

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 PLS FINANCIAL SERVICES, INC.,)
 an Illinois corporation,)
)
 PLS GROUP, INC., a Delaware)
 corporation, and)
)
 THE PAYDAY LOAN STORE OF)
 ILLINOIS, INC., an Illinois corporation,)
)
 Defendants.)
)

CASE NO. 1:12-cv-8334

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PAYMENT OF
CIVIL PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (FTC or Commission), has commenced this action by filing the Complaint, and Defendants have waived service of the Summons and the Complaint. The parties, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law and without Defendants admitting liability for any of the violations alleged in the Complaint.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s(a).

2. Venue in this district is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

3. The activities of the Defendants are in or affecting commerce, as defined in Section 4 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 44.

4. The Complaint states claims upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 56(a); Sections 621(a) and 628 of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681s(a) and 1681w, and the Disposal Rule, 16 C.F.R. Part 682; Title V, Subtitle A of the Gramm-Leach-Bliley Act (GLB Act), 15 U.S.C. §§ 6801-6809, and the Safeguards Rule, 16 C.F.R. Part 314; and the Privacy Rule, 16 C.F.R. Part 313.

5. Defendants have entered into this Stipulated Final Judgment and Order For Payment of Civil Penalties, Permanent Injunction, and Other Equitable Relief (Order) freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order and waive and release any claims they may have against the Commission, its employees, its representatives, or its agents.

7. The parties agree that each shall bear its own costs and attorneys' fees incurred in connection with this action. Defendants agree that the entry of this Order does not entitle them to seek or to obtain attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and they further waive any rights to attorneys' fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. “PLS” means PLS Financial Services, Inc., and its successors and assigns. PLS is part of a common enterprise that includes entities that hold themselves out as PLS Loan Stores and PLS Check Cashers.

2. “Group” means PLS Group, Inc., and its successors and assigns. Group is part of a common enterprise that includes entities that hold themselves out as PLS Loan Stores and PLS Check Cashers.

3. “PLS-Illinois” means The Payday Loan Store of Illinois, Inc., and its successors and assigns. PLS-Illinois is part of a common enterprise that includes entities that hold themselves out as PLS Loan Stores and PLS Check Cashers.

4. “Defendants” means PLS, Group, and PLS-Illinois, individually, collectively, or in any combination.

5. “Covered Entity” means any business entity that Group controls, directly or indirectly, which collects, handles, or stores personal information. Because PLS-Illinois is a Covered Entity, “Non-Defendant Covered Entity” means any Covered Entity other than PLS-Illinois.

6. “Fair Credit Reporting Act” or “FCRA” refers to 15 U.S.C. §§ 1681-1681x, as amended.

7. The terms “person,” “consumer,” and “consumer report” are as defined in Sections 603(b), (c), and (d), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), and 1681a(d).

8. “Personal information” means individually identifiable information from or about an individual consumer including but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a “cookie,” a static Internet Protocol (“IP”) address, or processor serial number; or (j) any information that is combined with any of (a) through (i) above.

9. “Disposal Rule” means the rule regarding the Disposal of Consumer Report Information and Records, 16 C.F.R. § 682.1 *et seq.*

10. “Consumer information” is as defined in the Disposal Rule, 16 C.F.R. § 682.1(b), *i.e.*, “any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.”

11. “Safeguards Rule” means the rule regarding the Standards for Safeguarding Customer Information, 16 C.F.R. § 314.1 *et seq.*

12. “Gramm-Leach-Bliley Act” or “GLB Act” refers to 15 U.S.C. §§ 6801-6809.

13. “Commerce” is as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

14. “Privacy Rule” means the rule regarding the Privacy of Consumer Financial Information, 16 C.F.R. § 313.1 *et seq.*

ORDER

I. CIVIL PENALTY

IT IS ORDERED that:

A. Judgment in the amount of \$ 101,500.00 (One hundred one thousand five hundred dollars) is entered against PLS and PLS-Illinois, jointly and severally, as a civil penalty, pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), as adjusted by 16 C.F.R. § 1.98(m).

