

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
3rd DIVISION

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

PLAINTIFF

vs.

CASE NO. CV 10-487

GENEVA-ROTH CAPITAL, INC.  
GENEVA-ROTH VENTURES, INC.  
D/B/A LOANPOINTUSA.COM  
AND MARK CURRY

FILED 05/04/11 14:04:08  
Larry Crane Pulaski Circuit Clerk  
CR3

DEFENDANTS

**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 *et seq.* and the Arkansas Constitution, *Article 19, Section 13*, prohibiting usury in the State of Arkansas.

The Attorney General and the Defendants wish to resolve this action and recognize that this Consent Judgment has been negotiated in good faith, and that this 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, *et seq.*

## **II. Jurisdiction**

2. The Attorney General brought this enforcement action pursuant to the Arkansas Deceptive Trade Practices Act. This Court has jurisdiction over this matter, and the parties hereto pursuant to Ark. Code Ann. § 4-88-104, the common law of the State of Arkansas, and under the Arkansas Constitutional provisions for usury, as set forth in Ark. Const. Art. 19 § 13 and *State ex rel. Bryant v. R & A Inv. Co., Inc.*, 336 Ark. 289, 985 S.W.2d 299 (1999). Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendants have transacted business in the State of Arkansas. By operating an interactive website that was continuously and systematically available to Arkansas consumers, by loaning money to Arkansas residents in Arkansas, and by debiting money from Arkansas residents' bank accounts located in Arkansas, the Defendants availed themselves of the benefit of conducting business in this State. Based upon their activities in the State of Arkansas, the Defendants should reasonably expect to defend themselves in the courts of this State for alleged violations of applicable laws.

3. For purposes of this Consent Judgment, the Attorney General and the Defendants 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, except as set out in paragraph 19 below.

## **III. Parties Bound**

4. This Consent Judgment applies to and is binding upon the Attorney General and the Defendants.

5. Any change in ownership or status of the Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' responsibilities under this Consent Judgment.

#### **IV. The Attorney General's Position**

6. Defendants are engaged in the business of making short term loans, more commonly known as payday loans, under the trade name Loan Point USA. Defendants own and operate the interactive website, [www.loanpointusa.com](http://www.loanpointusa.com), by which they have marketed loans to consumers nationwide, including to Arkansas consumers.

7. In order to fund loans to Arkansas consumers, Defendants obtain access to those consumers Arkansas-based bank accounts. Loans are electronically funded by crediting a borrower's account. Defendants thereafter electronically debit that same account in order to collect on the loan.

8. Defendants have offered loans of up to \$600 to Arkansas consumers. For each \$100 loaned, Defendants typically charged a finance charge of \$30. The initial loan term for one of Defendants' loans is two weeks to one month. The annual percentage rate of one of Defendants' loans can range from 364% up to 1,365%.

9. According to information provided by the Defendants, they have funded over 2260 loans to 2197 Arkansas consumers. All of these loans carried an annual percentage rate substantially in excess of 17% per annum.

10. Defendants charged Arkansas consumers triple digit interest rates on short term loans; the practice of charging such ultra-high usurious rates of interest 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).

11. The Attorney General specifically denies the assertions of the Defendants set forth in the Defendants' position in this Consent Judgment.

#### **V. The Defendants' Position**

12. Defendants deny the legal and factual assertions contained in Section IV, titled "Attorney General's Position."

13. Defendants deny that they have violated any laws of the state of Arkansas.

14. Defendants deny any and all responsibility and liability to the state of Arkansas for any of the acts alleged by the Attorney General.

15. That Defendants are entering into this consent judgment is not to be considered an admission of liability but rather an agreement on their part to resolve this litigation.

16. Defendants contend that at all times relevant hereto that transactions with Arkansas consumers were not usurious and were not subject to the ADTPA, Article 19, Section 13 of the Arkansas Constitution or any other Arkansas law.

17. Separate defendant Mark Curry denies that he is a "controlling person" pursuant to the Arkansas Deceptive Trade Practices Act and that he is otherwise personally liable for any claims arising of the conduct alleged by the Attorney General.

## VI. Relief

18. This Consent Judgment is intended to preclude the Defendants from directly or indirectly engaging in any type of lending transaction in violation of Arkansas' prohibition against usury. Accordingly, the Defendants shall hereafter be permanently restrained and enjoined from offering, funding, or collecting upon any loan with an interest rate in excess of the then-applicable maximum rate set out in the Arkansas Constitution where such offer or subsequent loan is made to any resident of Arkansas.

19. More specifically, the Defendants are permanently restrained and enjoined from using any plan, device, model, mechanism, or other sham, to avoid the terms of this Consent Judgment. Prohibited practices shall include, but are not limited to, internet originated lending with residents of the State of Arkansas where the annual percentage rate exceeds that allowed by the Arkansas Constitution regardless of the purported location of the lender, and regardless of any contractual term providing that the contract be interpreted or controlled by the laws of any other jurisdiction. If the Defendants, or any of them, believe that there has occurred a change in federal law subsequent to the entry of this Consent Judgment which has the effect of pre-empting the application of Arkansas law to lending transactions between the Defendants, or any of them, and residents of the State of Arkansas, then the Defendants, or any of them, may petition this Court for appropriate relief from the injunctive provisions of this Consent Judgment.

