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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF	:	
COMPLIANCE AND LICENSING	:	
Petitioners	:	Docket No.: 13 <u>0046</u> (BNK-CAO)
	:	
v.	:	
	:	
MARTIN A. WEBB, AN INDIVIDUAL, and	:	
his company PAYDAY FINANCIAL, LLC; and	:	
all affiliated companies including WESTERN	:	
SKY FINANCIAL, LLC; and RED STONE	:	
FINANCIAL, LLC.	:	
Respondents	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities (hereinafter "Department") Bureau of Compliance and Licensing, ("Bureau") enters into this Consent Agreement and Order with Martin A. Webb, an individual, and his company PayDay Financial, LLC, and all companies owned directly or indirectly, in whole or in part, now or in the future, by Martin A. Webb, including, but not limited to, Western Sky Financial, LLC, Red Stone Financial, LLC, which engage in short-term or other lending (hereinafter collectively referred to as "Western Sky companies") in Pennsylvania. This Consent Agreement and Order is between the Department, Martin A. Webb and Western Sky companies ("the Parties") in settlement of allegations of violations of requirements of Pennsylvania law, specifically the Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201- 6219, and the Act of January 30, 1974, P.L. 13, No. 6 known as the Loan Interest Protection Law ("LIPL"), 41 P.S. §§ 101-605

and is binding only as to them. This Consent Agreement has been reached without addressing jurisdictional defenses, and such defenses are reserved to the Respondents.

The Parties to the above-captioned matter, in lieu of litigation and without admitting wrongdoing, but intending to be legally bound, hereby voluntarily agree to the terms of this Consent Agreement and Order.

PARTIES

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA and LIPL.

2. The Bureau is delegated the responsibility to administer and enforce the CDCA and LIPL on behalf of the Department.

3. The Bureau operates from its offices at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania, 17101.

4. Martin A. Webb is a member of the Cheyenne River Sioux Tribe in South Dakota.

5. Martin A. Webb is the sole owner and organizer of PayDay Financial, LLC located at 612 E. Street, Timber Lake, South Dakota 57656, which is within the geographic boundaries of the reservation of the Cheyenne River Sioux Tribe.

6. PayDay Financial, LLC, Western Sky Financial, LLC, and Red Stone Financial, LLC, and other affiliated companies, are incorporated under the laws of South Dakota as domestic limited liability companies.

7. The Western Sky companies are licensed by the Cheyenne River Sioux Tribe and physically operate within the exterior boundaries of the Cheyenne River Sioux Tribe Reservation.

8. Martin A. Webb and the Western Sky companies have never been licensed by the Department as a Consumer Discount Company in Pennsylvania.

AUTHORITY OF THE DEPARTMENT

9. Section 202 of the LIPL, limits interest charged on all loans, not otherwise regulated by state or federal law, to a simple rate of 6% per annum. 41 P.S. § 202.

10. Section 3 of the CDCA requires any principal, employee, agent or broker, engaged in Commonwealth of Pennsylvania in the business of negotiating or making loans or advances of money on credit, in the amount or value of \$25,000 or less, to have a license. 7 P.S. § 6203; *Cash America Net of Nevada, LLC v. Dep't of Banking*, 8 A.3d 282 (Pa. 2010).

11. Section 11 of the CDCA requires any principal, agents or broker, who advertises or solicits the business of lending money in Pennsylvania to have a license issued by the Department. 7 P.S. § 6211; *Cash America*.

12. Section 13 of the CDCA, limits interest charged on loans of less than \$25,000 to \$9.50 per hundred, plus a service charge of \$1.50 for each \$50.00 up to \$150.00. 7 P.S. § 6213.

13. Section 502 of the LIPL provides borrowers the right to individual cause of action to recover excess interest, and triple damages, from any persons charging more than 6% interest in violation of the LIPL.

ALLEGATIONS OF THE BUREAU AND WESTERN SKY COMPANIES' RESPONSE

14. The Bureau alleges that the Western Sky companies, without a license under the CDCA, negotiated or made loans in the amount of \$25,000 or less to Pennsylvania residents, and collected and charged interest in amounts in excess of that permitted by the LIPL and the CDCA.

15. The Bureau alleges that the Department received a total of 58 complaints against the Western Sky companies since the year 2006.

16. The Bureau alleges that the Department received 1 complaint in 2010; 15 complaints in 2011; 29 complaints in 2012; and 2 complaints in 2013 to date.

