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PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE AND LICENSING

v.

CLEARWATER BAY MARKETING, LLC
and SANDPOINT CAPITAL, LLC

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: Docket No.: 120011 (ENF-C&D)
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CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania acting through the Department of Banking ("Department") Bureau of Compliance and Licensing ("Bureau") enters into this Consent Agreement and Order ("Order") with Clearwater Bay Marketing, LLC ("Clearwater Bay") and Sandpoint Capital, LLC ("Sandpoint") to resolve all issues arising from an Order issued against, *inter alia*, Clearwater Bay, Sandpoint and their owners and controlling parties by the Bureau on January 27, 2012, Docket No. 120011 (ENF-C&D).

The January Order asserted that Clearwater Bay, Sandpoint and their owners and controlling parties violated 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, when they engaged in the business of making short-term loans to Pennsylvania residents in amounts less than \$25,000 and charged interest in excess of 6% per annum for the loans and held themselves out as willing or able to arrange for or negotiate such loans. The parties to the above-captioned matter, in lieu of litigation, hereby stipulate that the

following statements are true and correct in settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Order.

BACKGROUND

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 primarily responsible for administering and enforcing the CDCA and LIPL.

3. Clearwater Bay is a limited liability company with its principal place of business located at 2601 Madison Avenue, Kansas City, Missouri 64108.

4. Clearwater Bay provides marketing and operational assistance to a short-term lender, Sandpoint.

5. Sandpoint is a limited liability company with an address of Companies Inc., 6 Solomon's Arcade, Charlestown, Nevis West Indies.

6. Sandpoint is a lender that offers and makes short-term loans of \$1000 or less to Pennsylvania residents.

7. Clearwater Bay provides operational assistance to Sandpoint for the loans that it makes to Pennsylvania residents.

8. Commencing February 1, 2009, the Department required persons that engage in the business of negotiating and making loans of \$25,000 or less to Pennsylvania residents where the interest and other charges on the loans exceed 6% per annum to obtain a consumer discount company license from the Department. *See Cash America Net of Nevada, LLC v. Department of Banking*, 978 A.2d 1028 (Pa. Cmwlth. July 10, 2009), *affirmed by* 8 A.3d 282 (Pa. 2010); *see also* 38 Pa.B. 3986 (2008).

9. Sandpoint is not licensed by the Department as a consumer discount company and has never been licensed by the Department.

10. Clearwater Bay is not licensed by the Department as a consumer discount company and has never been licensed by the Department.

11. Since February 1, 2009, the Department received complaints from Pennsylvania residents regarding loans that they obtained from Sandpoint; the residents asserted that Sandpoint charged them interest in excess of 6% per annum for the loans that they received from Sandpoint.

12. On January 27, 2012, the Bureau issued an Order against *inter alia* Sandpoint, Clearwater Bay and their owners and controlling persons.

13. The January Order provided that Clearwater Bay, Sandpoint and their owners and controlling persons violated the CDCA and LIPL by:

engaging in the business of negotiating and making loans of less than \$25,000 to Pennsylvania residents and by charging fees, interest, charges or other considerations in excess of 6% simple interest per annum, and by collecting or attempting to collect on such loans without being licensed by the Department

[and]

soliciting and holding itself out as willing or able to arrange for or negotiate loans of \$25,000 or less to Pennsylvania residents where the interest, fees, charges, or other considerations in the aggregate exceed 6% simple interest per annum, without being licensed by the Department

See 7 P.S. § 6203; *see also* 41 P.S. § 201(a).

14. To address the violations of the CDCA and LIPL, the January Order required, in relevant part that Sandpoint, Clearwater Bay and its owners and controlling parties:

(a) cease and desist from negotiating, making, advertising, soliciting and arranging loans for Pennsylvania residents of \$25,000 or less and charging interest in excess of 6% per annum without being licensed by the Department; and

(b) cease and desist from attempting to collect or collecting, directly or indirectly through third parties such as collection agencies, interest or any other considerations that exceed 6% per annum for loans of \$25,000 or less made to Pennsylvania residents; and

(d) refund Pennsylvania residents the excessive interest they paid for the loans; and

(e) pay a fine for the loans made to the Pennsylvania residents referenced therein.

15. Clearwater Bay, Sandpoint and its owners and controlling parties retained legal counsel and contacted the Bureau seeking to resolve this matter amicably.

