IN THE MATTER OF:	BEFORE THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION
UNITED CONSUMER FINANCIAL SERVICES, INC. d/b/a EZPAYDAYCASH.COM, **TRISH PHAM,** **and** **DANIEL LEE** Respondents.	Case No.: CFR-FY2012-109

SUMMARY ORDER TO CEASE AND DESIST
AND ORDER TO PRODUCE

WHEREAS the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation ("OCFR"), undertook an investigation into the business activities of United Consumer Financial Services, Inc. d/b/a ezpaydaycash.com ("UCFS"), Trish Pham, and Daniel Lee (collectively, "Respondents"); and

WHEREAS, as a result of that investigation, the Commissioner of Financial Regulation (the "Commissioner") finds grounds to allege that Respondents have violated Commercial Law Article ("CL"), Title 12, Subtitle 3, Annotated Code of Maryland, and Financial Institutions Article ("FI"), Title 11, Subtitle 2, Annotated Code of Maryland (collectively the "Maryland Consumer Loan Law," or "MCLL"); and the Commissioner finds that action under FI §§ 2-115(a) and 11-215(b) is appropriate;

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that Respondents' business activities constitute usurious and unlicensed consumer lending in violation of Maryland law, and that it is in the public interest that Respondents

immediately Cease and Desist from making any further loans to Maryland consumers, and from collecting, directly or indirectly through third party collection agencies or law firms, on any loans previously made to Maryland consumers:

1. FI §§ 2-115(a) and (b) set forth the Commissioner's authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction, in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing, providing as follows:

> (a) *Summary cease and desist orders*.- When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:
> (1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and
> (2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.
> (b) *Other authorized actions for violations*.- When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:
> (1) Issue a final cease and desist order against the person;
> (2) Suspend or revoke the license of the person;
> (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of $1,000 for a first violation and a maximum amount of $5,000 for each subsequent violation; or

(4) Take any combination of the actions specified in this subsection.

2. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction – which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations. Thus, for example, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire … a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry."

3. In the present matter, OCFR began an investigation into the business activities of Respondents as a result of multiple consumer complaints. Pursuant to OCFR's preliminary inquiry into these complaints, OCFR developed reasonable grounds to believe that Respondents engaged in unlicensed and predatory business practices in violation of various provisions of Maryland Law, including, but not limited to, violating the Maryland Consumer Loan Law. The legal and factual bases for these determinations are described below.

4. Pursuant to FI § 11-204, "[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan; or (2) [i]n any way use any advantage provided by the Maryland Consumer Loan Law."

5. Pursuant to CL § 12-302, a "person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions."

6. Pursuant to CL § 12-301(c), a "lender" "means a person who makes a loan under [Title 12, Subtitle 3 of the Commercial Law Article]."

7. Pursuant to CL § 12-301(e), a "loan" "means any loan or advance of money or credit made under [Title 12, Subtitle 3 of the Commercial Law Article]."

8. Pursuant to CL § 12-303, "[a] lender may not make a loan under this subtitle unless the loan is in an original amount or value which does not exceed $6,000."

9. CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article.

(a). Section 12-306(a)(6)(i) provides as follows: "For any loan with an original principal balance of $2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than $1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than $1,000." This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent interest on unpaid principal balances up to $1,000, and 24 percent on unpaid principal balances over $1,000.

(b). Section 12-306(a)(6)(ii) provides: "For any loan with an original principal balance of more than $2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan." This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

10. Interest on unpaid loan balances, refinanced loans, and computation of interest are discussed in CL §§ 12-306(b) through (d), respectively, which state the following:

> (b) *Interest on balance unpaid after original maturity date.–*
> If any principal balance remains unpaid 6 months after the loan matures as originally scheduled or deferred, the lender may not contract for, charge, or receive interest at a rate exceeding 6 percent simple interest per annum on the actual unpaid principal balances from time to time.
> (c) *Refinanced loan.* – If the lender refinances a loan in the ordinary course of business, he may not add to the principal balance or deduct from the proceeds of the new loan more than 60 days' interest then due.
> (d) *Computation of interest.* –
> (1) The lender shall compute interest on the actual unpaid principal balances outstanding from time to time, and he may not contract for, charge, or receive interest in advance or compounded interest.
> (2) For each day on which an unpaid principal balance is outstanding, the lender may charge on that unpaid balance 1/30th of the interest permitted under this subtitle to be charged for 1 month.
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> * * *

11. CL § 12-307(b) provides that, "[a] lender may collect from the borrower a fee not exceeding $15 if payment is made with a check that is dishonored on the second presentment."

