

ELECTRONICALLY
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MAR 27 2013

TIME: _____
CASE #: _____

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

STATE OF ARKANSAS *ex rel.*
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO. 60CV-2012-3396

NATIONAL CREDIT ADJUSTERS, LLC

DEFENDANT

CONSENT JUDGMENT

The State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, filed this action in order to redress and restrain alleged violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 through 115.

The Attorney General and the Defendant wish to resolve this action and recognize that this Consent Judgment has been negotiated in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest. Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

I. Definitions

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101 through 115.

II. Jurisdiction

2. This Court has subject matter jurisdiction pursuant to Ark. Code Ann. § 4-88-112. This Court has personal jurisdiction over the Defendant pursuant to Ark. Code Ann. § 4-88-104 and Ark. Code Ann. § 16-4-101(B), which provides: "The courts of this state shall have personal jurisdiction of all persons, and causes of action or claims for

relief, to the maximum extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.” Defendant routinely directs communications, by phone, mail, and other means, to Arkansas residents in order to collect money on purported contractual obligations. Based upon its activities in the State of Arkansas, the Defendant should reasonably expect to defend itself in the courts of this State for alleged violations of Arkansas laws.

3. For purposes of this Consent Judgment, the Attorney General and the Defendant waive all objections and defenses that they may have to the jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court’s jurisdiction in any subsequent action to enforce the terms of this Consent Judgment.

III. Parties Bound

4. This Consent Judgment applies to and is binding upon the Attorney General and National Credit Adjusters, LLC (“National Credit Adjusters” or “NCA”).

5. Any change in ownership or status of the National Credit Adjusters, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the party’s responsibilities under this Consent Judgment.

IV. The Attorney General’s Position

6. National Credit Adjusters is engaged in the business of debt collection. As part of its business, NCA seeks to collect money from Arkansas residents.

7. NCA is what is known in the collection industry as a debt buyer. As a debt buyer, NCA purchases the right to collect on delinquent obligations. The purchase is made from either the original creditor or some other third party intermediary.

8. As part of its portfolio of purchased debt, NCA has purchased a large number of debts resulting from loans known as "payday loans."

9. Payday loans are typically loans of \$1000 or less that are to be repaid in one month or less. Payday loans typically carry interest rates of more than 100% per annum; in many cases the annual percentage rate is much higher.

10. NCA has also purchased a number of debts resulting from high interest loans commonly described as "installment loans."

11. These installment loans are typically larger than payday loans. Installment loans can be as high as \$5,000. Payments are made on a monthly basis over a longer period of time, often one to two years. The resulting interest rates often far exceed that allowed by Arkansas law.

12. Neither payday loans nor high interest installment loans are legal or enforceable with respect to Arkansas borrowers.

13. Both types of loans violate the Arkansas Constitution, Amendment 89, formerly Article 19, Section 13, and the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 through 115. The Arkansas Constitution has prohibited usury for well over one hundred years. The practice of charging ultra-high rates of interest, such as those charged by the lenders from whom NCA acquires these accounts, is unconscionable as a matter of Arkansas law. See *State of Ark. v R & A Investment Co., Inc.*, 336 Ark. 289, 785 SW 2d 299 (1999); *Arkansas Board of Collection Agencies and Old Republic Surety Company v. Mcghee, et al.*, 372 Ark. 136, 271 S.W.3d 512 (2008); *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance*

Company, 372 Ark. 387, 277 S.W.3d 190 (2008); and, *McGhee v. Arkansas State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

14. The predatory lending practices engaged in by the lenders from whom NCA ultimately acquires its collection accounts prey upon necessitous borrowers who, because of their circumstances and lack of appropriate financial education, are reasonably unable to protect their own interests.

15. NCA has collected money from thousands of Arkansas consumers who purportedly owed debts on payday and installment loans contracts that are usurious, unconscionable and void.

16. The Attorney General specifically denies the assertions of the National Credit Adjusters set forth in NCA's position in this Consent Judgment.

V. The Defendant's Position

17. NCA purchases debt from third parties and collects only on the debt it purchases. At the time NCA purchased the debt at issue in this Consent Order, NCA believed in good faith that the loans were legal and did not violate Arkansas law.

18. In fact, the loans at issue in this Consent Order were authorized by Arkansas statute Ark. Code Ann §23-52-101, *et. seq*, Arkansas Check-Cashers Act, and that it was not until November, 2008, in *McGhee v. Arkansas State Board of Collections*, 375 Ark. 52 (2008), that the Arkansas Supreme Court ruled that the Arkansas Check-Cashers Act was unconstitutional.