16. The Bureau has agreed to enter into this Order to resolve the issues arising from the January Order. As part of this Order, the Bureau is withdrawing the January Order with respect to individuals and entities named in the January Order other than Clearwater Bay and Sandpoint.

RELIEF

17. Fine. Clearwater Bay and Sandpoint shall pay the Department a fine in the amount of \$30,000 within 30 days of the Effective Date of this Order as defined in Paragraph 25. The payment shall be made by certified check or money order made payable to the "Pennsylvania Department of Banking" and mailed or delivered to the Compliance Division, Bureau of Compliance and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

18. Corrective Action.

(a) Consumer Refunds and Credit Reports. Sandpoint and Clearwater Bay shall refund the Pennsylvania consumers that complained to the Department (enumerated in Appendix A) monies that the consumers paid in excess of 6% per annum for the short-term loans that they received from Sandpoint. Sandpoint and Clearwater Bay shall provide proof that they refunded the consumers in Appendix A to the Bureau in a manner that is acceptable by the Bureau such as providing copies of the cancelled refund checks or proof that the consumers' accounts were credited with the refunds.

If Sandpoint or Clearwater Bay caused to be filed or filed a report with any credit agency that resulted in a negative mark on the credit reports of the consumers enumerated in Appendix A, Sandpoint or Clearwater Bay shall take affirmative steps to remove such remarks from the credit reports and provide proof of their efforts to the Bureau in a manner acceptable to the Bureau.

In the event the Department receives additional complaints from Pennsylvania residents that obtained short-term loans from Sandpoint within three years from the date the resident demonstrates to the Bureau that it accepted the loans from Sandpoint, Sandpoint, upon written request from the Department, shall complete the Corrective Action set forth in this Paragraph 18(a).

(b) Cease and Desist Unlicensed Activity. From the Effective Date of this Order as defined in Paragraph 25, Clearwater Bay, Sandpoint and their owners and controlling parties, shall do all of the following (unless licensed by the Department to engage in such activity):

(i) Cease and desist from advertising, soliciting, arranging, negotiating and making loans of \$25,000 or less to Pennsylvania residents in which the interest and other charges in the aggregate exceeds 6% per annum; and

(ii) Cease and desist from attempting to collect or collecting, directly or indirectly, through third parties such as collection agencies, interest or other considerations that exceed 6% per annum for loans of \$25,000 or less made to Pennsylvania residents; and

(iii) Cease and desist from transferring, assigning or selling to any persons, companies or entities of any kind whatsoever any loans that it has made to Pennsylvania residents of \$25,000 or less in which it has charged interest in excess of 6% per annum nor shall it purchase any loans that meet these parameters; and

(iv) Cease and desist from directly or indirectly, through third persons, filing a negative report with any credit reporting agency regarding any Pennsylvania resident to which it has provided a loan of \$25,000 or less in which it has charged interest in excess of 6% per annum.

Should the Department ascertain that Sandpoint and Clearwater Bay continues to offer loans of \$25,000 or less to Pennsylvania residents and charge interest in excess of 6% for the loans, without being licensed to do so, the Bureau expressly reserves the right to seek enforcement in the Commonwealth Court of this Order or commence an enforcement action as permitted by law.

FURTHER PROVISIONS

19. Consent. Clearwater Bay and Sandpoint hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order, and agrees that it understands all of the terms and conditions contained herein. Clearwater Bay and Sandpoint, by voluntarily entering into this Order, waives any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

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

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

22. Entire Agreement. This 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 Order. This Order may be amended in writing by mutual agreement by the parties.

23. Binding Nature. The Department, Clearwater Bay, Sandpoint, their owners and controlling parties and officers, directors, members, partners, employees, agents and successors intend to be and are legally bound by the terms of this Order.

24. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

25. Effectiveness. Clearwater Bay and Sandpoint stipulate and agree that this Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

26. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Clearwater Bay, Sandpoint and its owners and controlling parties in the future regarding all matters not resolved by this Order.

(b) Clearwater Bay and Sandpoint acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

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

28. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

29. 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, Bureau of Compliance and Licensing and Clearwater Bay Marketing, LLC and Sandpoint Capital, LLC do hereby execute this Consent Agreement and Order.

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

By: _____
Ryan Walsh
Chief of Compliance

Dated: June 27, 2012

FOR CLEARWATER BAY MARKETING, LLC AND
SANDPOINT CAPITAL, LLC:

By: _____

Dated: 6/26/12

CONSUMER COMPLAINTS

1. REDACTED
2. REDACTED
3. REDACTED