12. CL § 12-308 sets forth various duties that lenders have towards borrowers, including, but not limited to, the duty to provide a statement containing specific language and provisions at the time the loan is made (CL § 12-308(a)), the duty to provide receipts for payments (CL § 12-308(b)), the obligation to permit prepayment of the loan, in full or in part, without penalty (CL § 12-308(c)), the duty to provide specific documents after full repayment of the loan (CL § 12-308(d)), and the duty to provide a written statement of the account upon request from the borrower (CL § 12-308(e)).

13. Pursuant to CL § 12-313(a)(1), a lender may not "[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle."

14. CL § 12-314 provides, in relevant part, as follows:

> (a) *Prohibited.* – A person may not lend $6,000 or less if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.
>
> (b) *Loans unenforceable; exceptions.* –
>
> (1) A loan made in the amount of $6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.
>
> (2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.
>
> * * *
>
> (c) *Transactions made in another state.* – This section does not apply to a loan transaction validly made in another state in compliance with a similar loan law of that state. However, a lender may not collect an amount that is more than the total amount that would be permitted if this subtitle were applicable. This section applies to all loans made by a lender domiciled in another state to a borrower who is a resident of this State if the application for the loan originated in this State.

15. Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 "shall be interpreted and construed to effectuate its general remedial purpose."

16. FI § 11-214 discusses the Commissioner's investigatory powers under the MCLL, providing as follows:

> (a) *Persons subject to investigation.*- To discover any violations of the Maryland Consumer Loan Law, the

> Commissioner, at any time and as often as the Commissioner considers appropriate, may investigate the loans made by and the business of:
> (1) Any licensee; or
> (2) Any other person who makes a loan or on whose behalf a loan is made, whether or not that person:
> (i) Acts or claims to act as a principal, agent, or broker; or
> (ii) Acts or claims to act under the Maryland Consumer Loan Law.
> (b) *Access; examination under oath.*- For the purposes of this section, the Commissioner:
> (1) Shall be given access to any books, papers, records, safes, or vaults of the person under investigation; and
> (2) May examine under oath any person whose testimony the Commissioner requires.

17. Pursuant to Maryland's Consumer Credit Reporting Agencies Law ("CCRAL," at CL § 14-1201 *et seq.*), the Commissioner is responsible for enforcing laws regulating consumer credit reporting. Notably, CL §§ 14-1217 and 14-1218 provide that the Commissioner has authority to conduct investigations, hold hearings, issue orders, promulgate regulations, and otherwise enforce the provisions of the CCRAL as well as other laws regulating consumer credit reporting.

18. Pursuant to CL § 14-1213, a "person who furnishes information to a consumer reporting agency" is required, within 30 days of discovering that they are not in compliance with consumer credit reporting laws, to notify the consumer of the failure to comply and to make "whatever adjustments are necessary to correct the noncompliance."

19. The Fair Credit Reporting Act ("FCRA," 15 U.S.C. § 1681 *et seq.*) imposes specific responsibilities on persons who furnish information to consumer reporting agencies ("CRAs") at § 623 [15 U.S.C. § 1681s-2]. This includes a general duty to report information accurately to CRAs (§ 623(a)(1)), as well as the duty to correct and update information previously reported (§ 623(a)(2)). In particular, § 623(a)(2) requires a person that "has

furnished to a consumer reporting agency information that the person determines is not complete or accurate" to "promptly notify the consumer reporting agency of that determination" and provide any information needed to make it complete and accurate.

