

2016 Small-Dollar Lending Update: An Obituary or a Re-Awakening?

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INTRODUCTION

During the past year, small-dollar lenders continued to face increasing scrutiny.¹ The Consumer Financial Protection Bureau (“CFPB”) announced a rule-making to overhaul the small-dollar lending industry;² the U.S. Department of Justice and the U.S. Attorney for the Southern District of New York each filed criminal indictments related to small-dollar lending operations;³ and even search-engine company Google banned advertisements for loans with an annual percentage rate of 36 percent or more.⁴ This survey reviews some of the key developments during the past year.

PROPOSED FEDERAL SMALL-DOLLAR LENDING RULE

In June 2016, the CFPB proposed a rule (“Proposal”) requiring lenders to determine whether consumers can repay new loans along with their preexisting obligations.⁵ Under the Proposal, the ability-to-repay determination does not apply

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1. See generally Catherine M. Brennan, Justin B. Hosie, K. Dailey Wilson & Erica A.N. Kramer, *Death by a Thousand Cuts: Update on Small-Dollar Lending*, 71 BUS. LAW. 741 (2016) (in the 2016 Annual Survey) (analyzing unresolved regulatory actions commenced in 2015, as well as legislation that took effect in 2016).

2. Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864 (proposed July 22, 2016) (to be codified at 12 C.F.R. pt. 1041).

3. See Indictment, United States v. Hallinan, No. 2:16-cr-00130-ER (E.D. Pa. Mar. 31, 2016), <https://www.justice.gov/usao-edpa/file/862906/download>; Indictment, United States v. Moseley, No. 1:16-cr-00079-ER (S.D.N.Y. Feb. 9, 2016), <https://www.justice.gov/usao-sdny/file/823171/download>; Indictment, United States v. Tucker, No. 1:16-cr-00091-PKC (S.D.N.Y. Feb. 8, 2016), <https://www.justice.gov/usao-sdny/file/823406/download>.

4. See David Graff, *An Update to Our AdWords Policy on Lending Products*, GOOGLE PUB. POLY BLOG (May 11, 2016), <https://publicpolicy.googleblog.com/2016/05/an-update-to-our-adwords-policy-on.html>.

5. Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. at 48168 (to be codified at 12 C.F.R. § 1041.4), 48172 (to be codified at 12 C.F.R. § 1041.8). Though published in the *Federal Register* in July, the CFPB released the Proposal in June. *Id.* at 48218.

to loans that satisfy certain structural conditions.⁶ The Proposal also imposes limits on repeated attempts to debit consumers' accounts and mandates specified consumer disclosures, recordkeeping, and compliance programs.⁷ The Proposal covers closed-end and open-end consumer credit with the following exclusions: credit extended solely to finance the purchase of a car or other consumer good that secures the transaction, credit secured by real property or a dwelling if the security interest is recorded or perfected, credit card transactions, student loans, non-recourse pawn transactions, overdraft services, and certain lines of credit.⁸

The Proposal classifies covered transactions in two categories, "short-term" and "longer-term" credit.⁹ The Proposal defines "short-term" as loans with terms of forty-five days or less.¹⁰ Longer-term transactions covered under the Proposal are those with a duration over forty-five days that have a "total cost of credit" that exceeds 36 percent per annum and have either a lien or other security interest in the consumer's vehicle or a form of "leveraged payment mechanism."¹¹

The limitations imposed under the Proposal are based on the CFPB's identification of certain abusive and unfair practices. The first such practice is making a covered loan without reasonably determining that the consumer can repay it.¹² The second is attempting to withdraw payment from a "consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account."¹³

To obtain a covered loan under the Proposal, consumers would have to prove that they can afford to repay the full amount of each payment when due, without re-borrowing, and be able to pay major financial obligations and living expenses.¹⁴ The consumer's loan payment amount would be limited to the amount of income remaining, if any, after paying for major financial obligations and living expenses, based on the consumer's written statements confirmed with reliable "verification evidence."¹⁵ After proving an ability to repay, consumers would next be required to overcome certain "presumptions of unaffordability" before obtaining credit.¹⁶ A loan would be presumed to be unaffordable, for ex-

6. *Id.* at 48170 (to be codified at 12 C.F.R. § 1041.7), 48173–74 (to be codified at 12 C.F.R. §§ 1041.11, 1041.12).

