

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS AUG 21 2012  
5th DIVISION

TIME: \_\_\_\_\_

CASE #: \_\_\_\_\_

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

PLAINTIFF

vs.

CASE NO. 60CV-12-391

JOSH MITCHEM,  
PDL SUPPORT, LLC, and  
PLATINUM B SERVICES, LLC

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, Amendment 89, 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. Amendment 89 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 are alleged to have transacted business in the State of Arkansas by offering, funding, and servicing loans to Arkansas consumers. The Defendants are alleged to have availed themselves of the benefit of conducting business in this State. Based upon their alleged 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 Defendants and the Lending Companies 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, but Defendants and the Lending Companies (as defined in paragraph 6) reserve the right to object to jurisdiction or venue in any other subsequent action filed against them by the Attorney General.

### **III. Parties**

4. This Consent Judgment applies to and is binding upon the Attorney General and the Defendants. In addition, certain of the injunctive provisions and releases contained in this Consent Judgment apply to the Lending Companies named in paragraph 6.

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.

6. For the purposes of this Consent Judgment, the following entities incorporated under the laws of St. Kitts and Nevis shall be referred to as the “Lending Companies”: Action PDL Services, LLC (d/b/a Action Payday); BD PDL Services, LLC (Bottom Dollar Payday); SCS Processing, LLC (d/b/a Everest Cash); International Equity Group, LLC (d/b/a Paradise Cash Advance); VIP PDL Services, LLC, (The VIP Loan Shop); and Red Leaf Ventures, LLC (d/b/a Red Leaf Lending).

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

7. The Attorney General alleges that Defendants are engaged in the business of making short-term loans, more commonly known as “payday” loans. Defendants solicit borrowers primarily through the use of internet websites.

8. The Defendants represent that they operate to service loans actually made by a number of limited liability companies formed under the laws of the foreign nation of Saint Kitts and Nevis. The Attorney General alleges that Defendants control, directly or through family members or friends, those purported limited liability companies formed under the laws of Saint Kitts and Nevis. The Attorney General alleges that the purpose of these LLCs is to make it appear as if the Defendants are not the actual payday lenders and to otherwise attempt to shield Defendants from liability from lawsuits such as the one brought by the Attorney General in this case.

9. The Attorney General alleges that the domain names [bottomdollarpayday.com](http://bottomdollarpayday.com), [everestcashadvance.com](http://everestcashadvance.com), [paradisecashadvance.com](http://paradisecashadvance.com), and

thevpioanshop.com are all registered to Josh Mitchem and Platinum B Services in Kansas City, MO, not to any Saint Kitts and Nevis LLC.

10. The Attorney General alleges that most of the phone and fax numbers utilized in the Defendants lending operation are registered to the Defendants, not to any Saint Kitts and Nevis LLC.

11. The Attorney General alleges that the Defendants make the decisions concerning all lending operations from their offices in the Kansas City, MO area. Further, the Defendants, specifically Josh Mitchem, are responsible for crediting and debiting Arkansas consumers' bank accounts as part of the Defendants' payday lending business.

12. The Attorney General alleges that a typical loan offered by the Defendants to Arkansas consumers is around \$400, with a finance charge of \$120 payable in full in two weeks. The annual percentage rate from such a transaction is 644.12%.

13. The Attorney General alleges that the Defendants charged Arkansas consumers triple-digit interest rates on 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).

14. The Attorney General specifically denies the assertions of the Defendants set forth in the "Defendants' Position" in this Consent Judgment.

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

15. The Defendants deny the legal and factual assertions contained in Section IV above, entitled "The Attorney General's Position."

16. The Defendants have vigorously denied and continue vigorously to deny each and all of the claims and contentions alleged by the Attorney General in this Consent Judgment and otherwise, including all claims concerning the Defendants' alleged conduct, as well as the contentions that such alleged conduct constitutes wrongdoing or gives rise to legal liability. The Defendants also have vigorously denied and continue vigorously to deny, *inter alia*, the allegations that Arkansas consumers have suffered any legally cognizable harm as a result of the Defendants' alleged activities. The Defendants deny that, but for their consent to such jurisdiction solely for the purposes of executing this Consent Judgment, this Court would have *in personam* jurisdiction over them. If this matter were to proceed further without the settlement contemplated hereby, the Defendants would have other defenses available to them.

#### **VI. Relief**

17. This Consent Judgment is intended to preclude the Defendants and the Lending Companies from directly or indirectly engaging in any type of lending transaction in violation of Arkansas' prohibition against usury. Accordingly, the Defendants and the Lending Companies 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.

18. The Defendants and the Lending Companies are permanently restrained and enjoined from using any plan, device, model, or mechanism to avoid the terms of this Consent Judgment. Prohibited practices shall include, but are not limited to, internet-originated lending, including lead generation of such loans, to 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, the Lending Companies, 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 preempting the application of Arkansas law to lending transactions between the Defendants, the Lending Companies, or any of them, and residents of the State of Arkansas, then the Defendants, the Lending Companies, or any of them, may petition this Court for appropriate relief from the injunctive provisions of this Consent Judgment.

19. The Defendants and Lending Companies are permanently restrained from entering into any agreements whereby they offer any form of services to other persons or entities that seek to offer loans where the annual percentage rate exceeds that allowed by the Arkansas Constitution. Services include, but are not limited to, website hosting or maintenance, call center operations, debt collection, and access to financial institutions.