20. Respondent UCFS is a Utah-based corporation, which advertises its services on the internet at www.ezpaydaycash.com, including to residents of Maryland. UCFS is not registered with the Maryland Department of Assessments and Taxation.

21. The OCFR's investigation revealed that Respondents Trish Pham and Daniel Lee are the owners, directors, officers, managers, employees and/or agents of UCFS.

22. Pursuant to an agreement with [redacted], ("Consumer A"), Respondents provided a $300.00 loan to Consumer A on or about July 13, 2011, in exchange for which Consumer A was required to pay $390.00 on July 22, 2011 (10 days after Consumer A received the loan.) This constituted an annual interest rate of 1216.667%. Consumer A made payments totaling $270 before stopping payment on the loan.

(a). Sometime in June 2011, Respondents provided Consumer A with a $200.00 loan. The finance charge for this loan was $60. Consumer A made payments totaling $414.00 in order to pay the loan in full.

23. OCFR's investigation revealed that Respondents engaged similar transactions with at least five (5) other Maryland residents, Consumers B-F, as identified on Attachment A, who had obtained consumer loans from Respondents.

24. All of these Maryland consumers applied for their loans from Respondents by completing and submitting on-line loan applications while these consumers were located in Maryland (and thus the loans originated in Maryland).

25. Respondents' transactions with Consumers A-F constituted "loans" under CL § 12-301(e), and thus the Respondents and all of Respondents' consumer loans to Maryland consumers are subject to the MCLL, which the Commissioner is charged with enforcing.

26. Respondents are not licensed by the State of Maryland to make consumer loans, nor are Respondents exempt from licensing under the MCLL. As such, Respondents' unlicensed consumer lending activities in Maryland violate the licensing provisions of the MCLL cited above, including FI § 11-204 and CL § 12-302.

27. The loans which Respondents made to Consumers A-F involved usurious rates of interest, far in excess of the 24% or 33% annual interest rates permitted for these transactions under CL § 12-306(a)(6). As such, Respondents violated numerous provisions of the MCLL, including, but not limited to, CL §§ 12-306(a)-(d), 12-313(a), 12-314(a), 12-314(b)(1), 12-314(b)(2), 12-314(c).

28. Pursuant to CL § 12-314(b)(1), as Respondents' loans to Consumers A-F and to all other unnamed Maryland consumers contain a "rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State," Respondents' loans to all Maryland consumers are illegal and unenforceable. Further, pursuant to CL § 12-314(b)(2), Respondents (who are neither licensed nor exempt from licensing), "may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection." It follows that, not only are Respondents' loans to all Maryland consumers unenforceable, but Respondents are prohibited from collecting the principal amount of those loans from any of these consumers or from collecting any other money related to those loans (thus these loans are "uncollectible").

29. Respondents' written agreements with Maryland consumers violate various other provisions of the MCLL. For example, Respondents' written agreements do not include the statements and disclosures required under CL § 12-308(a), and Respondents do not provide Maryland consumers with receipts for payments as required under CL § 12-308(b).

30. Additionally, as Respondents' loans to Maryland consumers are all illegal, unenforceable, and uncollectible, adverse or negative information pertaining to these loans should not be reflected on the credit reports of Maryland consumers for any reason, including but not limited to for reasons of nonpayment or default. Thus, pursuant to Respondents' duties under both CL § 14-1213 of the CCRAL and § 623(a)(1) of the FCRA, Respondents are prohibited from submitting any negative information concerning their loan transactions involving Maryland consumers to CRAs, whether reported directly or through third party collection agencies. Further, pursuant to Respondents' duties under both CL § 14-1213 of the CCRAL and § 623(a)(2) of the FCRA to correct and update information previously submitted to CRAs, Respondents are required to take corrective action to rectify their noncompliance with the credit reporting laws, including notifying the effected Maryland consumers of their noncompliance, as well as removing from the credit reports of effected Maryland consumers all adverse or negative information which Respondents, or third party collection agencies acting on Respondents' behalf, have previously submitted to CRAs concerning the loan transactions that Respondents entered into with these Maryland consumers.

