

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

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

Plaintiff,

v.

CNM PAWN, INC.,
a Virginia corporation,

Defendant.

Civil Action No. CL18001505-00

**ORDER ADOPTING AND APPROVING
ASSURANCE OF VOLUNTARY COMPLIANCE**

Upon review of the Complaint and the Assurance of Voluntary Compliance, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance of Voluntary Compliance 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 James E. Scott, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219, and James R. Richards, Petty, Livingston, Dawson & Richards, 925 Main Street, Suite 300, Lynchburg, Virginia 24504.

This matter is struck from the docket. JTC.

ENTER: *f* 127, 2018

John T. Cool

Judge, Circuit Court for the County of Campbell

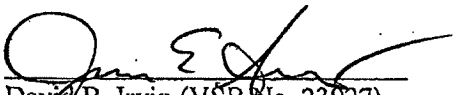
cc: Scott
Richards
Sean

A COPY TESTE:
VALERIE P. YOUNGER
Circuit Court Clerk
Campbell County, Virginia

By: *J Hedrick*
Deputy Clerk

WE ASK FOR THIS:

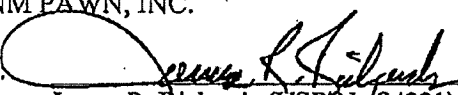
COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
James E. Scott (VSB No. 88882)
Assistant Attorney General
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Richmond, Virginia 23219
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Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

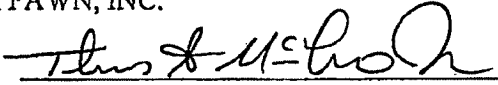
SEEN AND AGREED:

CNM PAWN, INC.

By: 
James R. Richards (VSB No. 24221)
Petty, Livingston, Dawson & Richards
925 Main Street, Suite 300
Lynchburg, Virginia 24504
Phone: (434) 846-2768
Fax: (434) 847-0141

Counsel for CNM Pawn, Inc.

CNM PAWN, INC.

By: 
Thomas A. McCue

Its: President

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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 CNM Pawn, Inc. d/b/a Vista Pawn of Altavista (“Vista Pawn” or the “Defendant”).

1.1 Vista Pawn is a Virginia corporation operating in Altavista, Virginia. Vista Pawn operates as a pawnbroker, as defined in Virginia Code § 54.1-4000, making closed-end loans to consumers out of 1000 Main Street, Altavista, Virginia 24517. Vista Pawn’s loans (the “pawn loans”) are secured by the consumers’ personal property that is left with the Defendant.

1.2 Vista Pawn does not contest that it has advertised to and served Virginia consumers. Vista 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. Vista 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 Vista 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 June 7, 2014 to the present, Vista Pawn offered to make, and made, pawn loans to Virginia consumers.

2.3 The Commonwealth contends that, during the period from June 7, 2014 through June 9, 2016 (the "Relevant Period"), Vista 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 Vista Pawn charged interest and/or fees in amounts beyond the "permissible fees," as defined in ¶ 6.3, *infra*.

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

2.5 Vista Pawn informs the Commonwealth, and the Commonwealth understands, that Vista Pawn voluntarily altered its fee structure on or around June 10, 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 Vista Pawn.

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

3.2 Vista 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 Vista Pawn for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Vista 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. Vista 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 Vista 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 Vista Pawn's services or practices and Vista 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 Vista Pawn in violation of applicable federal, state or other laws.

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

4.7 The Commonwealth shall not institute any subsequent civil proceeding or take any civil action against Vista Pawn, its officers, directors, managers, 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 Vista Pawn, or its officers, directors, managers, employees, or agents, 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 Vista Pawn, and its officers, directors, managers, employees, or agents, from all potential liability for law violations that the Commonwealth has or might have asserted based on practices alleged herein by the Attorney General, to the extent such practices occurred before the Effective Date and the Attorney General knew about them or had reason to know about them as of the Effective Date. 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 This Assurance applies to Vista Pawn, together with its officers, directors, managers, employees, assigns and agents who are engaged in any aspect of the Defendant's lending activities.

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

5.1 Vista 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 ¶ 2.3 of Section II of this Assurance, and Vista Pawn agrees that engaging in such 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 Vista 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 they are amended in the future.

5.3 Vista 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 ¶ 2.4 of Section II of this Assurance, and Vista 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 Vista 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 it is amended in the future.

5.5 Vista Pawn agrees to make available and to disclose the provisions of this Assurance to its officers, directors, managers, 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 Vista 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 Vista 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 Vista Pawn agrees that it shall not represent that the Attorney General approves of or endorses Defendant'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 October 9, 2015 through June 9, 2016.

6.1 “Restitution-Eligible Consumers” means all consumers who received one or more pawn loans from Vista Pawn during the Restitution Period, and from whom Vista Pawn collected impermissible fees as described in ¶ 6.4, *infra*.

6.2 All consumers who executed releases with Vista Pawn related to the conduct identified in ¶¶ 2.3 and 2.4 of this Assurance prior to the Effective Date of this Assurance are excluded from the definition of “Restitution-Eligible Consumers.” Vista Pawn is required to provide copies of such releases to the Attorney General within five (5) days of the Effective Date of this Assurance.