20. All current, delinquent, defaulted, charged-off, or outstanding lending transactions which the Defendants and/or the Lending Companies 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 consumer borrower 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. The Defendants and the Lending Companies will undertake no efforts to collect on these transactions. Furthermore, the Defendants and the Lending Companies shall take no action, formal or informal, to attempt to enforce any such obligation against any Arkansas resident. Specifically, the Defendants and the Lending Companies shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. The Defendants and the Lending Companies shall not contract with any third-party debt collectors regarding these transactions, nor sell, nor transfer, any obligations arguably due based upon these transactions, following the entry of this Order. The Defendants and the Lending Companies shall make no negative reports to any credit bureau, check clearinghouse, or other related service with respect to any of these transactions. If the Defendants and/or the Lending Companies have made any negative reports to any credit bureau, check clearinghouse, or other related service with respect to an Arkansas resident, they shall within 30 days of the entry of this Order request that those negative references be removed.

21. The Defendants and the Lending Companies represent that some payday loans serviced by them in the past have upon default been sold to other third parties for the purposes of collection. Having sold those obligations, the Defendants and/or the

Lending Companies can no longer guarantee the cancellation of those loans that were defaulted upon and sold to other parties not subject to this Consent Judgment. Upon entry of this Consent Judgment, the Defendants and the Lending Companies shall make diligent efforts to contact those third parties that they know may presently own such debts and take affirmative action to ensure cancellation of those obligations. Further, should the Attorney General receive a consumer complaint, or otherwise learn of a third party attempting collection of a payday loan issued by the Lending Companies or serviced by the Defendants that should have been cancelled per the terms of this Consent Judgment, upon written notice to the Defendants and/or the Lending Companies, the Defendants and Lending Companies shall undertake efforts to ensure cancellation of the loan. Upon obtaining cancellation of such an obligation contemplated under the terms of this paragraph, the Defendants and/or the Lending Companies shall provide written notice to the Attorney General that the loan has been canceled, including the name of the borrower and the amount cancelled.

22. Defendants and the Lending Companies shall clearly and conspicuously notify all visitors to their websites, or any websites that they may own, operate, or control now or in the future, that they do not make or service loans to consumers residing in the State of Arkansas. 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 sold or provided to any third party for any marketing purpose.

23. Contemporaneously with the entry of this Order, the Defendants shall pay the sum of \$80,000 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.

24. In addition to the \$80,000 payment, the Defendants agree to be contingently liable for the payment of an additional \$160,000. However, the imposition of the additional \$160,000 sum will be suspended for a period of five years. The payment of said additional sum shall be contingent upon a specific finding by this Court that any one of the Defendants has materially breached, intentionally or otherwise, a substantive term of this Consent Judgment within said five-year period commencing on the date this Consent Judgment is entered. A material violation of a substantive provision of this Consent Judgment shall cause the sum to be immediately due and payable. After the expiration of five years from the entry of this Consent Judgment, this contingent liability shall expire and the contingent payment of \$160,000 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.

25. This Consent Judgment constitutes the entire agreement of the Attorney General, the Defendants and the Lending Companies. 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.

26. 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 the Defendants and the Lending Companies 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.

27. 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. This Consent Judgment does not constitute an admission by the Defendants or the Lending Companies of any fact or the existence or application of any law, regulation or legal principle. This Consent Judgment

represents solely a compromise of disputed claims within the meaning of Rule 408 of the Federal and Arkansas Rules of Evidence. The document is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. This Consent Judgment and all actions of the parties pursuant to this Consent Judgment are intended by the parties to be exclusively a compromise and resolution of existing and disputed claims.

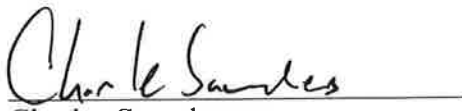
28. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendants, past, current, or future; and, the Defendants shall make no representations to the contrary.

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

#### VII. Signatories

30. 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.

31. This Consent Judgment is made and entered into by and between the parties hereto and on this 13 day of August, 2012.



Charles Saunders  
Assistant Attorney General



Justin Allen  
Attorney for the Defendants



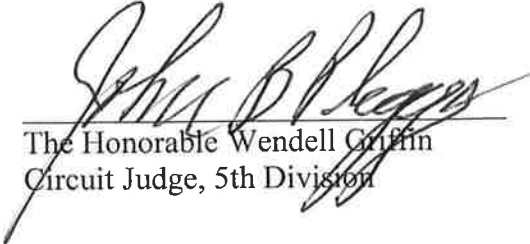
Josh Mitchem, individually, and on behalf of  
PDL Support, LLC and Platinum B Services, LLC



Hilary B. Miller, as counsel for, and on behalf of Action  
PDL Services, LLC (d/b/a Action Payday);  
BD PDL Services, LLC (Bottom Dollar Payday);  
SCS Processing, LLC (d/b/a Everest Cash);  
International Equity Group, LLC (d/b/a Paradise Cash Advance);  
VIP PDL Services, LLC, (The VIP Loan Shop);  
and Red Leaf Ventures, LLC (d/b/a Red Leaf Lending)

**SO ORDERED:**

Dated: August 20, 2012.



The Honorable Wendell Griffin  
Circuit Judge, 5th Division

**PREPARED BY:**

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