17. The Bureau alleges that the Western Sky companies engaged in activities in the Commonwealth, specifically advertising and soliciting their short-term lending business in Pennsylvania over radio, television, print and through the internet and U.S. Mail, without a license but for which a license is required under the CDCA. 7 P.S. § 6211.

18. Martin A. Webb and the Western Sky companies allege that, because the Western Sky companies are owned by a tribal member and perform their business activities within the exterior boundaries of the Cheyenne River Sioux Reservation, they are entitled to tribal immunity from foreign jurisdictions, and, therefore, admit no wrongdoing.

19. The Parties agree that the loans made to Pennsylvania consumers leading to this Consent Agreement and Order were made by the Western Sky companies and not by Martin A. Webb personally.

20. Martin A. Webb and the Western Sky companies allege that they are actively litigating, in multiple jurisdictions, colorable questions of law concerning tribal immunity and whether its lending activity takes place "on the reservation."

21. Martin A. Webb and Western Sky Financial, LLC state that, as a sign of good faith, and on a voluntary basis prior to the date of this Order, and upon learning of the objections the Bureau had to its activities, they removed Pennsylvania from the list of states on its dropdown box on its website thereby eliminating the possibility of further lending to Pennsylvania residents.

22. By entering into this Agreement, Martin A. Webb and the Western Sky companies do not admit any of the allegations set forth by the Bureau herein. Nor do Martin A.

Webb, or the Western Sky companies, admit that the Western Sky companies require a license to offer loans to consumers who reside in Pennsylvania, or waive, now or in the future, any jurisdictional defense Martin A. Webb or the Western Sky companies may possess regarding the allegations contained therein.

23. Martin A. Webb and the Western Sky companies allege that radio and television advertising is contracted with nationally syndicated stations that are available in multiple jurisdictions thereby limiting their ability to remove such advertisements for a single jurisdiction.

24. Martin A. Webb and the Western Sky companies state that, tribal immunity notwithstanding, they voluntarily agree to the relief set forth below to avoid litigation, without admitting wrongdoing or waiving any jurisdictional defense they may possess, and for the purpose of maintaining good will with the Commonwealth.

RELIEF

25. Corrective Action. Within thirty days from the Effective Date of this Order as defined in paragraph 36 below, Martin A. Webb and the Western Sky companies shall cease and desist from soliciting or advertising any loan product to Pennsylvania residents over radio, television, print, through the internet and or mails, or by any other means whatsoever, without benefit of a license pursuant to the CDCA. For purposes of this Consent Agreement and Order, the agreement not to advertise or solicit in Pennsylvania will be met if Martin A. Webb and the Western Sky companies do the following:

a. Remove, or refrain from adding, Pennsylvania to any drop down box on every company website such that the websites are disabled from accepting applications from Pennsylvania residents;

b. Remove, or refrain from airing, all advertisements from radio and television stations in Pennsylvania, or that target the Pennsylvania audience whenever and wherever possible and where advertisements cannot be pulled, a disclaimer that loans are not available in Pennsylvania or to Pennsylvania residents will be added;

c. Remove, or refrain from placing, any newsprint advertisement in any paper or magazine based in Pennsylvania, or to include in any advertisement where Pennsylvania is a part of a larger circulation, to include a disclaimer that loans are not available in Pennsylvania or to Pennsylvania residents;

d. Refrain from sending any advertisement or solicitation through the mails, or by telephone, direct to Pennsylvania residents; and

e. Include Pennsylvania in the list of states that cannot be served by the Western Sky companies on each company website.

26. Cease and Desist. From the Effective Date of this Order as defined in paragraph 43 below, Martin A. Webb and the Western Sky companies shall:

a. cease and desist from making loans to Pennsylvania residents;

b. cease and desist from collecting interest in excess of 6% on any outstanding loan from Pennsylvania residents;

c. cease and desist from transferring, assigning or selling to any other persons any short-term loans made to Pennsylvania residents, nor shall it purchase any loans from any other entity made to Pennsylvania residents;

d. cease and desist from filing negative reports with any credit reporting agency regarding any loan made to a Pennsylvania resident;

e. use best efforts to remove any negative credit report it may have already made; and

f. refund to those persons listed on Attachment A any amount it collected that exceeded the principle plus 6% interest.

