

FILED

2019 SEP 17 PM 3:11

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA:
DEPARTMENT OF BANKING AND
SECURITIES, COMPLIANCE OFFICE

v.

DOCKET NO. 19 0081 (BNK-CAO)

BORRO L1 INC., and BL2 INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities' ("Department") Compliance Office, has investigated the business practices of Borro L1 Inc. and BL2 Inc., collectively referred to herein as "Borro". Based on the results of its investigation, the Department alleges that Borro engaged in the Commonwealth in the consumer lending business without being properly licensed to do so in violation of the Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201-6219, and the Act of January 30, 1974, P.L. 13, No. 6 known as the Loan Interest Protection Law ("LIPL"), as amended by Act of April 12, 2012, 41 P.S. §§ 101-605 and the Pawnbrokers Licensing Act ("PLA"), Act of 1937, P.S. 200, No. 51. While denying the Department's allegations herein, in the interest of avoiding the expense and inconvenience of litigation, Borro agrees to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA, LIPL and the PLA.

2. The Compliance Office has the responsibility to administer and enforce the CDCA, LIPL, and the PLA on behalf of the Department.
3. The Compliance Office operates from its offices at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.
4. Borro L1, Inc. and BL2, Inc. are each organized under the laws of Delaware with a principal address of 767 Third Avenue, New York, NY 10017.
5. Borro and Pennsylvania residents executed loan agreements electronically over the Internet using collateral as security for the loans
6. The Pennsylvania residents' collateral for one or more of the loans was shipped to and stored in New York or otherwise as directed by Borro.
7. Loan proceeds for one or more of the loans were transferred from Borro to Pennsylvania residents by bank wire transfer.
8. Borro collects routine payments on the loans from the Pennsylvania residents who are physically located in Pennsylvania at the time they made the payments

AUTHORITY

9. The Department asserts the following:
 10. Section 201 of the LIPL establishes 6% as the maximum lawful rate of interest for a loan or use of money in an amount of fifty thousand dollars or less, unless the loan is unsecured in which case 6% is the maximum lawful rate of interest for a loan of thirty-five thousand dollars or less. 41 P.S. § 201.
 11. Section 408 of the LIPL does not allow the restriction on interest rates provided by the LIPL to be waived by the consumer as a matter of public policy. 41 P.S. § 408.

12. Section 505(b) of the LIPL states that any person who violates the LIPL shall be subject to a fine of ten thousand dollars (\$10,000) per offense.

13. Section 3 of the CDCA provides that interest, discount, bonus, fees, fines, commissions, charges or other considerations are aggregated into the calculation of interest. *See Pa Dep't of Banking v NCAS of Del., LLC* 948 A 2d 752 (2008).

14. Section 3 of the CDCA requires any person engaged in the business of arranging, negotiating or making loans or advances of money on credit in the Commonwealth of Pennsylvania in the amount or value of \$25,000 or less, and charge or receive interest or other considerations to have a license to charge more than the lawful rate of interest. 7 P.S. § 6203; *Cash America Net of Nevada, LLC v Dep't of Banking*. 8 A.3d 282 (Pa 2010).

15. Section 3 of the CDCA requires any person who advertises or solicits the business of lending money in the amount of \$25,000 or less where the interest exceeds 6% simple in Pennsylvania to have a license issued by the Department. 7 P.S. § 6203, *Cash America*.

16. Section 14 B of the CDCA prohibits the charging, contracting, collecting or receiving of interest, discounts, fee, fines, commissions, charges or other considerations in excess of the interest or discount, service charges, extension charges, deferment charges, default charges, recording and satisfaction fees, premiums for insurance, attorney's fees, court costs, repossession expenses, storage charges, and selling expenses authorized by the CDCA. 7 P.S § 6214.B

17. Section 2 of the PLA describes "pawnbroker" as "any person, who (1) engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness, or (2) purchases personal property with an expressed or implied agreement or understanding to sell it back at a

subsequent time at a stipulated price, or (3) lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.” 63 P.S. § 281-2

18. The PLA requires that any person, partnership, association, business corporation, non-profit corporation, common law trust, joint-stock company or any group of individuals, however organized, that engages in the business of a pawnbroker to be licensed under the PLA. 63 P.S. § 281-3

19. Section 12(E) of the PLA provides a pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this act shall forfeit both principal and interest and shall return the pledge upon demand of the pledger and surrender of the pawn ticket without tender or payment of principal or interest. 63 P.S. § 281-12(E)

20. Section 19 of the PLA prohibits a loan granted under its provisions to be repaid in installments. 63 P.S. § 281-19

21 The Department asserts jurisdiction to enforce the CDCA, LIPL and PLA when any of the following occur regarding a loan to, or a loan application from, a person who is a resident of Pennsylvania when the loan is closed or marketed or when a loan application is taken:

- a Direct solicitation, marketing or advertisements by any means whatsoever; including by mail, over the telephone, electronically but not including a passive website; is directed toward a Pennsylvania resident physically located in Pennsylvania.
- b. Loan applications are taken, in whole or in part, in person, through the mail, electronically, by telephone or otherwise, when the loan applicant is physically located in the Commonwealth.