31. Based on the foregoing facts, it has been determined that Respondents engaged in the business of making consumer loans to Maryland residents without being licensed as required by Maryland law, that Respondents have charged and received interest on the aforementioned loans in excess of the amount permitted by Maryland law, and that

Respondents have violated multiple other provisions of State and federal laws, including the Maryland Consumer Loan Law, the Consumer Credit Reporting Agencies Law, and the federal Fair Credit Reporting Act, all to the detriment of Maryland consumers.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by the Commissioner of Financial Regulation, HEREBY

ORDERED that Respondents shall immediately CEASE AND DESIST from making unlicensed consumer, installment, or any other loans to Maryland consumers; it is further

ORDERED that Respondents shall immediately CEASE AND DESIST from collecting or attempting to collect on any loans previously made to Maryland consumers; and it is further

ORDERED that Respondents shall immediately CEASE AND DESIST from referring any loan accounts involving Maryland consumers to third party collection agencies; and it is further

ORDERED that Respondents shall immediately CEASE AND DESIST from reporting any negative or adverse information to credit reporting agencies concerning any loan transactions which Respondents entered into with Maryland consumers; and it is further

ORDERED that Respondents shall take affirmative action to prevent any third party collection agencies, to which Respondents previously referred loan accounts involving Maryland consumers, from reporting any negative or adverse information to credit reporting agencies concerning such accounts; and it is further

ORDERED that Respondents shall immediately CEASE AND DESIST from violating the aforementioned statutory provisions of Maryland law, and that Respondents

should be assessed statutory monetary penalties and ordered to provide restitution for such violations, in addition to any other sanctions or actions against Respondents permitted by law; and it is further

ORDERED that all provisions of this Summary Order to Cease and Desist and Order to Produce, including all Orders and Notices set forth herein, also apply to all unnamed owners, partners, members, officers, and agents of the Respondent business entity named above; and it is further

ORDERED that the Resident Agent for the Respondent business entity named above shall provide a copy of this Summary Order to Cease and Desist and Order to Produce to all unnamed owners, partners, members, officers, and agents of that Respondent business entity; and it is further

ORDERED that, pursuant to the Commissioner's authority under FI §§ 2-114 and 11-214 and under CL §§ 14-1217 and 14-1218, Respondents shall provide to the Office of the Commissioner within 15 days of the receipt of this Summary Order to Cease and Desist and Order to Produce:

(a). A detailed list of all loan agreements which Respondents have entered into with Maryland consumers since January 1, 2006, including all of the following information for each loan transaction:

- the name of the consumer;
- the consumer's phone number(s), home address, and e-mail address;
- the date that the agreement with Respondents was formed;
- the original principal amount of the loan;
- the fees or interest payments that the consumer was required to make on the loan;
- the total annual interest rate on the loan;

- the APR on the loan;
- the date that the funds were originally disbursed to the consumer;
- the date that initial payment was due on the loan;
- the number of times that the loan was refinanced or extended;
- for each refinancing or extension of the loan: indicate each new fee or interest payment that was required, and the dates those payments were due;
- the payment history for each loan transaction, including the date and amount of each payment made by the consumer, and how that money was applied to the loan balance (i.e. whether it was applied to interest, to principal, to late fees or other penalties, etc.);
- the total amount of money paid by the consumer on the loan, including any principal, interest, or any other fees that were paid;
- the status of the loan, including the following for each transaction:
  - whether the loan was paid in full, or if still open, whether it is current or allegedly in default,
  - whether the account was referred to a third party collection agency (if so, provide the name of the collection agency);
  - whether the transaction was ever the subject of any arbitration proceedings (if so, detail the outcome of the arbitration proceeding);
  - whether the transaction was ever the subject of any judicial action (if so, provide the name of all third parties representing the Respondent in the action, the location the action was filed, the court in which it was filed, the current status of the case, and if a final judgment has been entered, the amount of the judgment, any liens that were filed or obtained pursuant to that judgment, and the total amount of money paid by the consumer to date pursuant to the action); and
  - whether the debt was sold to another party (if so, provide the name of the party to whom it was sold);
- indicate whether Respondents or any third party collection agency have ever submitted any negative or adverse information concerning the loans to any consumer reporting agency; and
- for loans that are allegedly in default: provide the date of default, the amount of principal, interest, and any other fees that were allegedly owed by the consumer on the loan at the time of default, and the last payment date;