B. PLS, PLS-Illinois, and their attorneys represent that, prior to or concurrently with their execution of this Order, PLS and PLS-Illinois have transferred the amount specified in paragraph A of this Section I to their attorneys, who shall hold the sum in escrow for no purpose other than payment to the Treasurer of the United States after entry of this Order by the Court. Within seven (7) days of entry of this Order, PLS's and PLS-Illinois's attorneys shall transfer the sum in the form of a wire transfer or certified or cashier's check made payable to the Treasurer of the United States. Wire transfers made pursuant to Section I of this Order shall be made in accordance with instructions provided by the Department of Justice. The check or written confirmation of the wire transfer shall be delivered to the Director, Consumer Protection Branch, U.S. Department of Justice, Civil Division, P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include the title of this litigation. In addition, PLS's and PLS-Illinois's attorneys shall send written confirmation of the payment to the FTC's counsel of record: Maria Del Monaco, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114, Re: *United States of America v. PLS Financial Services, Inc.*

C. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand return of these funds, directly or indirectly, through counsel or otherwise.

D. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that:

A. Defendants and their agents, servants, and employees and all persons in active concert or participation with any one or more of them, including all Covered Entities, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined, in connection with their advertising, marketing, promotion, or offering of any service or product in or affecting commerce, from making any representation, in any manner, expressly or by implication, about the extent to which Defendants maintain and protect the security, privacy, confidentiality, or integrity of any personal information collected from or about consumers, unless the representation is true, and non-misleading.

B. Defendants and their agents, servants, and employees and all persons in active concert or participation with any one or more of them, including all Covered Entities, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

1. Violating Section 628 of the FCRA or the Disposal Rule, including but not limited to, by maintaining or otherwise possessing consumer information for a business purpose

and failing to properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

2. Violating Title V, Subtitle A of the GLB Act or the Safeguards Rule, including but not limited to, by failing to develop, implement, or maintain a comprehensive written information security program containing reasonable administrative, technical and physical safeguards, including safeguards used to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information; and

3. Violating Title V, Subtitle A of the GLB Act or the Privacy Rule, including but not limited to, by failing to provide consumers, no later than when a customer relationship arises and annually for the duration of that relationship, a clear and conspicuous notice that accurately reflects its privacy policies and practices, including its security policies and practices.

C. In the event that any of the statutory sections and/or rules identified in paragraph B are hereafter amended or modified, compliance with that statutory section or rule as so amended or modified shall not be a violation of this Order.

III. REQUIRED INFORMATION SECURITY PROGRAM

IT IS FURTHER ORDERED that Defendants, for themselves and all Non-Defendant Covered Entities, shall, no later than the date of entry of this Order, establish and implement, and thereafter maintain, a comprehensive information security program that is designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to Defendants' and the Covered Entity's size and complexity, the nature and scope of Defendants'

and the Covered Entity's activities, and the sensitivity of the personal information collected from or about consumers, including:

A. The designation of an employee or employees to coordinate and be accountable for the information security program;

B. The identification of material internal and external risks to the security, confidentiality and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and the assessment of the sufficiency of any safeguards in place to control the risks. At a minimum, this risk assessment should include consideration of the risks in each relevant area of operations, including but not limited to (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other system failures;

C. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing and monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;

D. The development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information received from Defendants and the Covered Entity, and requiring service providers by contract to implement and maintain appropriate safeguards; and

E. The evaluation and adjustment of the information security program in light of the results of the testing and monitoring required by paragraph C of this Section III, any material changes to operations or business arrangements, or any other circumstances that Defendants or

the Covered Entity knows or has reason to know may have a material impact on the effectiveness of the information security program.