20. All current, delinquent, in default, charged off, or outstanding lending transactions which Defendants entered into with residents of the State of Arkansas are hereafter cancelled. For purposes of this provision, a transaction shall be considered "entered into with a resident of the State of Arkansas" if the Arkansas resident was

physically located and domiciled in Arkansas at the time he accepted the offer for the loan or the loan proceeds were deposited into a consumer's bank account, where that consumer routinely banks at a bank branch with a physical location in the State of Arkansas. Defendants will undertake no efforts to collect on these transactions. Furthermore, the Defendants shall take no action, formal or informal, to attempt to enforce any such obligation against any Arkansas resident. Specifically, the Defendants shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. Defendants shall not contract with any third party debt collectors regarding these transactions, nor sell, nor transfer, any obligations arguably due based upon these transactions. Defendants shall make no negative reports to any credit bureau, check clearing house, or other related service with respect to any of these transactions. If Defendants have made any negative reports to any credit bureau, check clearing house, or other related service with respect to an Arkansas resident, Defendants shall within 30 days of the entry of this Order request that those negative references be removed. Within 30 days of the entry of this Order, Defendants shall provide the Attorney General a digital record using Microsoft Excel format of all Arkansas residents that obtained a loan from the Defendants; this record shall show the consumer's name, address, the amount borrowed for each loan, and the total amount paid or collected on each loan. The purpose of providing this information is to ensure Defendants compliance with the terms of the Consent Judgment.

21. Defendants shall clearly and conspicuously notify all visitors to their website, or any websites that they may own, operate, or control now or in the future, that they do not make loans to consumers residing in the State of Arkansas unless such loans

comply with the Arkansas Constitution. Any loan applications made by a resident of Arkansas shall be rejected. No information provided in any application received shall be used to market any product or service to such applicant, nor provided to any third party for any marketing purpose.

22. Within 30 days of the entry of this Order, the Defendants shall pay the sum of \$60,000.00 to the Attorney General. All monies shall be delivered to the Chief Financial Officer of the Attorney General's office and shall be made payable to the Office of the Attorney General. A copy of all checks shall be delivered to Charles Saunders, Assistant Attorney General. All checks will be delivered to Carol Thompson, Chief Financial Officer, Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201. These sums 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.

23. In addition to the \$60,000.00 payment, the Defendants agree to be contingently liable for the payment of an additional \$100,000.00. However, the imposition of the additional \$100,000.00 sum will be suspended for a period of five years. The payment of said additional sum shall be contingent upon the following conditions: 1) failure to make the \$60,000.00 payment within 30 days of the entry of this Order; 2) upon a specific finding by this Court that any one of the Defendants has materially breached a substantive term of this agreement within said five year period commencing on the date this Consent Judgment is entered. A violation of either

provision shall cause the sum to be immediately due and payable. After the expiration of five years from the entry of this Judgment, this contingent liability shall expire and the contingent payment of \$100,000.00 shall no longer be collectable by the Attorney General. However, neither the suspension of such payment nor the expiration of such contingency shall prevent the Attorney General from pursuing any and all actions and claims available to the Attorney General for any conduct occurring after the entry of this Consent Judgment, and the injunctive provisions of this Consent Judgment shall remain in effect unless and until modified by this Court upon the petition of either party.

24. This Consent Judgment constitutes the entire agreement of the Attorney General and the Defendants. 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.

25. 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 Defendants for those practices alleged within its Original Complaint. 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 Original 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.



26. 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. Further, the parties understand and agree that: this Consent Judgment is the compromise and settlement of all disputed claims; the payment made is not to be construed as an admission of liability on the part of the Defendants; the Defendants deny liability for all claims and causes of action asserted against them in this litigation and have entered into this compromise settlement for the purpose of avoiding litigation and buying their peace; and that this Consent Judgment shall never be treated as an admission of liability by the Defendants at any time or in any manner whatsoever.


27. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendants, past, current, or future; and, the Defendants shall make no representations to the contrary.

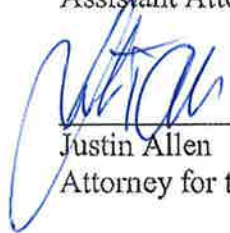
28. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

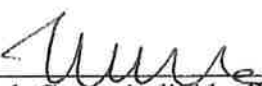
## VII. Signatories

29. 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.

25. This Consent Judgment is made and entered into by and between the parties hereto and on this 3rd day of May, 2011.

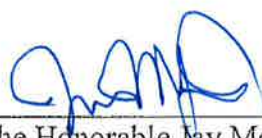
  
\_\_\_\_\_  
Charles Saunders  
Assistant Attorney General

  
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Justin Allen  
Attorney for the Defendants

  
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Mark Curry, individually, and on behalf of  
Geneva-Roth Capital, Inc and Geneva-Roth Ventures, Inc

**SO ORDERED:**

Dated: 5/11, 2011.

  
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The Honorable Jay Moody  
Circuit Judge, 3rd Division

**PREPARED BY:**

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