

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 16 2015



IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
Civil Action No. 15-cv-00299
CLERK

Consumer Financial Protection Bureau
and Navajo Nation,

Plaintiffs,

v.

S/W Tax Loans, Inc. formerly d/b/a
Fast Refund Loans, Inc.; J Thomas
Development of NM, Inc. formerly
d/b/a H&R Block; Dennis R. Gonzales;
and Jeffrey Scott Thomas,

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER

The Consumer Financial Protection Bureau ("Bureau") and the Navajo Nation ("Nation") commenced this civil action on April 14, 2015 to obtain injunctive relief, monetary relief, civil monetary penalties, and other relief from S/W Tax Loans, Inc. formerly d/b/a Fast Refund Loans, Inc.; J Thomas Development of NM, Inc. formerly d/b/a H&R Block; Dennis R. Gonzales; and Jeffrey Scott Thomas (collectively, "Defendants"). The Complaint alleges violations of the Truth In Lending Act ("TILA") and its implementing regulations, 12 U.S.C. § 1601 *et seq.*, 12 C.F.R. pt. 1026, and the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§ 5531, 5536(a)(1), in

connection with Defendants' offering, provision, and facilitation of loans issued to consumers based on the consumers' anticipated tax refunds.

The Parties, by and through their respective counsel, request that the Court enter this Stipulated Final Judgment and Order ("Order"). Defendants have waived service of the Summons and Complaint.

The parties having requested the Court to enter this Order, it is therefore ORDERED, ADJUDGED, and DECREED as follows:

INTRODUCTION

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. Venue in this District is proper.
3. The Complaint states claims upon which relief may be granted under 12 U.S.C. §§ 5531 and 5536 and the Truth in Lending Act, as implemented by 12 C.F.R. §1026.17. The relief provided in this order is appropriate and available under 12 U.S.C. §§ 5564 and 5565.
4. The Parties agree to the entry of this Order, without adjudication of any issue of fact or law, to settle and resolve all matters in this dispute arising from the conduct alleged in the Complaint to the date of entry of this Order.

5. The Defendants neither admit nor deny any allegations in the Complaint, except as specifically stated in this Order. For purposes of this Order, the Defendants admit to the facts necessary to establish the Court's jurisdiction over the Defendants and the subject matter of this action.

6. The Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Defendants also waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action. Each party will bear its own costs and expenses, including without limitation attorneys' fees.

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

DEFINITIONS

The following definitions apply to this Order:

8. **"Affected Consumer"** means any consumer who received a Refund Anticipation Loan from Southwest from January 1, 2011 through the Effective Date.

9. **"Corporate Defendants"** means, individually or collectively, Southwest, J Thomas Development of NM, Inc. formerly d/b/a H&R Block, and their successors or assigns.

10. **"Defendants"** means the Corporate Defendants and the Individual Defendants, individually, collectively, or in any combination.

11. **"Effective Date"** means the date that this Order is entered by this Court.

12. **"Enforcement Director"** means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his delegate.

13. **"Individual Defendants"** means, individually or collectively, Jeffrey Scott Thomas and Dennis R. Gonzales.

14. **"Refund Anticipation Loan"** means any loan product or extension of credit that is secured by or based upon a consumer's anticipated tax refund.

15. **"Related Consumer Action"** means a private action by or on behalf of one or more consumers or an enforcement action by another government agency brought against Defendants based on substantially the same facts as described in the Complaint.

16. **"Relevant Period"** means the period from January 1, 2011 through the Effective Date.

17. **"Southwest"** means S/W Tax Loans, Inc. formerly d/b/a Fast Refund Loans, Inc., and its successors and assigns.

ORDER

A. Conduct Provision

18. For 5 years from the Effective Date, the Individual Defendants are restrained and enjoined from (1) offering, marketing, selling, or providing any Refund Anticipation Loan, (2) assisting any person in offering, marketing, selling, or providing any Refund Anticipation Loan, and (3) receiving any monies or consideration from, financing, holding any ownership interest in, providing services to, or working in any capacity for any person engaged in the offering, marketing, selling, or provision of Refund Anticipation Loans.

19. The Corporate Defendants are permanently restrained and enjoined from (1) offering, marketing, selling, or providing any Refund Anticipation Loan, (2) assisting any person in offering, marketing, selling, or providing any Refund Anticipation Loan, and (3) receiving any monies or consideration from, financing, holding any ownership interest in, providing services to, or working in any capacity for any person engaged in the offering, marketing, selling, or provision of Refund Anticipation Loans.

20. Defendants will provide all birth certificates, social-security cards, and other identification documents of Affected Consumers that are in Defendants' possession, custody, or control to the Bureau or its delegate within

15 days of the Effective Date so that the documents may be returned to the Affected Consumers. Defendants must certify to the Bureau that they have complied with this paragraph within 20 days of the Effective Date.