7. *Id.* at 41875–82 (to be codified at 12 C.F.R. §§ 1041.13–1041.20).

8. *Id.* at 47864, 47910, 48168 (to be codified at 12 C.F.R. § 1041.3).

9. *Id.* (to be codified at 12 C.F.R. § 1041.3).

10. *Id.* at 48168 (to be codified at 12 C.F.R. § 1041.3(b)(1)).

11. *Id.* (to be codified at 12 C.F.R. § 1041.3(b)(2)).

12. *Id.* at 48168 (to be codified at 12 C.F.R. § 1041.4), 48172 (to be codified at 12 C.F.R. § 1041.8).

13. *Id.* at 48175 (to be codified at 12 C.F.R. § 1041.13).

14. *Id.* at 48168 (to be codified at 12 C.F.R. § 1041.5), 48172 (to be codified at 12 C.F.R. § 1041.9).

15. *Id.* at 48168 (to be codified at 12 C.F.R. § 1041.5(c)), 48172 (to be codified at 12 C.F.R. § 1041.9(c)).

16. *Id.* at 48169 (to be codified at 12 C.F.R. § 1041.6), 48173 (to be codified at 12 C.F.R. § 1041.10).

ample, when the consumer seeks to borrow within thirty days of a prior short-term loan or a longer-term loan with a balloon payment, or to refinance other existing loans with the same lender, if the consumer is unable to repay them.¹⁷ The Proposal would allow certain loans to overcome the presumption of unaffordability in limited circumstances.¹⁸ After three covered short-term loans in a sequence, i.e., within thirty days of one another, the Proposal mandates a thirty-day cooling off period before the consumer could obtain another covered short-term loan.¹⁹

The Proposal includes three conditional exemptions to the ability-to-repay requirements: a short-term principal payoff option, a longer-term payday alternative option with cost limitations, and a longer-term portfolio option with cost limitations.²⁰ Under the short-term principal payoff option, the Proposal would prohibit, among other things, borrowing more than \$500, using a vehicle as collateral, and successive re-borrowing, unless the consumer can pay off at least one-third of the principal with each extension.²¹ Consumers would be limited to no more than ninety days of such indebtedness or no more than six such loans in a rolling twelve-month period.²² Finally, consumers would be prohibited from obtaining such a loan if they already have outstanding short-term or balloon-payment loans.²³

The first longer-term alternative is modeled on the National Credit Union Administration's "payday alternative loan" program.²⁴ The Proposal limits the total cost allowed to no more than 28 percent per annum, plus an application fee of \$20.²⁵ The other longer-term option limits the total cost of credit to 36 percent per annum plus an origination fee of \$50.²⁶ Under this option, if the lender's default rate exceeds 5 percent, then the lender must refund the origination fees obtained.²⁷ Various other limitations also apply for each loan type.²⁸

The Proposal imposes many other limitations on consumer credit. For example, under the Proposal, consumers seeking credit would be required to have their nonpublic personal information submitted to new registered information systems and consumer reporting agencies.²⁹ The Proposal also imposes various

17. *Id.* at 48169 (to be codified at 12 C.F.R. § 1041.6), 48173 (to be codified at 12 C.F.R. § 1041.10).

18. *Id.* at 48170 (to be codified at 12 C.F.R. § 1041.6(e)), 48173 (to be codified at 12 C.F.R. § 1041.10(d)).

19. *Id.* at 48170 (to be codified at 12 C.F.R. § 1041.6(f)).

20. *Id.* at 48170–71 (to be codified at 12 C.F.R. § 1041.7), 48173–75 (to be codified at 12 C.F.R. §§ 1041.11, 1041.12).

21. *Id.* at 48170–71 (to be codified at 12 C.F.R. § 1041.7(b)).

