by November 9, 2011, the consumer had repaid \$1,080, via bi-weekly automatic debits from her checking account. Under those repayment terms, this loan carried an effective interest rate of approximately 578.75% APR.
25. As further example, Cash in a Wink issued a \$600 loan to another consumer in 2010, at a stated interest rate of 547.50% APR.
26. At all relevant times, Defendants have not been licensed to solicit or lend money in Vermont, and all loans exceeded Vermont's usury cap.

Causes of Action

Count ONE - Unfair and Deceptive Trade Practices

27. Defendants engaged in unfair and deceptive trade practices in commerce in violation of the Consumer Protection Act, 9 V.S.A. §§ 2453(a) and 2481w(b), by making loans without a state license, and charging interest rates in excess of Vermont's usury cap.

Count TWO – Civil Usury

28. Defendants violated 9 V.S.A. § 41a and 8 V.S.A. § 2233(a) by collecting sums of money in excess of the legal interest rate applicable to consumer loans.

Count THREE - Transacting Business Without Authority

29. Defendants transacted business in this state without authority in violation of 11A V.S.A. § 15.01(a) and 11 V.S.A. § 1621(a).

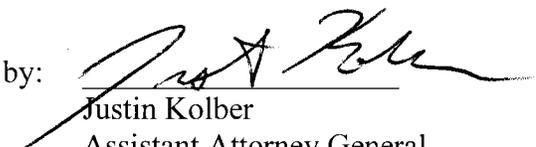
WHEREFORE, the State of Vermont seeks the following relief:

1. A permanent injunction prohibiting Defendants from engaging in any business activity in, into, or from Vermont that violates Vermont law;
2. In particular, a permanent injunction prohibiting Defendants from making any loans in the State of Vermont without first being licensed to lend money in Vermont and obtaining authority to transact business in the state;
3. Full restitution to all Vermont consumers whose loans were funded by Defendants;
4. Civil penalties of up to \$10,000 for each violation of the Consumer Protection Act;
5. Civil penalties of \$50/day up to \$1,000/year for transacting business without authority;
6. The award to the State of costs, fees, and attorneys' fees incurred in this litigation; and,
7. Such other relief as this court deems just and appropriate.

Dated April 22, 2014 at Montpelier, Vermont.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:


Justin Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-5620

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609



State of Vermont
Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101
www.bishca.state.vt.us

Consumer Assistance Only:
Insurance: 1-800-964-1784
Health Care Admin.: 1-800-631-7788
Securities: 1-877-550-3907

Via Certified Mail and 1st Class Mail

June 9, 2010

Delaware Business Incorporators, Inc.
3422 Old Capitol Trail, Suite 700
Wilmington, DE 19808

Cash In A Wink Inc.
3422 Old Capitol Trail, Suite 1109
Wilmington, DE 19808-6192

Re: *Payday Lending in the State of Vermont*

Dear Sir or Madam:

The Vermont Department of Banking, Insurance, Securities, and Health Care Administration ("the Department") has been made aware that **Cash In A Wink Inc.**, a payday lender, has extended credit to a Vermont resident. Any person engaged in the business of making loans to Vermont residents is required to be licensed or otherwise authorized under state or federal law to make loans in Vermont. A loan solicited and made by mail, telephone, or electronic means to a Vermont resident is subject to the Vermont licensed lender statute notwithstanding where the loan was made. [See 8 V.S.A. 2233 (b)]. According to the Department's records, **Cash In A Wink Inc** is not licensed in Vermont.

Furthermore, payday lending is prohibited in the State of Vermont. [See 8 V.S.A. §2519(a)(13)] Also, the maximum interest rate for a single payment loan is 18 percent per annum and the maximum interest rate for an installment loan is a blended rate of 18%. [9 V.S.A. §41a(b)(1), (5)]

Unless **Cash In A Wink Inc.** can provide evidence that it is licensed to lend in Vermont, any Vermont loan may be void in whole or in part. [8 V.S.A. §2215(c)]

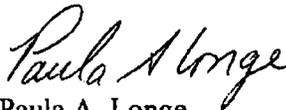
This letter is also to direct **Cash In A Wink Inc.** to provide the Department with a complete list of all Vermont customers by July 12, 2010.



