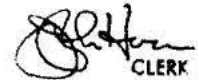


**FILED**

APR 04 2014

  
CLERK

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION**

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FEDERAL TRADE COMMISSION,	*	
	*	Case No. 3:11-cv-3017-RAL
Plaintiff,	*	
	*	
v.	*	
	*	
PAYDAY FINANCIAL, LLC, et al.,	*	
	*	
Defendants.	*	

---

**STIPULATED ORDER FOR PERMANENT INJUNCTION  
AND CIVIL PENALTIES**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), filed this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, to obtain monetary civil penalties and injunctive and other equitable relief against Payday Financial, LLC, also d/b/a Lakota Cash, Big Sky Cash, and Big \$ky Cash; Great Sky Finance, LLC, also d/b/a Great Sky Cash, Great \$ky Cash, and G\$ky; Western Sky Financial, LLC; Red Stone Financial, LLC, also d/b/a Red Stone Cash; Management Systems, LLC, also d/b/a G\$ky; 24-7 Cash Direct, LLC; Red River Ventures, LLC; High Country Ventures, LLC; Financial Solutions, LLC; and Martin A. Webb (collectively, "Defendants") for alleged acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Trade Regulation Rule Concerning Credit Practices ("Credit Practices Rule"), 16 C.F.R. § 444, and the Electronic Fund Transfer Act ("EFTA"), 15

U.S.C. §§ 1693-1693r, and its implementing Regulation E, 12 C.F.R. § 205.10, in connection with the offering and extension of credit in the form of high-fee, short-term loans, and the collection of those loans.

Recognizing the costs, risks, and other burdens of continued litigation, and wishing to resolve this matter fully without further adjudication, and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the FTC and Defendants stipulate to the entry of this Stipulated Order For Permanent Injunction and Civil Penalty ("Order").

THEREFORE, IT IS ORDERED as follows:

#### FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. The Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendants pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. § 45(m)(I)(A), 45(a), 53(b) and 57(b).
2. Venue in the District of South Dakota is proper under 28 U.S.C. § 1391(b) and (c) and 1395(a), and 15 U.S.C. § 53(b).
3. This is an action by the FTC instituted under Section 16(a)(1) of the FTC Act, 15 U.S.C. § 56(a)(1). The Amended Complaint seeks monetary civil penalties and permanent injunctive relief against Defendants' alleged deceptive acts or practices in connection with the offering and extension

of credit in the form of high-fee, short-term loans, and the collection of those loans.

4. The FTC has authority under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act to seek civil penalties and permanent injunctive relief.
5. Defendants neither admit nor deny any of the allegations set forth in the Amended Complaint, except as specifically stated in this Order. Only for purposes of this Order, Defendants admit the facts necessary to establish jurisdiction.
6. Defendants waive any claims that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order, and agree to bear their own costs and attorney fees.
7. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.
8. The entry of this Order is in the public interest.
9. This Order supersedes the Judgment and Stipulated Order for Permanent Injunction and Monetary Relief entered on December 5, 2013, Doc. 148, and includes the monetary disgorgement amount ordered therein.

#### DEFINITIONS

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

1. **"Assisting others"** includes, but is not limited to: (A) performing customer service functions, including but not limited to, receiving or



responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including but not limited to, any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication; (C) formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet protocol address or domain name registration for any Internet websites, affiliate marketing services, or media placement service; (D) providing names of, or assisting in the generation of, potential customers; (E) performing marketing, billing, or payment services of any kind; or (F) acting or serving as an owner, officer, director, manager, or principal of any entity.

2. **"Collection of debts"** means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due.
3. **"Corporate Defendants"** means: Payday Financial, LLC, also doing business as Lakota Cash, Big Sky Cash, and Big \$ky Cash; Great Sky Finance, LLC, also doing business as Great Sky Cash, Great \$ky Cash, and G\$ky; Western Sky Financial, LLC; Red Stone Financial, LLC, also doing business as Red Stone Cash; Management Systems, LLC, also doing business as G\$ky; 24-7 Cash Direct, LLC; Red River Ventures, LLC; High Country Ventures, LLC; and Financial Solutions, LLC.