22. *Id.* at 48171 (to be codified at 12 C.F.R. § 1041.7(c)).

23. *Id.* (to be codified at 12 C.F.R. § 1041.7(c)).

24. *Id.* at 47865, 48173 (to be codified at 12 C.F.R. § 1041.11).

25. *Id.* at 47865, 48173–74 (to be codified at 12 C.F.R. § 1041.11(b) (cross-referencing 12 C.F.R. § 701.21(c)(7)(iii))).

26. *Id.* at 48174 (to be codified at 12 C.F.R. § 1041.12(b)).

27. *Id.* (to be codified at 12 C.F.R. § 1041.12(d)).

28. *Id.* at 48170–71 (to be codified at 12 C.F.R. § 1041.7), 48173–75 (to be codified at 12 C.F.R. §§ 1041.11, 1041.12).

29. *Id.* at 48179 (to be codified at 12 C.F.R. §§ 1041.16, 1041.17).

written verification, notification, disclosure, compliance management, and record-keeping requirements on lenders, and it includes anti-evasion provisions.³⁰

CFPB ENFORCEMENT ACTIONS

The CFPB has taken several enforcement actions in the small-dollar lending space during the past year. In August 2015, the CFPB sued NDG Financial Corporation and related companies for making unlicensed loans and collecting on loans that exceeded state usury caps.³¹ The CFPB alleged that the defendants violated the federal prohibition on unfair, deceptive, and abusive acts and practices and sought monetary and injunctive relief.³² The action was still pending as of this writing.

In October 2015, the CFPB announced a consent order with Westlake Services, LLC and its auto title loan subsidiary, Wilshire Consumer Credit, LLC.³³ The consent order focused on alleged improper debt collection, due date changes, extending terms of loans without consent, misrepresentations about the benefits of changed loans, and failing to clearly advertise annual percentage rates.³⁴ Under the terms of the consent order, Westlake and Wilshire agreed to pay \$44.1 million in redress to affected consumers, to pay a \$4.25 million civil penalty, and to modify certain practices.³⁵

In November 2015, the CFPB targeted Integrity Advance, LLC, a Delaware-based online lender, for allegedly deceiving consumers about the cost of short-term loans.³⁶ The CFPB alleged that Integrity Advance violated the Truth in Lending Act, the Electronic Fund Transfer Act, and the Consumer Financial Protection Act's prohibition against unfair and deceptive acts and practices.³⁷ The CFPB sought redress for harmed consumers, as well as civil penalties and injunctive relief.³⁸ The action was still pending as of this writing.

In December 2015, EZCORP, Inc., a payday and installment lender, entered into a consent order with the CFPB for alleged improper debt collection

30. *Id.* at 48168–69 (to be codified at 12 C.F.R. § 1041.5), 48170–71 (to be codified at 12 C.F.R. § 1041.7), 48172 (to be codified at 12 C.F.R. § 1041.9), 48176–79 (to be codified at 12 C.F.R. § 1041.15), 48181–82 (to be codified at 12 C.F.R. §§ 1041.18, 1041.19).

31. Press Release, Consumer Fin. Prot. Bureau, CFPB Sues Offshore Payday Lender (Aug. 4, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-offshore-payday-lender/>.

32. Complaint at 23–32, CFPB v. NDG Fin. Corp., No. 1:15-cv-05211-CM (S.D.N.Y. July 31, 2015), http://files.consumerfinance.gov/f/201508_cfpb_complaint-northway.pdf.

33. Press Release, Consumer Fin. Prot. Bureau, CFPB Orders Indirect Auto Finance Company to Provide Consumers \$44.1 Million in Relief for Illegal Debt Collection Tactics (Oct. 1, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-indirect-auto-finance-company-to-provide-consumers-44-1-million-in-relief-for-illegal-debt-collection-tactics/>.

34. Consent Order at 5–20, *In re* Westlake Servs., LLC, No. 2015-CFPB-0026 (Sept. 30, 2015), http://files.consumerfinance.gov/f/201509_cfpb_consent-order-westlake-services-llc.pdf.

