

FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

CASE NO.: D-101-CV-2009-01917

STATE OF NEW MEXICO, ex rel.
HECTOR H. BALERAS, Attorney General,

Plaintiff,

vs.

FASTBUCKS HOLDING CORPORATION, *et al*,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL JUDGMENT**

THIS MATTER having come before the Court for a Hearing on Liquidation of Damages herein, Plaintiff, State of New Mexico, being represented by P. Cholla Khoury and Elizabeth K. Korsmo, Assistant Attorneys General and the Defendants being represented by Business Law Southwest LLC (Donald F. Kochersberger III); the Court having heard arguments of Counsel, reviewed the pleadings and all matters of record and being otherwise fully advised in the premises, makes the following **Findings of Fact**:

1. Judge Michael E. Vigil entered his Decision and Final Order ("Decision") herein on September 26, 2012 following a trial on the merits.
2. Following the entry of his Decision, Judge Michael E. Vigil retired from the Court without determining the amounts of the restitution required to be paid by the terms of the Decision.
3. The undersigned Judge was assigned to this case on March 6, 2014.

4. Following the assignment of the undersigned Judge, the liquidation of damages, along with various post-trial motions, was set for hearing and continued upon various motions of the Parties.

5. The Parties stipulated to various facts by a Stipulation of Facts filed herein on October 14, 2016, which Stipulation is incorporated herein by reference.

6. After the enactment of the 2007 legislative reforms to address payday loans, §§ 58-15-32 to 58-15-39, NMSA 1978 (2007), the Defendants fashioned their loans and business practices so as to circumvent regulation of payday loans. They dramatically increased their use of installment loan products and decreased the use of payday loans. (Decision ¶ 7)

7. It is clear from the context of the testimony, that the Defendants were not allowing borrowers to pay off their loans when they were able to. (Decision ¶ 9)

8. By promoting installment loan products in lieu of payday loans, Defendants avoided the provisions of Section 58-15-35, which require lenders of payday loans to “offer the consumer the opportunity to enter into an unsecured payment plan for any unpaid administrative fees and principal balance of the payday loan,” allow consumers of payday loans to enter into payment plans for any unpaid administrative fees and the principal balances of payday loans, and give consumers of payday loans the opportunity to retire their delinquent debt obligations over a minimum 130-day repayment period without incurring interest - all benefits to borrowers that Defendants avoided by promoting installment loan products. (Decision ¶ 11)

9. The Defendants engaged in practices that would be prohibited when a loan is fashioned as a payday loan and subjected their consumers to loan terms that are more detrimental to consumers than those of payday loans. (Decision ¶ 13)

10. The evidence illustrates a pattern of Defendants manufacturing exorbitantly expensive repayment obligations through their use of the installment loan products. (Decision ¶ 14)

11. Judge Michael E. Vigil found that the amount of consumer loss is best represented by the difference in the amounts the borrowers paid under the installment loan products and the amounts they would have paid had they taken out payday loans, minus any deficiencies incurred on individual loans, and he ordered the Defendants to pay restitution according to such finding. (Decision ¶ 18 and page 7)

12. The Court rejects the argument of Defendants that the loans at issue should be recast as a series of fourteen (14) day payday loans over the lives of the installment loans to allow the imposition of a 404.1% interest rate to be earned by Defendants over the entire time the installment loans were outstanding.

13. Under the terms of the Judge Michael E. Vigil's Decision, each installment loan is to be considered a payday loan during the entire time it was outstanding, allowing a onetime administrative fee of fifteen dollars and fifty cents (\$15.50) per one hundred dollars (\$100) of principal to be collected by Defendants in accordance with §§ 58-15-32 to 58-15-39.

14. Pursuant to the terms of Parties' Stipulation of Facts, Defendants received thirty-two million, two hundred fifty-five thousand and fifty-four dollars (\$32,255,054.00) in overpayments from the consumer borrowers affected by their business practices.

Based upon the foregoing, this Court makes the following **Conclusions of Law**:

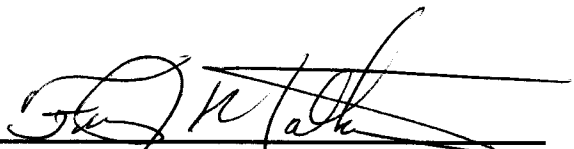
1. The Court has subject matter jurisdiction over the parties and claims presented in this case.

2. Venue is proper in Santa Fe County, New Mexico.

3. The Defendants should pay the sum of thirty-two million, two hundred fifty-five thousand and fifty-four dollars (\$32,255,054.00) in restitution to the consumer borrowers who were affected by their business practices and identified in the consumer loan data provided by the Defendants to the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, in accordance with a plan of distribution to be approved by this Court, the Defendants shall pay the sum of thirty-two million, two hundred fifty-five thousand and fifty-four dollars (\$32,255,054.00) in restitution to the consumer borrowers who were affected by their business practices and identified in the consumer loan data provided by the Defendants to the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the parties shall present a plan of distribution to this Court no later than ninety (90) days from the date of this Final Judgment.


Francis J. Mathew
District Court Judge

xc: P. Cholla Khoury, Esq., e-served
Elizabeth K. Korsmo, Esq. e-served
Donald F. Kochersberger, Esq., e-served