4. **"Credit"** means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
5. **"Debt"** means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
6. **"Defendants"** means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.
7. **"Individual Defendant"** means Martin A. Webb.
8. **"Person"** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

#### **ORDER**

##### **PROHIBITED COLLECTION PRACTICES**

I. **IT IS ORDERED** that Defendants and their officers, agents, servants, and employees, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the collection of a debt from any consumer, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, or assisting others who are misrepresenting, expressly or by implication:
  - 1. That any person is authorized to garnish the pay of a consumer without first obtaining a court order authorizing such garnishment;
  - 2. That, before any person sends a garnishment request to a consumer's employer, such person has notified the consumer of his or her intent to garnish and has provided the consumer with the opportunity to dispute the debt that is the subject of the garnishment;
  - 3. That any person can obtain a valid order to garnish the pay of a consumer by suing the consumer; or
  - 4. Any other fact material to the collection or attempt to collect a debt.
- B. Contacting, or assisting others in contacting, directly or indirectly, a consumer's employer unless the communication is in connection with seeking garnishment of the consumer's wages pursuant to a valid court order authorizing such garnishment in compliance with this Order, or the communication is for the purpose of acquiring information about the consumer's location; or
- C. Disclosing, or assisting others in disclosing, directly or indirectly, the existence of a consumer's debt or purported debt to any person other than Defendants' attorneys and agents, debt collectors, debt



purchasers, the consumer, the consumer's spouse, the consumer's parent (if the consumer is a minor), the consumer's guardian, the consumer's executor, the consumer's administrator, the consumer's attorney, a consumer reporting agency if permitted by law, the creditor, the creditor's attorney, or any other person pursuant to subpoena, upon court order, or where otherwise required by law, unless the disclosing or assisting party has the prior express consent of the consumer given directly to such party, the express permission of a court of competent jurisdiction, or he or she can show that such disclosure is reasonably necessary to effectuate a post judgment judicial remedy.

**PROHIBITION AGAINST VIOLATING THE CREDIT PRACTICES RULE**

**II. IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, and employees, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the extension of credit to consumers, are hereby permanently restrained and enjoined from:

- A. Taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings unless:
  - (i) The assignment by its terms is revocable at the will of the debtor,

- (ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment,
  - (iii) The assignment applies only to wages or other earnings already earned at the time of the assignment, or
  - (iv) The assignment is otherwise lawful based on the controlling law at the time.
- B. Assisting others in taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings, unless the assignment is made pursuant to Section II(A)(i), II(A)(ii), II(A)(iii), or II(A)(iv) above;
- C. Taking or receiving any funds pursuant to an assignment of wages or other earnings, unless the assignment is made pursuant to Section II(A)(i), II(A)(ii), II(A)(iii), or II(A)(iv) above;
- D. Assisting others in taking or receiving from a consumer any funds pursuant to an assignment of wages or other earnings, unless the assignment is made pursuant to Section II(A)(i), II(A)(ii), II(A)(iii), or II(A)(iv) above; or
- E. Violating any other provision of the Credit Practices Rule, 16 C.F.R. § 444.



**PROHIBITED ELECTRONIC FUND TRANSFER PRACTICES**

**III. IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, and employees, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device are prohibited from: (A) conditioning the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers in violation of the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r, and Regulation E, 12 C.F.R. § 1005.10(e)(1); or (B) violating any other provision of the Electronic Fund Transfer Act and Regulation E.

**PROHIBITED DEBT COLLECTION LITIGATION PRACTICES**

**IV. IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, and employees, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device are prohibited from bringing any legal action on a debt against any consumer, provided, however, that if any Defendant or Person subject to this Order is named as a defendant in a lawsuit or any other similar proceeding, that Defendant or Person may defend against the suit and file any counterclaim deemed appropriate by that Defendant or Person.

**PROHIBITED LENDING PRACTICES**

**V. IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, and employees, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, or offering of any loan or other extension of credit to consumers, are hereby restrained and enjoined from:

- A. Misrepresenting, or assisting others who are misrepresenting, expressly or by implication:
1. That Defendants will automatically withdraw the full amount owed, including applicable fees, from a consumer's bank account on one specific date;
  2. That a consumer's total of payments will be equal to the amount financed plus a stated finance charge when in fact the consumer's payment will also include interest charges and/or other fees; or
  3. Whether, and the extent to which, a consumer's payment will be applied to principal repayment, finance charges, interest, and/or other fees.

- B. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

**MONETARY RELIEF**

**VI. IT IS FURTHER ORDERED** that:

- A. Judgment is hereby entered in favor of the Commission and against Defendant Payday Financial LLC in the amount of \$550,000 (five hundred fifty thousand), as a civil penalty for violations of the Credit Practices Rule, 16 C.F.R. § 444 (the "Civil Penalty"), as alleged in Count IV of Plaintiff's Amended Complaint.
- B. Judgment is hereby entered in favor of the Commission and against Defendants Payday Financial LLC and Financial Solutions LLC, jointly and severally, in the amount of \$417,740 (four hundred seventeen thousand seven hundred forty), as disgorgement for unjust enrichment for violations of Section 5 of the FTC Act, 15 U.S.C § 45, as alleged in Count I of Plaintiff's Amended Complaint. The parties to this Order acknowledge and agree that this amount has already been paid in full.
- C. Upon Commission approval of this proposed settlement, Defendants shall consent to a joint motion to release funds held in the Court Registry, in the amount specified in Section VI (A) of this order to the Treasurer of the United States in accordance with instructions provided by the FTC.



