

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
16th DIVISION

STATE OF ARKANSAS *ex rel.*  
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO. CV 2008-010593

QCA, INC.,  
D/B/A QUICK CASH OF ARKANSAS,  
HARRISON QUICK CASH, INC.,  
CQC-A, INC.,  
D/B/A CONWAY QUICK CASH,  
RQC, INC.,  
D/B/A RUSSELLVILLE QUICK CASH,  
QCP, INC.,  
D/B/A QUICK CASH PROCESSING,  
FREEDOM FINANCE COMPANY, INC.,  
D/B/A QUICK CASH OF SOUTH DAKOTA,  
JAY BRESLAU,  
AND KELLY BRESLAU

FILED 02/09/2009 14:09:54  
Pat O'Brien Pulaski Circuit Clerk  
CRI By \_\_\_\_\_

DEFENDANTS

**CONSENT JUDGMENT**

The State of Arkansas *ex rel.*, Dustin McDaniel, Attorney General, filed the above-captioned enforcement action against the above named corporate and individual Defendants pursuant to the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.* The Attorney General and the Defendants wish to resolve this action. The Attorney General and the Defendants recognize that this Consent Judgment has been negotiated by the parties in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest. Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

**I. Definitions**

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.*

2. Unless otherwise indicated, any reference to "Defendants" includes QCA, Inc., Harrison Quick Cash, Inc., CQC-A, Inc., RQC, Inc., QCP, Inc., Freedom Finance Company, Inc., Jay Breslau, and Kelly Breslau.

3. Unless otherwise indicated, the term "Affiliates of the Defendants" or simply "Affiliates," shall mean Jay Breslau's wife, Kerri Breslau, Roaring River Finance, Inc., Elizabeth Bone, and Robert Bone.

## II. Jurisdiction

4. The Attorney General brought this enforcement action pursuant to the authority vested in his office by the Arkansas Deceptive Trade Practices Act and the common law. This Court has jurisdiction over this matter, and the parties hereto pursuant to Ark. Code Ann. § 4-88-104, and the common law of the State of Arkansas. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendants have transacted business in the State of Arkansas.

5. For purposes of this Consent Judgment, the Attorney General and the Defendants waive all objections and defenses that they may have to the jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court's jurisdiction over any subsequent action to enforce the terms of this Consent Judgment.

## III. Parties Bound

6. This Consent Judgment applies to and is binding upon the Attorney General, QCA, Inc., Harrison Quick Cash, Inc., CQC-A, Inc., RQC, Inc., QCP, Inc., Freedom Finance Company, Inc., Jay Breslau, and Kelly Breslau.

7. The Affiliates of the Defendants, who are not parties to this action, have executed this Consent Judgment to evidence their agreement to join in and abide by the terms of the injunctive relief set forth hereinbelow.

8. Any change in ownership or status of a party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such parties' responsibilities under this Consent Judgment.

#### IV. The Attorney General's Position

9. Beginning in the late 90's, through the present, Defendants have operated what are commonly known as "payday loan" businesses in Arkansas under the names Quick Cash of Arkansas, Harrison Quick Cash, Conway Quick Cash, and Russellville Quick Cash.

10. Defendants offered and made short term, high interest loans. Funds were advanced to Arkansas consumers secured by the consumers' personal checks. The amount of each advance was less than the face value of the check presented. The loans were structured as short term (usually 14 to 30 day) single payment transactions with principal and interest due in one payment, although the Defendants commonly allowed the borrowers to "roll over" the loan by paying only the interest due, or by executing a new loan immediately after the payoff on the previous loan. Such activities or transactions may hereafter be identified as a "Payday Lending Transaction(s)," or "Payday Loan(s)."

11. Defendants have charged interest at annual percentage rates ranging from approximately 173% to 868%, depending on the terms of each Payday Lending Transaction.

12. Defendants have offered these high-interest, short term loans in Arkansas since approximately 1996 using various methods or schemes at different times depending on the Defendants' perception of the regulatory and legal climate in Arkansas.

13. From approximately September 2001 to March 2006, Defendants operated their stores in conjunction with a Missouri based lending institution, Roaring River Finance, Inc. Defendants, Jay and Kelly Breslau, had an ownership interest and financial stake in the operations of Roaring River Finance, Inc. Defendants claimed that their Arkansas based businesses were agents of Roaring River Finance, Inc, and that the contracts issued by the Defendants were governed by Missouri law.

14. Prior to September 2001 and at times subsequent to March 2006, Defendants operated under licenses issued by the Arkansas State Board of Collections Agencies. The Arkansas State Board of Collections Agencies formerly issued licenses to payday lenders pursuant to the Arkansas Check Cashers Act, ARK. CODE ANN. § 23-52-100, *et seq.* The Arkansas Supreme Court found the Check Cashers act to be unconstitutional. *McGhee v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 08-164 (AR S. Ct. Nov. 6, 2008). In accordance with that ruling, at no time did the Check Cashers Act authorize or condone violations of the Arkansas Constitution or the Deceptive Trade Practices Act.