IV. ASSESSMENT REQUIREMENTS

IT IS FURTHER ORDERED that:

A. In connection with their compliance with Sections II(B)(1), II(B)(2) and III of this Order, Defendants shall obtain initial and biennial assessments and reports (Assessments) for Defendants and any Non-Defendant Covered Entity from a qualified, objective, independent third-party professional who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the Order for the initial Assessment; and (2) each two (2) year period thereafter for twenty (20) years after service of the Order for the biennial Assessments. Each Assessment shall:

1. Set forth the specific administrative, technical, and physical safeguards that Defendants or the Covered Entity has implemented and maintained during the reporting period;

2. Explain how such safeguards are appropriate to Defendants' or the Covered Entity's size and complexity, the nature and scope of Defendants' or the Covered

Entity's activities, and the sensitivity of the personal information collected from or about consumers;

3. Explain how the safeguards that have been implemented meet or exceed the protections required by Section 628 of the FCRA, the Disposal Rule, the Safeguards Rule, and Section III of this Order; and

4. Certify that Defendants' or the Covered Entity's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

B. Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Defendants and any Covered Entity shall provide the initial Assessment to the Associate Director of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by Defendants until the Order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, initial and biennial Assessments shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, with the subject line *USA v. PLS Financial Services, Inc.*, FTC File Number 1023172. *Provided, however,* that, in lieu of overnight courier, Assessments may be sent by first class mail, but only if an electronic version of such Assessments is contemporaneously sent to the Commission at DEBrief@ftc.gov.

V. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after entry of this Order, each Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendants delivered a copy of this Order, Defendants must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the

products and services offered, and the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

B. For 20 years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in (a) any designated point of contact; or (b) the structure of any Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *USA v. PLS Financial Services, Inc.*

VII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants must maintain the following records:

A. Accounting records showing the revenues from all goods and services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Written complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each advertisement or other marketing material.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also

authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiff may use all other lawful means, including posing, through their representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1.

IX. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED:

JOAN B. GOTTSCHALL
UNITED STATES DISTRICT JUDGE

DATED: _____

STIPULATED AND AGREED TO:

OF COUNSEL:

JON MILLER STEIGER
Director, East Central Region

MARIA DEL MONACO
JONATHAN L. KESSLER
Attorneys
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, OH 44114
Phone: (216) 263-3405 (Del Monaco)
Phone: (216) 263-3436 (Kessler)
Fax: (216) 263-3426
mdelmonaco@ftc.gov
jkessler@ftc.gov

Dated: October 18, 2012

FOR PLAINTIFF THE UNITED STATES OF
AMERICA

STUART F. DELERY
Acting Assistant Attorney General
Civil Division

MICHAEL S. BLUME
Director

RICHARD GOLDBERG
Assistant Director
Consumer Protection Branch

By: 
JOHN W. BURKE
Trial Attorney, Consumer Protection Branch
United States Department of Justice
P.O. Box 386
Washington, DC 20044
Phone: 202-353-2001
Fax: 202-514-8742
josh.burke@usdoj.gov

GARY S. SHAPIRO
Acting United States Attorney
Northern District of Illinois

THOMAS P. WALSH
Chief, Civil Division
Northern District of Illinois
219 South Dearborn, 5th Floor
Chicago, IL 60604
Phone: 312-353-5312
thomas.walsh2@usdoj.gov

FOR DEFENDANT
PLS FINANCIAL SERVICES, INC.:

Dated: 6/11/12



ROBERT WOLFBERG, President

FOR DEFENDANT PLS GROUP, INC.:

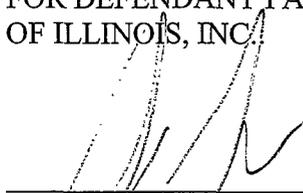
Dated: 6/11/12



ROBERT WOLFBERG, President

FOR DEFENDANT PAYDAY LOAN STORE
OF ILLINOIS, INC.:

Dated: 6/11/12



DANIEL WOLFBERG, President

Dated: 06/12/12

Kirk D. Jensen/CCJ
Margo H.K. Tank/CCJ
MARGO H.K. TANK, Esq.
KIRK D. JENSEN, Esq.
Buckley Sandler LLP
1250 24th Street, NW, Suite 700
Washington, DC 20037
Phone: (202) 349-8050 (Tank)
Phone: (202) 349-8048 (Jensen)
Fax: (202) 349-8080
mtank@buckleysandler.com
kjensen@buckleysandler.com

Attorneys for Defendants PLS Financial Services,
Inc., PLS Group, Inc., and The Payday Loan Store
of Illinois, Inc.