- D. In the event of any default in payment, the entire unpaid judgment, together with interest, as computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due and payable.
- E. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- F. The facts alleged in the Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- G. The facts alleged in the Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- H. Defendants agree that the judgment for \$550,000 (five hundred fifty thousand), as specified in Section VI (A), represents a civil penalty owed to the government of the United States, is not compensation for actual pecuniary loss, and, therefore, as to the Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

- I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Number or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

#### **ORDER ACKNOWLEDGMENT**

**VII. IT IS FURTHER ORDERED** that Defendants obtain acknowledgements 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 5 years after entry of this Order, each Individual Defendant, for itself and for any business that (i) is majority owned or directly or indirectly controlled by any Defendant, and (ii) engages in providing consumer credit or collecting debt, and each Corporate 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 the extension of credit to consumers or the collection of debts; and (3) any business entity resulting from any change in structure as set forth in the Section VIII titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others,

delivery must occur before they assume their responsibilities.

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

#### **COMPLIANCE REPORTING**

**VIII. 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.
  - 1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that 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 goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which the Individual Defendant must describe if he knows or should know due to his own involvement); (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;

2. Additionally, the Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email, and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any business in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 15 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly 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.

2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business for which such Defendant performs services whether as an employee or otherwise and any such entity in which such Defendant has any ownership interest, and identify its name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or 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](mailto: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, N.W.  
Washington, D.C. 20580  
RE: *FTC v. Payday Financial, LLC*, X110050

**RECORDKEEPING**

**IX. IT IS FURTHER ORDERED** that Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants in connection with the offering and extension of credit or the collection of debts and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints concerning the subject matter of the Order, 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 consumer contract and unique advertisement or marketing material.

#### **COMPLIANCE MONITORING**

**X. 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, 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 is 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, provided that Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order for one or more of the protections set forth in Rule 26(c).
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission 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 may use all other lawful means, including posing, through its 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 Section 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

#### **RETENTION OF JURISDICTION**

**XI. IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED AND AGREED:

FOR DEFENDANTS

PAYDAY FINANCIAL, LLC; GREAT SKY FINANCE, LLC; WESTERN SKY  
FINANCIAL, LLC; RED STONE FINANCIAL, LLC; MANAGEMENT SYSTEMS,  
LLC; 24-7 CASH DIRECT, LLC; RED RIVER VENTURES, LLC; HIGH  
COUNTRY VENTURES, LLC; FINANCIAL SOLUTIONS, LLC AND MARTIN A.  
WEBB



Date: 1-13-14

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COUNSEL FOR DEFENDANTS



FOR DEFENDANTS MARTIN A. WEBB AND PAYDAY FINANCIAL, LLC;  
GREAT SKY FINANCE, LLC; WESTERN SKY FINANCIAL, LLC; RED STONE  
FINANCIAL, LLC; MANAGEMENT SYSTEMS, LLC; 24-7 CASH DIRECT, LLC;  
RED RIVER VENTURES, LLC; HIGH COUNTRY VENTURES, LLC; AND  
FINANCIAL SOLUTIONS, LLC



Date:



MARTIN WEBB, INDIVIDUALLY AND AS  
AN OFFICER OF PAYDAY FINANCIAL, LLC;  
GREAT SKY FINANCE, LLC; WESTERN SKY  
FINANCIAL, LLC; RED STONE FINANCIAL,  
LLC; MANAGEMENT SYSTEMS, LLC;  
24-7 CASH DIRECT, LLC; RED RIVER  
VENTURES, LLC; HIGH COUNTRY  
VENTURES, LLC; AND FINANCIAL  
SOLUTIONS, LLC.

FOR THE PLAINTIFF

FEDERAL TRADE COMMISSION: \_\_\_\_\_



Date: 4/3/14


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NIKHIL SINGHVI  
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(202) 326-3172 (Grajales)  
(202) 326-3480 (Singhvi)  
(202) 326-2914 (Zullow)  
(202) 326-3768 (facsimile)  
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Date: 4/3/2014

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IT IS SO ORDERED, this day of April 4, 2014



Roberto Lange  
United States District Judge