35. *Id.* at 26–39.

36. See Notice of Charges, *In re* Integrity Advance, LLC, No. 2015-CFPB-0029 (Nov. 18, 2015), http://files.consumerfinance.gov/f/201511_cfpb_notice-of-charges-integrity-advance-llc-james-r-carnes.pdf.

37. *Id.* at 9–14.

38. *Id.* at 14–15.

practices.³⁹ These practices allegedly included visits to consumers at their homes and workplaces, empty threats of legal action, lying about consumers' rights, and exposing consumers to bank fees through unlawful electronic withdrawals.⁴⁰ EZCORP agreed to refund \$7.5 million to consumers, pay \$3 million in civil penalties, and cease certain practices.⁴¹ On the same day, the CFPB issued a bulletin warning about in-person debt collection practices.⁴²

Also in December 2015, the CFPB sued T3Leads, alleging that it bought and sold personal information derived from loan applications without properly vetting buyers and sellers.⁴³ The CFPB further alleged that T3Leads exploited consumers' lack of understanding.⁴⁴ In addition to monetary relief, the CFPB sought to permanently enjoin T3Leads from committing future violations of federal law.⁴⁵ In a matter announced the same day, Eric V. Sancho, who operated a company called Lead Publisher, settled similar claims.⁴⁶

SMALL-DOLLAR LENDING CASE DECISIONS

Several case decisions were handed down in the small-dollar lending space during the past year. In *Pennsylvania v. Think Finance, Inc.*,⁴⁷ the Pennsylvania Attorney General sued Think Finance, Inc. and others (collectively, "Think Finance") for violating state and federal laws prohibiting usurious and illegal lending practices in connection with loans made to Pennsylvania citizens. The Attorney General alleged that Think Finance partnered with an out-of-state bank and with Native American tribes in schemes known as, respectively, "rent-a-bank" and "rent-a-tribe" to evade state lending laws, while it remained "the de facto lender—marketing, funding, and collecting the loan."⁴⁸ Think Finance argued that federal law preempted any causes of action related to its partnership with the bank, in particular the usury claims.⁴⁹ However, the court held that, because the Attorney General had made no state usury claims against the bank, only

39. Consent Order, *In re* EZCORP, Inc., No. 2015-CFPB-0031 (Dec. 16, 2015), http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf.

40. *Id.* at 6–17.

41. *Id.* at 17–20, 23–30.

42. CONSUMER FIN. PROT. BUREAU, CFPB BULL. 2015-17: IN-PERSON COLLECTION OF CONSUMER DEBT (Dec. 16, 2015), http://files.consumerfinance.gov/f/201512_cfpb_compliance-bulletin-in-person-collection-of-consumer-debt.pdf.

43. Complaint at 2, CFPB v. D&D Mktg., Inc., No. 2:15-cv-09692 (C.D. Cal. Dec. 17, 2015), http://files.consumerfinance.gov/f/201512_cfpb_complaint-v-d-and-d-marketing-inc-et-al.pdf. D&D Marketing, Inc. does business as T3Leads. *Id.* at 3.

44. *Id.* at 2, 4–6.

45. *Id.* at 12.

46. Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action Against Lead Aggregators for Online Trafficking of Personal Information (Dec. 17, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-lead-aggregators-for-online-trafficking-of-personal-information/>; see Consent Order at 1–12, *In re* Sancho, No. 2015-CFPB-0033 (Dec. 17, 2015), http://files.consumerfinance.gov/f/201512_cfpb_eric-v-sancho-consent-order.pdf.

47. No. 14-cv-7139, 2016 U.S. Dist. LEXIS 4649 (E.D. Pa. Jan. 14, 2016).

48. *Id.* at *3–4.