(b). The full names and all addresses for the owners, organizers, directors, managers, loan officers, and other agents acting on behalf of Respondents or any affiliated companies; and

(c). Copies of all lending licenses issued Respondents or any of the owners, organizers, directors, managers, loan officers, or other agents of Respondent UCFS, by the Maryland Commissioner of Financial Regulation or any other state, federal, or foreign governmental entity.

FURTHERMORE,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI §§ 2-115(a) and 11-215(b), Respondents are entitled to a hearing before the Commissioner to determine whether this Summary Order to Cease and Desist should be vacated, modified, or entered as a final Order of the Commissioner; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI §§ 2-115(a), 11-215(b), and 11-518(c), this Summary Order to Cease and Desist will be entered as a final Order of the Commissioner if Respondents do not request a hearing within 15 days of the receipt of this Summary Order to Cease and Desist; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Enforcement Unit, Administrator
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

and further,

RESPONDENTS ARE HEREBY NOTIFIED that, as Respondent's loan transactions with Maryland consumers are all illegal, unenforceable, and uncollectible, all adverse or negative information which Respondents or third party collection agencies acting on Respondents' behalf previously reported to credit reporting agencies (CRAs) concerning these loans was impermissibly and incorrectly reported; and further

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Respondents' duties under both CL § 14-1213 of the CCRAL and § 623(a)(2) of the FCRA, and having received this written notification of Respondents' noncompliance with the relevant credit reporting laws, Respondents are required to take corrective actions, including notifying the effected Maryland consumers that Respondents or their agents have impermissibly and incorrectly reported to CRAs negative or adverse information concerning the loan transactions which Respondents entered into with these Maryland consumers, as well as removing from the effected Maryland consumers' credit reports all adverse or negative information which Respondent or third party collection agencies acting on Respondents' behalf previously had submitted to CRAs concerning Respondent's loan transactions with these consumers; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, Respondents' failure to take the corrective actions specified above within 30 days of receipt of this Summary Order to Cease and Desist will be considered as a violation of the relevant credit reporting laws, and will subject Respondents to additional civil fines and penalties; and further

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner described above, the Commissioner may, in the Commissioner's discretion and in addition to

taking any other action authorized by law, enter an Order making this Cease and Desist Order final, issue a penalty order against Respondents imposing a civil penalty up to $1,000 for each violation cited above, up to $5,000 for each subsequent violation, or may take any combination of the aforementioned actions against Respondent. Additionally, pursuant to CL § 12-314(b), the Commissioner may also enter a final order declaring the following: that all consumer loans made by the Respondents in Maryland or otherwise involving Maryland consumers are illegal and unenforceable; and that Respondents "may not receive or retain any principal, interest, or other compensation with respect to [these] loan[s] that [are] unenforceable." As such, the Commissioner may enter a final order requiring Respondents to provide restitution to Maryland consumers for all amounts collected on such illegal, unenforceable, and uncollectible loans to date.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

8/20/2015
Date

By: Keisha Whitehall Wolfe
Acting Deputy Commissioner

ATTACHMENT A

Consumer ID	Name	Number of Loans	Total Amount Borrowed	Total Amount Paid
Consumer A	[redacted]	2	$500.00	$684.00
Consumer B	[redacted]	1	$400.00	$700.00
Consumer C	[redacted]	1	$200.00	Unknown
Consumer D	[redacted]	1	$350.00	$0.00
Consumer E	[redacted]	2	Unknown	$1,356.00
Consumer F	[redacted]	1	$400.00	$0.00