19. NCA does not loan money, has not made any payday loans or any other loans, and as such, has never charged interest or interest rates exceeding the maximum rate allowed by Arkansas law to any Arkansas resident or anyone else.

20. Many of the lending transactions which are the subject of this Consent Order were permitted by Arkansas statute when NCA purchased and collected on the loans.

21. A substantial portion of the loans which are the subject of this Consent Order were loans obtained by Arkansas residents over the internet in which the Arkansas resident contractually agreed that the loan would be governed by the laws of a state other than Arkansas. Such loans were legal under the law of the state agreed to by the debtor Arkansas resident.

22. NCA specifically denies the assertions of the Attorney General set forth in The Attorney General's Position in this Consent Judgment.

VI. Relief

23. All delinquent, defaulted, charged-off, or outstanding lending transactions, which have rates of interest exceeding the rate allowed by Arkansas law, which National Credit Adjusters currently owns or currently has the present right to collect, and which were entered into with persons who were residents of the State of Arkansas and who were located in the State of Arkansas at the time the loans were originated, are hereafter cancelled. Loans in which Arkansas residents travelled to another state in order to obtain the loan are not subject to this Order. If NCA cannot determine the state of residence of the consumer when the loan was originated, and that consumer now resides in Arkansas, then the loan shall be cancelled. The Defendant is enjoined from undertaking any efforts to collect on these cancelled transactions. Furthermore, the Defendant is enjoined from taking any action, formal or informal, to attempt to enforce any such cancelled obligation. The Defendant shall not contract with any third-party debt collectors regarding these

transactions, nor sell, nor transfer, any debt obligations based upon these transactions. The Defendant shall make no negative reports to any credit bureau, check clearinghouse, or other related service with respect to any of these debts. If the Defendant has made any negative reports to any credit bureau, check clearinghouse, or other related service with respect to an Arkansas resident, the Defendant shall within 30 days of the entry of this Order request that those negative references to be removed.

24. Should NCA in the future acquire, purchase, or otherwise obtain the rights to collect on payday loan or installment loan debts, where the borrower was a resident of the state of Arkansas and was located in Arkansas at the time the transaction was entered into, then NCA is enjoined from any attempt to collect on those debts, and shall not sell, nor transfer these debts to any other third party. Should NCA discover any such debts among the debts it acquires or obtains the right to collect, NCA shall either cancel those debts in accordance with the requirements of paragraph 23 of this Consent Judgment, refuse to accept those debts from the seller or otherwise return such debts to the seller. NCA shall provide the Attorney General a list of all such debts acquired that are not refused or otherwise returned. This information shall be provided in a similar format as the information set out in paragraph 23, and such information shall be provided to the Attorney General with a reasonable time after it is discovered by NCA. With respect to loans subject to this paragraph, if NCA cannot determine where the state of residence of the consumer was when the loan was originated, and that consumer now resides in Arkansas, than the loan shall be cancelled. However, loans in which Arkansas residents travelled to another state to obtain the loan are not subject to this Order.

25. Prior to the entry of this Order, NCA has provided the Attorney General with a full and complete digital list of all Arkansas consumers whose debts are being cancelled; this record includes the consumer's name, address, the name of the lender, the amount owed on each loan at the time NCA acquired the loan, and the total amount collected by the Defendant on each loan. This digital list shall be provided in a Microsoft Excel compatible format.

26. Within 60 days of the entry of this Order, NCA shall cause a letter to be sent to the last known address of each Arkansas consumer on the list described in Paragraph 25. This letter shall identify the original creditor, the amount claimed to be owed, and clearly state that the obligation has been cancelled and will not be resold to another collector. The letter shall be in a form approved by the Attorney General prior to mailing. Within 90 days of the entry of this Order, NCA shall provide the Attorney General's Office with an affidavit attesting that all of the letters have been mailed. Within 60 days of the mailing required by the paragraph NCA shall provide to the Attorney General a list of the letters that were returned.

27. The Defendant shall pay the sum of \$200,000 to the Attorney General in nine (9) equal installments with the first installment due upon entry of this Order and the subsequent eight (8) installments due every thirty (30) days thereafter. All monies shall be delivered to Charles Saunders, Assistant Attorney General, at the Attorney General's office and shall be made payable to the Office of the Attorney General. These funds shall be deposited in the Attorney General's Clearing Account and thereafter disbursed by the Attorney General, at his discretion, to one or more Arkansas institutions of higher education consistent with the settlement funds policy attached hereto as Exhibit (A).