Delaware Business Incorporators, Inc.
June 9, 2010
Page Two

If you have any further questions, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Paula A. Longe".

Paula A. Longe
Banking Consumer Services Specialist

cc: File Number 100186



State of Vermont
Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101
www.bishca.state.vt.us

Consumer Assistance Only:
Insurance: 1-800-964-1784
Health Care Admin.: 1-800-631-7788
Securities: 1-877-550-3907

November 15, 2011

Via Certified Mail and 1st Class Mail

Cash in a Wink Inc.
3422 Old Capitol Trail, Suite 1109
Wilmington, DE 19808-6192

Delaware Business Incorporators, Inc.
3422 Old Capitol Trail, Suite 700
Wilmington, DE 19808

Re: Payday Lending in the State of Vermont

Dear Sir or Madam:

On June 10, 2010 the Vermont Department of Banking, Insurance, Securities, and Health Care Administration ("the Department") sent a letter requesting that Cash in a Wink cease engaging in unlicensed lending in Vermont. The Department was recently made aware that Cash in a Wink, a payday lender, has extended credit to another Vermont resident.

Cash in a Wink's attention is drawn to 8 V.S.A. § 2233(b) which states that a loan solicited and made by mail, telephone or electronic means to a Vermont resident shall be subject to the provisions of Title 8, Vermont Statutes Annotated, Chapter 73, Licensed Lenders, notwithstanding where the loan was legally made. No person shall engage in the business of soliciting and making loans by mail, telephone or electronic means to residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of Title 8 and chapters 4, 59 and 61 of Title 9, but shall not be required to have or maintain a place of business in the state.

Payday lending is prohibited in the State of Vermont. [See 8 V.S.A. §2519(a)(13)] Also, the maximum interest rate for a single payment loan is 18 percent per annum and the maximum interest rate for an installment loan is a blended rate of 18%. [9 V.S.A. §41a(b)(1), (5)]

Furthermore, please be aware that pursuant to 8 V.S.A. §2215:

(a) The commissioner may:

(1) Impose an administrative penalty of not more than \$10,000.00 for each violation upon any person who violates or participates in the violation of this chapter [73],



sections 10403 and 10404 of this title [8] or chapters 4, 59 or 61 of Title 9, or any lawful regulation or order issued thereunder; and

(2) Order any person to make restitution to any person for any violation of this chapter [73], sections 10403 and 10404 of this title, or chapters 4, 59 or 61 of Title 9.

- (b) Each violation, or failure to comply with any directive or order of the commissioner, is a separate and distinct violation.
- (c) It shall be a criminal offense, punishable by a fine of not more than \$100,000.00, or not more than a year in prison, or both, for any person, after receipt of an order directing the licensee to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, to perform such duties or exercise such powers of any licensee until the penalty has been satisfied, or otherwise satisfactorily resolved between the parties, or the order is vacated by the commissioner or by a court of competent jurisdiction.
- (d) (1) Any contract of loan made in knowing and willful violation of section 2201(a)(1) of this title, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever; provided, however, in the case of loans made in violation of section 2201(a)(1) of this title, where no finding of a knowing and willful violation is made, the lender shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal.

(2) In the case of any person who, after receipt of an order directing such person to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, continues to perform such duties or exercise such powers of any licensee without satisfying the penalty, or otherwise reaching a satisfactory resolution between the parties, or securing a decision vacating the order by the commissioner or by a court of competent jurisdiction, any contract of loan made by such person after receipt of such order shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

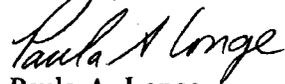
Cash in a Wink
November 15, 2011
Page 3

This letter is also to direct Cash in a Wink to cease all loan origination and solicitation of loans in Vermont, until Cash in a Wink can provide evidence that it is exempt from or in compliance with Vermont statutes. Additionally, please provide a list, including the names and addresses of each Vermont borrower, and the date and amount of each loan, if any, that was made by Cash in a Wink.

Cash in a Wink's response to the Department should include a complete list of all Vermont consumers by December 16, 2011.

If you have any further questions, please contact this office.

Sincerely,



Paula A. Longe
Banking Consumer Services Specialist

cc: File Number 110182