27. The Department agrees that nothing in this Order prevents the Western Sky companies, its servicers and collection companies to whom the loans have been transferred, sold, or assigned, from recovering the principle of all loans, together with interest at the rate of 6% per annum, provided all collection efforts are in compliance with federal and state collection laws.

28. The Department agrees that nothing in this Order prevents Martin A. Webb or the Western Sky companies from obtaining a license from the Department upon proper application.

29. The Department refrains from assessment of any fine against Martin A. Webb, Payday Financial, LLC or the Western Sky companies in recognition of their good faith actions in ceasing its lending activity in Pennsylvania prior to issuance of this Order, or any other order.

30. The Department agrees that this Order does not bind any legal or natural person that is not owned, in whole or in part, directly or indirectly, by Martin A. Webb, or any of the Western Sky companies that exist now, or in the future, and which engage in the business of advertising, soliciting or lending money.

31. Department Remedies. Should the Department ascertain that the Company either (i) continued to offer loans of \$25,000 or less to Pennsylvania residents and charge interest in excess of 6% after the effective date of this Order, or (ii) failed to undertake or comply with any of its obligations set forth in this Order, the Bureau expressly reserves the right to seek enforcement in the Commonwealth Court or otherwise as provided by law.

FURTHER PROVISIONS

32. Consent. The parties hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order without any admission of any liability, and agree that they understand all of the terms and conditions contained herein. The parties, by voluntarily entering into this Consent Agreement and Order, waive any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Consent Agreement and Order.

33. Publication and Release. The Department will publish this Consent Agreement and Order pursuant to its authority in Section 302.A(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

34. Consumer Rights. This Consent Agreement and Order shall not limit or impair the consumers' rights under the LIPL. See 41 P.S. §§ 501-507.

35. Entire Agreement. This Consent Agreement and Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Consent Agreement and Order. This Consent Agreement and Order may be amended in writing by mutual agreement by the parties.

36. Binding Nature. The parties intend to be and are legally bound by the terms of this Consent Agreement and Order. This Consent Agreement and Order shall be enforceable in a court of competent jurisdiction by the parties. This Consent Agreement and Order shall be admissible in court if relevant to the proceedings, however it shall not be construed as a waiver of any jurisdictional defense Martin A. Webb or the Western Sky companies may possess. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties' present and future owners, principals, directors, officers, members, partners, managers, agents,

successors and assigns. The parties acknowledge and agree that this order binds The Department, and not any other local, state or federal agency, department, or office, regarding matters within this Order.

37. Counsel. This Consent Agreement and Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

38. Effectiveness. The parties stipulate and agree that this Consent Agreement and Order shall become effective on the date that the Bureau executes the Order.

39. Other Enforcement Action. Once Martin A. Webb, PayDay Financial, LLC, and the Western Sky companies have fully complied with all of their obligations under this Consent Agreement and Order, the Department agrees that it will not bring an enforcement action of any kind against the Martin A. Webb, PayDay Financial, LLC, and the Western Sky companies, or against any of its present or future members, principals, officers, managers, agents, employees, successors, or assigns for any conduct arising out of or related to Martin A. Webb, PayDay Financial, LLC, and the Western Sky companies' lending activities with Pennsylvania consumers that ensued prior to the Effective Date of this Order.

40. Authorization. The parties below are authorized to execute this Consent Agreement and Order and legally bind their respective parties.

41. Counterparts. This Consent Agreement and Order may be executed in separate counterparts and by facsimile or email.

42. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Compliance

and Licensing, and Martin A. Webb, PayDay Financial, LLC, Western Sky Financial, LLC, Red Stone Financial, LLC and all other Western Sky companies, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF COMPLIANCE AND LICENSING:**

Ryan Walsh, Chief, Compliance Division
Bureau of Compliance and Licensing
Department of Banking and Securities

Date: June 25, 2013

FOR MARTIN A. WEBB. INDIVIDUALLY

Date: 6/18/13

**FOR PAYDAY FINANCIAL, LLC, and it's
affiliated companies**

Name _____

Print: Martin A. Webb

Title: Managing Member

Date: 6/18/13

FOR RED STONE FINANCIAL, LLC

Name _____

Print: Martin A. Webb

Title: Managing Member

Date: 6/18/13

FOR WESTERN SKY, LLC

Name _____

Print: Morbin A. Webb

Title: Managing Member

Date: 6/18/13