49. *Id.* at *38–39.

against a non-bank, Think Finance, the federal bank preemption argument failed.⁵⁰

Other state enforcement actions involving the tribal model occurred in North Carolina, Washington, and Massachusetts. The North Carolina Attorney General and the Commissioner of Banks obtained a preliminary injunction barring Western Sky Financial, LLC (“WSF”), CashCall, Inc. (“CCI”), and related companies from making or collecting on small loans to North Carolina consumers that imposed excessive interest rates.⁵¹ The Washington Department of Financial Institutions reached a settlement agreement with WSF and CCI, resolving allegations that the online lenders engaged in unfair and deceptive acts and violated usury laws and other consumer protection laws.⁵² The Massachusetts Attorney General and the Massachusetts Division of Banks settled claims against WSF and others for making small consumer loans to Massachusetts residents without a license and at usurious rates.⁵³

In *Everette v. Mitchem*,⁵⁴ the court found that sovereign immunity applied to a tribal lender. The plaintiff obtained payday loans from MobiLoans, LLC, a tribal lending entity wholly owned by the Tunica-Biloxi Tribe of Louisiana, and Riverbend Cash, a tribal lending entity wholly owned by the Fort Belknap Indian Community.⁵⁵ She claimed that the defendants engaged in illegal consumer lending and collection practices.⁵⁶ The court granted the defendants’ motions to dismiss, holding that they were “‘arms of the tribe’ that are closely enough related to the tribes to share in their sovereign immunity.”⁵⁷

A state court also addressed the bank partnership model in *CashCall, Inc. v. Maryland Commissioner of Financial Regulation*.⁵⁸ The Commissioner alleged that CCI violated the Maryland Credit Services Business Act (“MCSBA”) by soliciting Maryland consumers for high-interest closed-end loans originated by FDIC-insured banks.⁵⁹ Each loan amount included a loan origination fee, which the consumer ultimately paid, over time, to the holder of the loan.⁶⁰ The banks then sold the loans to CCI for servicing.⁶¹ CCI argued that it was not a “credit services business” because any origination fee came from the bank, not the con-

50. *Id.* at *40–41.

51. *North Carolina v. W. Sky Fin., LLC*, No. 13 CVS 16487, slip op. at 1, 37–38 (N.C. Super. Ct. Aug. 27, 2015) (opinion and order), <http://ncdoj.gov/getdoc/fd0279fb-084e-4e98-8c1e-1e33250f00ff/Western-Sky-Order.aspx>.

52. Consent Order at 1–10, *In re CashCall, Inc.*, No. C-11-0701-15-C001 (Wash. Dep’t Fin. Insts. Oct. 5, 2015), <http://www.dfi.wa.gov/sites/default/files/consumer-services/enforcement-actions/C-11-0701-15-C001.pdf>.

53. Final Judgment by Consent at 5, 7–19, *CashCall, Inc. v. Mass. Div. of Banks*, No. SUCV2013-01616-B (Mass. Super. Ct. Oct. 26, 2015), <http://www.mass.gov/ago/docs/press/2015/western-sky-cashcall-settlement.pdf>.

54. 146 F. Supp. 3d 720 (D. Md. 2015).

55. *Id.* at 722.

56. *Id.*

57. *Id.* at 725 (quoting the operating agreement of MobiLoans, LLC).

58. 139 A.3d 990 (Md. 2016).

59. *Id.* at 993–96; see MD. CODE ANN., COM. LAW §§ 14-1901 to 14-1916 (LexisNexis 2013).

60. *CashCall, Inc.*, 139 A.3d at 994.

61. *Id.* at 994–95.

sumer.⁶² The court ruled that CCI's fee structure with the banks did not exempt it from the MCSBA because CCI did not offer a service other than arranging credit.⁶³ The court also found that CCI received its payment directly from the consumer because the loans were quickly sold by the banks and CCI accepted all payments made by the borrowers pursuant to the loans.⁶⁴