6.3 “Permissible fees” means the fees specifically permitted by Virginia Code §§ 54.1-4004 (lost ticket fee of \$5); 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)(1) (a five-percent service fee for making daily electronic reports to the appropriate law-enforcement officers, not to exceed \$3); 54.1-4009(C)(2) (a late fee not to exceed ten percent of the amount loaned for each item not claimed by the pledged date); and 54.1-4013(B) (a five-percent monthly storage fee).

6.4 “Impermissible fees” means any fee charged by Vista Pawn in addition to the permissible fees specifically authorized by Virginia Code §§ 54.1-4004, 54.1-4008(A), 54.1-4009(C) or 54.1-4013(B). For purposes of calculating restitution in this §, “impermissible fees” means the difference between the aggregate fees actually charged by Vista Pawn, and the aggregate permissible fees described in ¶ 6.3.

6.5 The “Effective Date” shall mean the date on which this Assurance is adopted and approved as an Order of the Court.

6.6 Simultaneously with the execution of this Assurance, Vista Pawn agrees to provide the Attorney General’s Office with a verified spreadsheet containing the first and last

name, home street address, city, state and zip code, 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 number of payments made (including any monthly renewals and final payment upon redemption of the property item pawned), 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 [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 a form approved by the Attorney General.

6.7 No later than sixty (60) days after the Effective Date, Vista Pawn shall issue claim forms to the Restitution-Eligible Consumers along 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. Vista 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.

6.8 Vista Pawn shall issue a single claim form (and, ultimately, a single restitution check) to Restitution-Eligible Consumers who received multiple loans during the Relevant Period.

6.9 Vista Pawn shall manage and conduct the mailing of refund checks to Restitution-Eligible Consumers who return executed claim forms. The Defendant shall issue each refund check no later than sixty (60) days after receipt of an executed claim form, and shall issue refund checks to all Restitution-Eligible Consumers who return completed claim forms that are postmarked within two hundred seventy (270) days of the Effective Date. With exception of the circumstances described in ¶ 6.12 below, Vista Pawn will not be obligated to issue restitution

checks to consumers who return completed claim forms that are postmarked later than two hundred seventy (270) days after the Effective Date.

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

6.11 Vista Pawn shall on an ongoing basis, starting within one hundred twenty (120) days of 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 ¶ 6.10 above to the Attorney General's Office so that the Attorney General may engage in further efforts to locate the Restitution-Eligible Consumers whose claim forms are returned for incorrect or insufficient address, or for any other reason. For any Restitution-Eligible Consumer whose claim form is returned for incorrect address or insufficient address, or any other reason, Vista Pawn also will provide the Attorney General with the consumer's date of birth, last known address, phone number, and driver's license number, if Vista Pawn has that information. Vista Pawn agrees that it will use reasonable efforts to locate such Restitution-Eligible Consumers. The Attorney General may direct Vista Pawn to send claim 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 Vista Pawn shall issue refund checks to such consumers whose claim forms are postmarked within three hundred sixty (360) days of the Effective Date.

6.12 In the event a Restitution-Eligible Consumer signs and returns a claim form to Vista Pawn and the consumer's refund check is returned to Vista Pawn for any reason after being

mailed, Vista Pawn will forward the amount due to that consumer to the Attorney General's Office. If the Attorney General's Office 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.

6.13 Vista Pawn agrees to use a telephone number designated by Vista Pawn (and subject to approval by the Attorney General's Office) and staff to handle consumer inquiries relating to the settlement during its normal business hours for at least one (1) year after the Effective Date. For purposes of complying with this requirement, Vista Pawn agrees to accept collect telephone calls from affected 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 ¶ 6.6, 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 The Defendant 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 Three Dollars (\$3) (the "Non-Restitution Consumers"). The total aggregate restitution due to all Non-Restitution Consumers is Thirty-Seven Dollars and Eighty Cents (\$37.80) (the "Cy Pres Funds").

7.1 The Attorney General will distribute the Cy Pres Funds to one or more nonprofit organizations that provide consumer finance or credit-counseling education to citizens of the

County of Campbell or surrounding geographic areas. The specific organization(s) to receive the Cy Pres Funds shall be selected by the Attorney General in his sole discretion.

VIII. MISCELLANEOUS

8.0 Vista Pawn agrees to preserve any loan records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer.

8.1 To the extent that Vista Pawn has provided any negative information, knowingly or unknowingly, directly or indirectly, to any credit reporting agency concerning any Restitution-Eligible Consumer, the Defendant agrees to contact the credit reporting agency to request removal of the adverse information.

IX. ATTORNEYS' FEES

9.0 The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of Three Thousand Four Hundred and Sixty-Two Dollars and Twenty Cents (\$3,462.20) pursuant to § 59.1-206(C) of the VCPA for reimbursement of the Commonwealth's reasonable expenses, costs and attorneys' fees in investigating and preparing this action. 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, Vista Pawn agrees to make payment of the amounts required by Sections VII and IX, *supra*, by delivering to the Commonwealth a certified or cashier's check, in the amount of Three Thousand Five Hundred Dollars (\$3,500), made payable to "Treasurer of Virginia" and remitted to: James E. Scott, 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 22nd day of August, 2018.

FOR THE PLAINTIFF:

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

By: 

David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
James E. Scott (VSB No. 88882)
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Counsel for CNM Pawn, Inc.

FOR THE DEFENDANT:

CNM Pawn, Inc.

By: 

Thomas A. McCue

Its: President