

# ORDER

BEFORE THE ADMINISTRATOR  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF BANKING

TO: SCS Processing, LLC  
d/b/a Everest Cash Advance  
Hunkins Waterfront Plaza  
Main Street, Suite 556  
Charlestown, Nevis, West Indies  
Respondent

## PURPOSE

This is an order issued by the Administrator, State of Wisconsin, Department of Financial Institutions, Division of Banking and directed to respondent.

## JURISDICTION and AUTHORITY

The State of Wisconsin, Department of Financial Institutions, Division of Banking ("division") shall enforce all laws relating to the lending of money under s. 138.14, Stats., in the State of Wisconsin, and shall enforce and cause to be enforced every law relating to the supervision and control thereof. Sec. 220.02(2)(b), Stats.

The intent of s. 220.02(2)(b), Stats., is to give the division jurisdiction to enforce and carry out all laws relating to small loan companies or other loan companies or agencies. Sec. 220.02(3), Stats.

Respondent is not licensed under s. 138.14, Stats., with the division. Upon information and belief, respondent is located at the address indicated above.

Respondent is a regulated entity under the supervision and control of the division. Sec. 220.04(9)(a)2., Stats.

The division may issue any general or special order in execution of or supplementary to s. 138.14, Stats. Sec. 138.14(8)(a), Stats.

## FINDINGS

### The division finds as follows:

1. On or about April 5, 2012, the division received a complaint filed against respondent by Ms. \_\_\_\_\_ ('\_\_\_\_\_'), a Wisconsin resident. The complaint included a copy of \_\_\_\_\_ loan agreement with respondent. **Exs. 1 and 2.**
2. \_\_\_\_\_ s loan agreement indicates that she obtained a \$500 loan from respondent on February 1, 2012. The loan agreement disclosed an annual percentage

rate of 730%, a maturity date of February 17, 2012, and provided respondent with authorization to initiate ACH debits to [redacted] bank account to repay the loan.

3. On April 5, 2012, the division wrote to respondent regarding respondent's unlicensed payday lending activity. **Ex. 3.**

4. On or about April 26, 2012, the division received a letter from respondent. Respondent indicated that it is organized in the country of Nevis, has no physical presence in the State of Wisconsin or elsewhere in the United States, and is not now, and has never been, engaged in activities covered by Wisconsin law. Respondent also indicated that Nevis is a sovereign nation whose contractual choice of law provisions are fully recognized by the United States of America, all of respondent's lending activities are fully performed in Nevis, and Wisconsin law does not apply to respondent's business practices. **Ex. 4.**

5. On May 23, 2012, the division informed respondent that it disagreed with respondent's position and asked respondent to provide written confirmation that it would not originate or service payday loans involving Wisconsin residents. **Ex. 5.** The division received no response from respondent.

6. On or about February 11, 2013, the division received a complaint filed against respondent by Mr. [redacted] ("[redacted]"), a Wisconsin resident. **Ex. 6.**

7. [redacted] indicated that he obtained a \$500 payday loan from respondent on or about November 4, 2012. The loan had a maturity date of December 4, 2012. [redacted] stated that respondent debited \$150 from his checking account on December 4, 2012.

8. On February 13, 2013 and March 14, 2013, the division wrote to respondent regarding respondent's unlicensed payday lending activity. **Exs. 7 and 8.** The division received no response from respondent.

9. Pursuant to s. 138.14(1), Stats., "Payday loan" includes a transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept the individual's authorization to initiate one or more electronic fund transfers from the account, to wait a period of time before initiating the electronic fund transfer or transfers, and to loan to the individual, for a term of 90 days or less, before initiating the electronic fund transfer or transfers, an amount that is agreed to by the individual.

10. Pursuant to s. 138.14(2), Stats., a person may not originate or service a payday loan involving a Wisconsin resident without first having obtained a payday lender license from the division for each place of business at which the person originates or services payday loans involving Wisconsin residents. The license is required for all payday loans made to a Wisconsin resident, regardless of whether the loan is made by face-to-face contact, mail, telephone, Internet, or any other means.

11. Respondent violated s. 138.14(2), Stats., by originating and servicing a payday loan involving a Wisconsin resident without first having obtained a payday lender license from the division.

12. Pursuant to s. 138.14(15)(b), Stats., if a person who is not licensed under s. 138.14, Stats., makes a payday loan to a customer, the loan is void, the customer is not obligated to pay any amounts owed on the loan, and the customer may recover from the person all amounts the customer has paid to the person.

## ORDER

### Based on the foregoing, IT IS HEREBY ORDERED AS FOLLOWS:

Respondent shall not originate or service payday loans involving Wisconsin residents.

Respondent shall immediately discontinue any and all violations of s. 138.14, Stats., and ch. DFI-Bkg 75, Admin. Code.

Respondent shall void \_\_\_\_\_'s payday loan and shall refund to \_\_\_\_\_ any and all monies that have been paid to respondent by \_\_\_\_\_. The refund check shall be made payable to \_\_\_\_\_, and shall be forwarded to the division along with the voided loan agreement, a letter of explanation to \_\_\_\_\_ and a stamped envelope addressed to \_\_\_\_\_. The check, voided loan agreement, letter, and stamped envelope shall be received by the division no later than September 27, 2013.

Respondent shall void \_\_\_\_\_'s payday loan and shall refund to \_\_\_\_\_ any and all monies that have been paid to respondent by \_\_\_\_\_. The refund check shall be made payable to \_\_\_\_\_ and shall be forwarded to the division along with the voided loan agreement, a letter of explanation to \_\_\_\_\_, and a stamped envelope addressed to \_\_\_\_\_. The check, voided loan agreement, letter, and stamped envelope shall be received by the division no later than September 27, 2013.

For each Wisconsin resident for whom respondent originated a payday loan on or after January 1, 2011, respondent shall void any unpaid payday loan and shall refund any and all moneys that the Wisconsin resident paid to respondent. Respondent shall forward to the division the voided loan agreements, refund checks, letters of explanation, and stamped envelopes addressed to each Wisconsin resident. The checks, voided loan agreements, letters and stamped envelopes shall be received by the division by September 27, 2013.

The provisions of this order shall be binding upon respondent and respondent's directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of its affairs. The provisions of the order shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this order shall have been modified, terminated, suspended, or set aside by the division.

The effective date of this order shall be the date it is served, and service is complete upon mailing. Secs. 227.48(1), Stats., and DFI—Bkg 11.09, Admin. Code.

Dated and mailed at Madison, Wisconsin this 28th day of August, 2013.

By: \_\_\_\_\_  
Michael J. Mach, Administrator  
Wisconsin Department of Financial Institutions  
Division of Banking  
P.O. Box 7876  
201 W. Washington Avenue, Suite 500  
Madison, WI 53707-7876  
tel. (608) 266-0451  
fax (608) 267-6889

#### APPEAL

The procedures to appeal this order are set forth in s. 227.42, Stats. Pursuant to s. 227.42(1), Stats., any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

All four criteria set for in s. 227.42(1), Stats., must be met for a person to have the right to a hearing. In particular, the attention of an individual or entity requesting a hearing is directed to the requirement to demonstrate that there is a dispute of material fact regarding the basis or bases for the action being taken by the division.

The request shall be sent to:

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