In *James v. National Financial, LLC*,⁶⁵ the Delaware Court of Chancery found a loan to be unconscionable where the borrower obtained \$200 from National Financial, LLC and agreed to pay an annual percentage rate of 838.45 percent, even though the Delaware Code permits the parties to negotiate the interest rate, without imposing any statutory ceiling.⁶⁶ After a lengthy analysis of unconscionability, the court found that the loan was fundamentally unfair, and therefore substantively unconscionable, stating that “[n]o one would borrow rationally on the terms [the loan agreement] contemplated unless that person was delusional, mistaken about its terms or a material fact, or under economic duress.”⁶⁷ The court also found that the contract was procedurally unconscionable because of the “exploitation of the underprivileged, unsophisticated, and uneducated” and because it was designed to evade the Delaware short-term loan law and its five-loan limit by disguising a payday loan as an installment loan.⁶⁸

In *Goldenstein v. Repossessors, Inc.*,⁶⁹ the U.S. Court of Appeals for the Third Circuit addressed whether a claim can be brought under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) for repossession of a vehicle securing a usurious loan. The borrower obtained a vehicle-secured loan from Sovereign Lending Solutions, LLC.⁷⁰ Following default and repossession, the borrower sued, alleging that the repossession violated various state and federal consumer protection laws, as well as RICO.⁷¹ The court noted that “the prohibition on the ‘collection of unlawful debt’ under the statute encompasses efforts to collect on a usurious loan” and therefore held that the repossession of collateral securing a usurious loan is considered the “collection of unlawful debt” actionable under RICO.⁷²

In *Cox v. Community Loans of America, Inc.*,⁷³ the U.S. Court of Appeals for the Eleventh Circuit found that an implied right of action exists under the Military Lending Act (“MLA”). Active duty military servicemembers brought a class action

62. *Id.* at 1004 (quoting MD. CODE ANN., COM. LAW § 14-1901(e)(1) (LexisNexis 2013) (defining “credit services business”).

63. *Id.* at 1005.

64. *Id.* at 1005–06.

65. 132 A.3d 799 (Del. Ch. 2016).

66. *Id.* at 803; see DEL. CODE ANN. tit. 5, §§ 2216, 2229 (2001) (permitting, under each section, the imposition of interest “as established in the manner provided in [the] agreement”).

67. *James*, 132 A.3d at 837.

68. *Id.* at 831, 837 (quoting *Fritz v. Nationwide Mut. Ins. Co.*, No. 1369, 1990 WL 186448, at *5 (Del. Ch. Nov. 26, 1990)).

69. 815 F.3d 142 (3d Cir. 2016).

70. *Id.* at 144.

71. *Id.*

72. *Id.* at 148 (quoting 18 U.S.C. § 1962).

73. 625 F. App'x 453 (11th Cir. 2015) (per curiam) (interpreting 10 U.S.C. § 987).

against several vehicle title lenders based on their alleged violation of the MLA by charging an annual rate of interest that exceeded the MLA's statutory maximum.⁷⁴ The trial court concluded that, although the MLA, at the time pertinent to the plaintiffs' claims, did not expressly provide for a private right of action, it implicitly authorized one.⁷⁵ The Eleventh Circuit affirmed, holding that, because "the text and structure of the MLA unambiguously confer on covered members of the armed forces and their dependents certain legal rights," including the right to rescind a contract that is void under the criteria of the MLA, "an implied private right of action exists under the MLA."⁷⁶

OTHER STATE ENFORCEMENT ACTIONS

In December 2015, the Virginia Attorney General announced a settlement with MoneyKey, Inc., a Delaware-based online consumer lender, resolving allegations that the company violated state law by imposing illegal charges on borrowers who received open-end credit, misrepresenting its licensure status in Virginia, and misrepresenting that its loans were compliant with Virginia's open-end credit statute.⁷⁷ The settlement provided more than \$4 million in forgiven interest and fees and \$18,000 in restitution.⁷⁸

In February 2016, the Montana Division of Banking and Financial Institutions published a memorandum stating its new position that, because the drafters of the Montana Consumer Loan Act intended that anyone who collects a Montana consumer loan be licensed, servicers who service loans originated under the Act must also be licensed.⁷⁹ According to the Division, "the provisions of the Act continue to apply to an entity that acts as a servicer by receiving or accepting payments due," and therefore a servicer must obtain a license in order to fulfill the Act's purpose.⁸⁰

In May 2016, the New York Department of Financial Services entered into consent orders with two debt buyers that allegedly collected or attempted to collect usurious loan debts from New York consumers.⁸¹ Under the settlements, the

74. *Id.* at 454.