B. Consumer Information

21. Defendants and their officers, agents, servants, employees, and attorneys who receive actual notice of this Order, whether acting directly or indirectly, may not disclose, use, or benefit from customer information, including the name, address, telephone number, email address, social-security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that the Defendants obtained before the Effective Date relating to a consumer who applied for or took out a Refund Anticipation Loan from Southwest. But consumer information may be disclosed if requested by the Bureau, the Nation, or the Court.

C. Redress

22. A judgment for equitable monetary relief is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$254,267. This amount is in recognition of the fact that Defendants have already paid \$183,733 in remediation to Affected Consumers.

23. Within 10 days of the Effective Date, Defendants must pay \$254,267, by wire transfer, to the Bureau or the Bureau's agent according to the Bureau's wiring instructions, in full satisfaction of the judgment as set forth in ¶ 22.

24. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for Affected Consumers, including but not limited to refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

25. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau may apply any remaining funds for such other equitable relief (including consumer-information remedies) as it determines to be reasonably related to the violations described in the Complaint. Any funds not used for such equitable relief will be deposited in the U.S. Treasury as disgorgement. The Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this paragraph. Redress provided under this section does not limit consumers' rights in any way.

D. Civil Money Penalties

26. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint, Defendants, jointly and severally, must pay a civil money penalty of \$438,000 to the Bureau.

27. Within 10 days of the Effective Date, the Defendants must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

28. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau, as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

29. The Defendants must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, the Defendants may not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

30. To preserve the deterrent effect of the civil money penalty, in any Related Consumer Action, the Defendants may not argue that they are entitled to, nor may the Defendants benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action ("Penalty Offset"). If the court in any Related Consumer Action grants such a Penalty Offset, the Defendants must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

E. Additional Monetary Provisions

31. In the event of any default on the Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

32. The Defendants must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to the Defendants.

33. Under 31 U.S.C. § 7701, the Defendants, unless they already have done so, must furnish to the Bureau their respective taxpayer-identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

34. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, the Defendants must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that the Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

35. Under § 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), the Bureau may obtain from any consumer reporting agency a consumer report concerning any Defendant. The Bureau may use any such report to collect on and report any amount not paid as required by this Consent Order.

F. Reporting Requirements

36. For 5 years from the Effective Date, the Defendants must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger,

or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against any of the Defendants; or a change in the Defendants' names or addresses. The Defendants must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

37. Within 7 days of the Effective Date, the Defendants must:
 - a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with all of the Defendants;
 - b. Identify all businesses for which any of the Defendants are the majority owner, or that any of the Defendants directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

- d. Identify the telephone numbers and all email, Internet, physical, and postal addresses, including all residences, of the Individual Defendants;
- e. Describe in detail the Individual Defendants' involvement in any business for which either Defendant performs services in any capacity or which he wholly or partially owns, including each Defendant's title, role, responsibilities, participation, authority, control, and ownership.

G. Recordkeeping

38. The Defendants must create and maintain for at least 5 years from the Effective Date all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau or to the Nation.

H. Notices

39. Unless otherwise directed in writing by the Bureau, the Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "CFPB, Navajo Nation v. S/W Tax Loans, Inc., J Thomas Development of NM, Inc., Jeffrey Scott Thomas,

and Dennis Gonzales, Case No. [the number assigned to this matter by the U.S. District Court for the District of New Mexico]" and send them either:

By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington DC 20006; or

By first-class mail to the below address and contemporaneously by
email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington DC 20552

I. Cooperation with the Bureau and the Nation

40. The Defendants must cooperate fully to help the Bureau or the Nation determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. The Defendants must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau or the Nation.

41. For 5 years from the Effective Date, the Defendants must cooperate fully with the Bureau and the Nation in this matter and in any investigation

related to or associated with the conduct described in the Complaint. The Defendants must provide truthful and complete information, evidence, and testimony. Defendants must appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau or the Nation may reasonably request upon reasonable notice, at such places and times as the Bureau or the Nation may designate, without the service of compulsory process.

J. Compliance Monitoring

42. Within 14 days of receipt of a written request from the Bureau or the Nation, the Defendants must submit compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

43. For purposes of this section, the Bureau or the Nation may communicate directly with the Defendants, unless the Defendants retain counsel related to these communications.

44. The Defendants must permit Bureau or Nation representatives to interview any employee or other person affiliated with the Defendants who have agreed to such an interview. The person interviewed may have counsel present.

45. Nothing in this Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

K. Release

46. The Bureau and the Nation release and discharge the Defendants from all potential liability for law violations that the Bureau or the Nation has or might have asserted based on the practices described in the Complaint, to the extent such practices occurred before the Effective Date and the Bureau or the Nation knows about them as of the Effective Date. The Bureau may use the practices described in this Order in future enforcement actions against the Defendants and their affiliates, including without limitation to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau or the Nation to determine and ensure compliance with the Order, or to seek penalties for any violations of the Order.

L. Retention of Jurisdiction

47. The Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

Dated this 16th day of April, 2015


United States District Court Judge