15. On March 18, 2008, the Attorney General demanded that lenders engaged in the business of Payday Lending, including the Defendants, cease charging interest rates in excess of the limits imposed by the Arkansas Constitution and cease engaging in conduct prohibited by the Deceptive Trade Practices Act.

16. On March 20, 2008, Defendants Jay Breslau and Kelly Breslau applied for a money lending license for their corporation, Freedom Financial, from the South Dakota Division of Banking. Jay and Kelly Breslau are the sole owners of Freedom Financial Company, Inc.

17. Similar to Defendants' lending activities involving Roaring River Finance, Defendants purport to service loans on behalf of Freedom Financial Company (d/b/a Quick Cash of South Dakota). Defendants claim that South Dakota law applies to these lending transactions.

18. Despite Defendants' claims, all of Defendants' payday lending transactions, including those purportedly entered into on behalf of Roaring River Finance and Freedom Financial Company, have been and are governed by Arkansas law, specifically, the Arkansas Deceptive Trade Practices Act and the Arkansas Constitution, *Article 19, Section 13*.

19. The Payday Lending Transactions engaged in by the Defendants constitute deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited Payday Lending Transactions engaged in by the Defendants include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(1), 4-88-107(a)(8), and 4-88-107(a)(10). More specifically, the Defendants have violated the Deceptive Trade Practices Act by:

(a) Charging and collecting unconscionable rates of interest on short term Payday Lending Transactions. The practice of charging ultra-high usurious rates of interest is unconscionable as a matter of law.

(b) At various times the Defendants have attempted to avoid application of the prohibitions of the Arkansas Constitution and the Deceptive Trade Practices Act by:

(1) From 2003 through approximately July of 2006, the Defendants attempted to disguise Arkansas Payday Loans as Missouri loans;

(2) At certain times, Defendants obtained licenses from the Arkansas Board of Collection Agencies for their six stores and used these licenses as a purported basis for charging the fees associated with the Payday Loans;

(3) From March 2008 through the present, Defendants attempted to disguise Payday Loans as South Dakota loans under a scheme adopted only after the Attorney General demanded that all unconscionable and usurious conduct cease.

20. The Attorney General specifically denies the assertions of the Defendants set forth in the Defendants' position in this Consent Judgment.

#### **V. The Defendants' Position**

21. The Defendants specifically deny the Plaintiff's characterization of facts and conclusions of law as set out in the Plaintiff's position statement hereinabove.

22. The Defendants incorporate herein by reference their Answer to the Plaintiff's Complaint, including the assertion of Defendants' affirmative defenses.

23. The Defendants contend that at all times relevant hereto, that their engagement in Payday Lending Transactions was pursuant to and in accordance with state law, to include laws of the States of Missouri, Arkansas, and South Dakota, and to include specific licenses issued by the regulatory authorities of said states.

24. The Defendants contend that the Arkansas Deceptive Trade Practices Act is expressly non-applicable to the transactions as described in the Plaintiff's Complaint. See ACA §4-88-101(3).

#### **VI. Relief**

25. This Consent Judgment is intended to preclude the Defendants from directly or indirectly engaging in any type or form of Payday Lending Transactions in violation of Arkansas law. Accordingly, the Defendants shall from this day hereafter be permanently restrained and enjoined from engaging or entering into any type, shape or form of Payday Lending Transactions in the State of Arkansas in violation of the Arkansas Deceptive Trade Practices Act, ARK. CODE

ANN. §§ 4-88-101, *et seq*, either directly through their own actions, or indirectly through the Affiliates, or other third parties. Specifically, Defendants are enjoined from charging or collecting any payments on any Payday Lending Transactions in the State of Arkansas where the interest charged is in excess of that allowed by the Arkansas Constitution, Article 19, § 13, or other applicable Arkansas law.

26. More specifically, Defendants are permanently restrained and enjoined, both directly and indirectly through the Affiliates or other third parties, from using any plan, device, model, mechanism, or other sham, to avoid the terms of this Consent Judgment. Prohibited practices shall include, but are not limited to: (1) internet based Payday Lending with residents of the State of Arkansas; (2) the offering, advertisement, or promotion in Arkansas of the availability of payday loans in states neighboring Arkansas; and (3) direct or indirect notification of past Payday Lending customers in Arkansas as to the availability of Payday Loans in states neighboring Arkansas, *i.e.* no written notifications to such customers through the mail or other media, and no posting of such notices or advertisements on the Defendants' places of business in Arkansas. Notwithstanding these prohibitions, the Defendants are not precluded from television or radio advertisements which originate in states other than Arkansas.

27. All outstanding contracts for Defendants' Payday Lending Transactions, which were entered into with residents of the State of Arkansas and consummated in the State of Arkansas, are hereafter cancelled by the Defendants. For purposes of this provision, transactions with Freedom Finance in South Dakota shall be considered "consummated in the State of Arkansas" if the Arkansas resident was physically located in Arkansas at the time he applied for the loan, or the Arkansas resident made payments on the loan at a location in Arkansas, or the loan proceeds were received by the consumer in the State of Arkansas. All such contractual

obligations, which were consummated in Arkansas, are hereby voluntarily voided and cancelled by the Defendants. Furthermore, the Defendants shall take no action, formal or informal, to attempt to enforce any such obligation against any Arkansas consumer pursuant to any Payday Lending contracts consummated in Arkansas. Specifically, the Defendants shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. Defendants shall not contract with any third party debt collectors regarding these Payday Lending Transactions consummated in Arkansas, nor sell any obligations arguably due from these transactions to any third party. Defendants shall make no negative reports to any credit bureau with respect to any of these Payday Lending Transactions consummated in Arkansas.