28. National Credit Adjusters agrees to be contingently liable for the payment of an additional \$400,000. The payment of said additional sum shall be contingent upon a specific finding by this Court that National Credit Adjusters has materially breached a substantive term of this Consent Judgment within a five-year period commencing on the date this Consent Judgment is entered. A finding of a material violation of a substantive provision of this Consent Judgment shall cause the sum to be immediately due and payable. Substantive violations shall include, but are not limited to, failure to pay the full \$200,000 to the Attorney General as set out in paragraph 27, including missing any of the nine installments.

29. Additionally, National Credit Adjusters agrees to be contingently liable for the payment of an additional \$1,000,000 if it fails to fully comply with the provisions of paragraph 23 of this Consent Judgment relating only to lending transactions which NCA currently owns or currently has the present right to collect. This paragraph 29 does not apply to the subsequently acquired loan provisions contained in paragraph 24. The \$1,000,000 contingent liability shall be satisfied upon the presentment of the Affidavit required in Paragraph 26 above, and an Affidavit from NCA that the loans required to be cancelled have been cancelled, written off and placed on a do not call list. Subsequently, in the event it is discovered that a loan was not cancelled and NCA attempted to collect said loan, NCA shall pay a penalty to the Attorney General equal to three (3) times the amount of the loan that was not cancelled. Paragraph 29 does not negate the contingent liability contained in Paragraph 28 in the event NCA is found to have committed a material violation of this agreement. Any money collected as a result of this provision shall be held by the Attorney General and deposited in the Consumer Education and

Enforcement Fund and shall be held in trust there to be used by the Attorney General in his discretion to further efforts to investigate and prosecute consumer protection, environmental, public utilities and antitrust matters, and to educate consumers regarding such matters. The funds will be distributed in accordance with the Attorney General's settlement funds policy attached as Exhibit A.

30. This Consent Judgment constitutes the entire agreement of the Attorney General and National Credit Adjusters. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment, and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

31. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against National Credit Adjusters for those practices alleged within its Complaint in this action. This release shall not in any way limit the authority of the Attorney General to conduct such investigations as he deems advisable or to bring any enforcement action regarding alleged violations of law unrelated to its Complaint or occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek enforcement of any and all sections of this Consent Judgment by appropriate petition to this Court.

32. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto. Moreover, the parties do not intend

for this Consent Judgment or this lawsuit to toll the running of the statute of limitations on any private right of action by a person or entity not a party hereto.


33. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendant, past, current, or future; and, National Credit Adjusters shall not make any representations to the contrary.

34. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

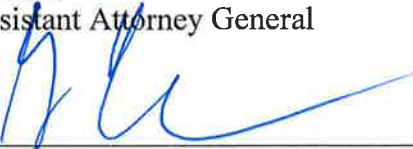
VII. Signatories

35. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.


36. This Consent Judgment is made and entered into by and between the parties hereto and on this 27th day of March, 2013.



Charles Saunders
Assistant Attorney General



Greg Campbell
Attorney for the Defendant



[individual]
on behalf of National Credit Adjusters

SO ORDERED:

Dated: _____, 2013.



The Honorable Chris Piazza
Circuit Judge, 2nd Division

PREPARED BY:

Mr. Charles Saunders
Assistant Attorney General
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323 Center Street, Suite 200
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STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

AG POLICY ON LAWSUIT SETTLEMENT FUNDS

It is the legal responsibility of the Attorney General's office to pursue consumer protection lawsuits on behalf of the State. In the event of a judgment or settlement, the Office of the Attorney General shall distribute funds in the following manner:

1. Restitution to Arkansas consumers or state agencies¹ as designated by the Court Order or settlement agreement,
2. Designation of cash funds to a state agency having a nexus to the underlying litigation,
3. Payment of attorney's fees to the State Treasury, or
4. Payment into the "Consumer Education and Enforcement" Account.

The Office of Attorney General shall retain no more than \$1,000,000 in the "Consumer Education and Enforcement" account to support litigation, investigations and education.² Funds received pursuant to a judgment or settlement shall be distributed within 120 days of receipt. The Office of the Attorney General shall provide quarterly financial reports to Legislative Council as to all expenditures made pursuant to this policy.


DUSTIN MCDANIEL
ATTORNEY GENERAL

¹ State agencies shall include departments, agencies, offices, boards, commissions, colleges, and universities.

² See Ark. Code Ann. §4-88-105.