- c. The loan is closed while the borrower is physically located in the Commonwealth.
- d. Loan payments are made by the borrower by any means when the consumer is physically located in the Commonwealth.
- e. Collection activities, including phone calls to a borrower, letters or notices sent to the borrower, or telephone calls to the borrower take place while the borrower is physically located in the Commonwealth.

FACTUAL ALLEGATIONS

22. The Compliance Office alleges that Borro violated the CDCA, LIPL and PLA when it arranged, negotiated and made consumer loans in amounts of \$25,000 or less to Pennsylvania residents which required repayment in amounts greater than principal and 6% interest while Borro was not licensed under either the CDCA or the PLA and therefore was not authorized to charge interest in excess of 6% simple.

23. The Compliance Office alleges Borro violated the PLA by being engaged with Pennsylvania residents in the business of a pawnbroker, i.e , by lending money on goods that were stored or pledged as collateral, while not licensed under the PLA.

24 While denying any liability or wrongdoing arising from the Department's allegations herein, Borro has nevertheless cooperated with the Department's investigation and now wishes to avoid the expense and inconvenience of litigation.

RELIEF

25. Cease and Desist Borro shall refrain from engaging in the business of consumer discount and pawnbroker lending to Pennsylvania consumers without licensure for the Department. Specifically, Borro will not:

- a. directly advertise, market, or solicit loans to Pennsylvania residents in Pennsylvania with an interest rate in excess of 6% simple
- b. knowingly accept applications for loans from Pennsylvania residents in Pennsylvania with an interest rate in excess of 6% simple.
- c. make loans to Pennsylvania residents in Pennsylvania at an interest rate in excess of 6%.
- d. accept deposits of collateral security from Pennsylvania consumers for loans.

26. Borro shall not, without the approval of the Department, sell or assign to any other person the loans made to Pennsylvania residents in Pennsylvania.

27. Borro will post a disclaimer on its website and all marketing materials in a prominent manner (meaning a font size no smaller than 12 point) that it does not make loans to Pennsylvania residents in Pennsylvania.

28. Restitution.

- a. Within 60 days of the date that the Department's Legal Division docketed a fully executed copy of this Order (hereinafter the "Effective Date"), Borro will make a good faith effort to refund any loan payments it received from Pennsylvania residents on loans made to Pennsylvania residents in Pennsylvania in excess of the principal and 6% simple interest, inclusive of all fees and charges

b Within 60 days of the Effective Date of this Order, Borro shall make a good faith effort to return any money received on loans made to Pennsylvania residents in Pennsylvania in excess of the principal and 6% simple interest per annum resulting from the disposition of the borrower's loan collateral through sale.

29. Within 90 days of the effective date of this Order, Borro will provide the Department with a listing memorializing the refunds it made pursuant to this Order

30. Any money that cannot be refunded pursuant to this will be sent on Borro's behalf to the Pennsylvania Department of Treasury.

31 Borro will pay a fine of \$44,375 to the Department for the alleged violations of the CDCA and LIPL within 30 days of the Effective Date of this Order.

FURTHER PROVISIONS

32. Consent The Department and Borro (collectively known as the "Parties") knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order and understand and agree to be bound by all the terms and conditions contained herein and waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in the Order.

33. Publication. The Department will publish this Order pursuant to its authority in Section 302 A(5) of the Department of Banking and Securities Code. 71 P.S. § 733-302.A(5).

34. Consumer Rights. This Order shall not limit or impair the consumers' rights under the LIPL. *See* 41 P.S. §§ 501-507.

35. Entire Agreement This Order contains the whole agreement between the Parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by agreement by the Parties

36. Binding Nature. The Parties intend to be and are legally bound by the terms of this Order. This Order shall be enforceable in a court of competent jurisdiction. This Order shall be binding upon the Parties and inure to the benefit of their successors and assigns.

37. Counsel. This Order is entered into by the Parties upon full opportunity for legal advice from legal counsel.

38. Other Enforcement Action Upon execution of this Order, the Department releases Borro from actions, claims, demands, liabilities, damages, rights, and suits with respect to the loans and transactions disclosed to the Department arising out of Borro's loans to consumers in the Commonwealth of Pennsylvania. The Department reserves its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction regarding any loans or transactions not disclosed to the Department

39. Borro acknowledges and agrees that this Order is only binding upon the Department and not upon any other local, state or federal agency, department or office regarding matters within this Order.

40. Authorization. The individuals executing this Order are authorized to execute this Order and legally bind the entities on whose behalf they execute the Order.

41. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

42. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

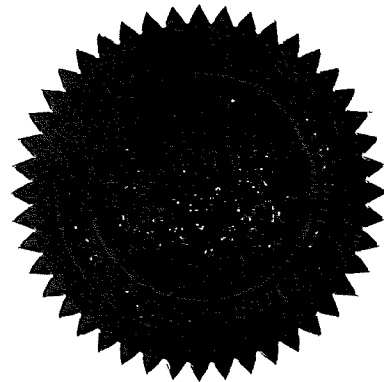
WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Parties do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES**

Signature: Redacted

James Keiser, Chief
Compliance Office
Department of Banking and Securities

Date: September 12, 2019



FOR BORRO L1, INC.

Signature: Redacted

Printed Name: Claire Hillier

Title: Chief Commercial Officer

Date 09/12/19

FOR BL2 , INC.

Signature: Redacted

Printed Name: Claire Hillier

Title: Chief Commercial Officer

Date: 09/12/19