28. Simultaneous with the entry of this Judgment, the Defendants shall, collectively, pay the total sum of \$200,000.00 to the Attorney General, and the Attorney General hereby acknowledges the receipt of said sum. Said monies shall be held in trust by the Attorney General for purposes directly related to the Attorney General's consumer education and enforcement efforts. In making this payment, the Defendants make no admission of liability, and instead have agreed to make this payment to avoid further litigation.

29. In addition to the sum of \$200,000.00 paid simultaneous with the entry of this Judgment, the Defendants agree to be contingently liable for the payment of an additional \$200,000.00. However, this second \$200,000.00 sum will be suspended for a period of two years. The payment of said additional sum shall be contingent upon, and shall be due and payable only upon a specific finding by this Court that any one of the Defendants, or any one of the Affiliates of the Defendants, have materially breached a substantive term of this agreement within said two year period commencing on the date this Consent Judgment is entered. After the

expiration of two years from the entry of this Judgment, this contingent liability shall expire and the contingent payment of \$200,000.00 shall no longer be collectable by the Attorney General. However, neither the suspension of such payment nor the expiration of such contingency shall prevent the Attorney General from pursuing any and all actions and claims available to the Attorney General for any conduct occurring after the entry of this Consent Judgment.

30. This Consent Judgment constitutes the entire agreement of the parties. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

31. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against Defendants, the Affiliates of the Defendants, or the Defendants' employees for those practices alleged within its Original Complaint. Nothing within this Consent Judgment, however, precludes the Attorney General from instituting any cause of action against any party not a signatory to or otherwise released by this Consent Judgment. Nor shall this release in any way limit the authority of the Attorney General to conduct such investigations as he deems advisable (including investigations of possible violations of this Consent Judgment), or to bring any enforcement action regarding alleged violations of law unrelated to its Original Complaint or those occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek enforcement of any and all sections of this Consent Judgment by appropriate action with this Court.

32. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to suggest the existence of, or to create any private right of action for any person or entity not a signatory hereto.

33. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Defendants, past, current, or future; and, the Defendants shall make no representations to the contrary.

34. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

**VII. Signatories**

35. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

36. This Consent Judgment is made and entered into by and between the parties hereto and on this 9<sup>th</sup> day of February, 2009.

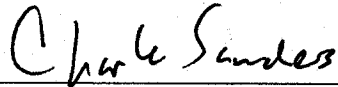
**IT IS SO ORDERED:**

Dated: FEB 9 - 2009, 2009.

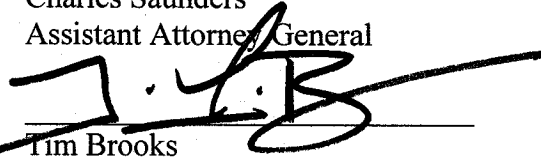
Ellen B. Brantley  
The Honorable Ellen Brantley  
Circuit Judge, 16th Division

Judge Ellen B. Brantley  
16th Division Circuit Court  
Date 2-9-09  
Jury Trial   
Bench Trial   
Non-Trial

**APPROVED AS TO FORM:**



Charles Saunders  
Assistant Attorney General



Tim Brooks  
Attorney for the Defendants

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The Defendants and the Affiliates of the Defendants, by their signature below, acknowledge their understanding and agreement with the terms and conditions of the Consent Judgment as set forth above. Specifically, the undersigned acknowledge, pursuant to the terms and conditions set forth in paragraph 29 above, that any finding by this Court as to any material violation of enjoined and prohibited activities as specified above, by any one of the Defendants or Affiliates of the Defendants shall result in the Defendants' liability for the contingent sums as identified in paragraph 29 above.

**APPROVED:**


QCA, INC. D/B/A QUICK CASH OF ARKANSAS

By:  PRESIDENT

HARRISON QUICK CASH, INC.

By:  PRESIDENT

CQC-A, INC. D/B/A CONWAY QUICK CASH

By:  PRESIDENT

RQC, INC. D/B/A RUSSELLVILLE QUICK CASH

By: Kelly A. Breslau, President

QCP, INC. D/B/A QUICK CASH PROCESSING

By: Kelly A. Breslau, President

FREEDOM FINANCE COMPANY, INC. D/B/A  
QUICK CASH OF SOUTH DAKOTA

By: Jay Breslau, President

Jay Breslau  
JAY BRESLAU

Kelly A. Breslau, V. President  
KELLY BRESLAU

Kerri Breslau  
KERRI BRESLAU

ROARING RIVER FINANCE, INC.

By: Elizabeth A. Bone, President

Elizabeth Bone  
ELIZABETH BONE

Robert Bone  
ROBERT BONE