75. *Id.* at 454–56. "Congress amended the MLA effective January 2, 2013. This amendment created a private right of action, but only for those extensions of credit made on or after its effective date." *Id.* at 456 n.2. Because the express cause of action was not available to the Cox plaintiffs, the court examined whether an implied right of action existed under the pre-2013 version of the MLA. *Id.*

76. *Id.* at 457–58.

77. Press Release, Va. Attorney Gen., Herring Announces Settlement Valued at \$4 Million with Online Lender (Dec. 18, 2015), <http://www.oag.state.va.us/media-center/news-releases/671-december-18-2015-herring-announces-settlement-valued-at-4-million-with-online-lender>.

78. *Id.*

79. Memorandum from Kelly M. O'Sullivan, Staff Att'y, Mont. Div. Banking & Fin. Insts., to Servicers of Montana Consumer Loans 1 (Feb. 23, 2016), <https://banking.mt.gov/Portals/58/Consumer%20Loan/Consumer%20Loan%20Servicer%20Memorandum%20-%202016-02-23-16.pdf>.

80. *Id.*

81. Consent Order at 1, *In re Nat'l Credit Adjusters, LLC* (N.Y. Dep't Fin. Servs. May 16, 2016) [hereinafter *Nat'l Credit Adjusters Consent Order*], http://www.dfs.ny.gov/about/ea/ea160517_nca.pdf; Consent Order at 1, *In re Webcollex LLC* (N.Y. Dep't Fin. Servs. May 16, 2016) [hereinafter *Webcollex Consent Order*], http://www.dfs.ny.gov/about/ea/ea160517_cks.pdf.

defendants will discharge debt connected with the loan accounts they currently hold, provide refunds to affected borrowers, and pay a penalty.⁸²

Also in May 2016, the Vermont Attorney General settled claims against Billing Tree, Inc., a company that processes electronic payments, alleging that it violated consumer protection laws by processing payments for high-interest online consumer loans by unlicensed lenders.⁸³ The annual interest on the loans allegedly exceeded the maximum interest rate allowed under state law.⁸⁴ The settlement required Billing Tree to issue credits of \$153,282 to affected consumers and pay \$25,000 in civil penalties and costs.⁸⁵

In June 2016, the Michigan Attorney General's Office announced that it obtained a default judgment and a permanent injunction against Liquidation, LLC and several associated companies for providing unlawful vehicle title loans and using illegal collection practices.⁸⁶ The judgment ordered the defendants to pay over \$2 million in fines and restitution for violating the Michigan debt collection law.⁸⁷

82. Nat'l Credit Adjusters Consent Order, *supra* note 81, at 4–11; Webcollex Consent Order, *supra* note 81, at 4–7.

83. Assurance of Discontinuance at 1–4, *In re Billing Tree*, No. 304-S-16-WnCV (Vt. Super. Ct. May 19, 2016), http://ago.vermont.gov/assets/files/Consumer/Illegal_Lending/Billing%20Tree%20AOD.pdf.

84. *Id.* at 1–4 (citing VT. STAT. ANN. tit. 8, § 2233(b), VT. STAT. ANN. tit. 9, § 41a).

85. *Id.* at 4–6.

86. Press Release, Mich. Attorney Gen., Schuette Secures Victory Against Auto Title Loan Company Liquidation, LLC to Protect Michigan Residents from Illegal Title Loans (June 8, 2016), http://www.michigan.gov/ag/0,4534,7-164-46849_47203-386461-,00.html.

87. Default Judgment & Final Order for Permanent Injunction at 11–12, *Schuette v. Liquidation, LLC*, No. 16-30-CP (Mich. Cir. Ct. June 8, 2016), http://www.michigan.gov/documents/ag/6_8_16_Filed_Default_Judgment_Final_Order_for_Permanent_Injunction_526342_7.pdf.

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