

Illinois law. Plaintiff is not licensed under the Indiana UCCC. Its Loans do not comply (and, as an economic matter, cannot comply) with the Indiana UCCC.

2. By letter dated August 6, 2007 (the "Warning Letter"), an official of the Indiana Department of Financial Institutions (the "Department") reporting to Defendant asserted that, as a result of a recent statutory amendment: (a) the Indiana UCCC applied to Plaintiff's business, effective July 1, 2007; (b) Plaintiff was in violation of the Indiana UCCC; and (c) its failure to comply could render its Loans to Indiana residents void (as to both principal and interest) and could subject Plaintiff to regulatory enforcement.

3. Plaintiff is located in Illinois and conducts no business in Indiana. Rather, it makes loans exclusively in-person at its Illinois stores. Apart from (formerly) making Loans to Indiana residents and engaging in some solicitation of business from Indiana residents, its contacts with the State of Indiana have been extremely limited. The Commerce Clause and the Due Process Clause forbid the State of Indiana from applying the Indiana UCCC on an extraterritorial basis to Plaintiff's business.

4. As a direct result of its receipt of the Warning Letter and the unacceptable legal risks that continued lending to Indiana residents would have entailed, Plaintiff was forced to immediately suspend making Loans to Indiana residents. These Loans represented nearly 10% of Plaintiff's business. Accordingly, the Department's threat to enforce the Indiana UCCC against Plaintiff has seriously damaged Plaintiff's business and, unless and until this Court enjoins Defendant from enforcing the Indiana UCCC against Plaintiff, will continue to severely and irreparably damage Plaintiff's business.

5. The Department's aggressive efforts to project Indiana law *extraterritorially* to govern Plaintiff's Illinois business activities cannot be harmonized with governing precedent in this Circuit, namely *Dean Foods Co. v. Brancel*, 187 F.3d 609 (7th Cir. 1999). In *Dean Foods*, the Seventh Circuit refused on Commerce Clause grounds to allow the State of Wisconsin to dictate the terms of Illinois milk sales by Wisconsin farmers. The Wisconsin law was ruled invalid despite extensive solicitation and other activities by Dean Foods in Wisconsin and despite the fact that the milk sales by Wisconsin farmers exceeded one billion pounds of milk and represented nearly 90% of Dean Foods' yearly purchases. Dean Foods' extensive contacts with the State of Wisconsin stand in marked contrast with Plaintiff's limited contacts with the State of Indiana.

6. The Seventh Circuit characterized as "a fact well known" the principle that "extraterritorial regulation is barred by the federal constitution," *id.* at 614, and it followed the "long line of cases holding that states violate the Commerce Clause by regulating or controlling commerce occurring wholly outside their own borders." *Id.* at 615.

7. Given that Wisconsin could not constitutionally apply its law to Dean Foods' milk sales, *a fortiori* Defendant cannot apply Indiana law to Plaintiff's Illinois Loans. Compared with the extensive contacts between Dean Foods and the State of Wisconsin, the contacts between Plaintiff and the State of Indiana are insignificant.

8. In addition, the Department's threat to take regulatory enforcement action against Plaintiff under the Indiana UCCC purports to subject Plaintiff to sanctions under Indiana law for business activities in Illinois that are lawful in that State. The imposition of sanctions to

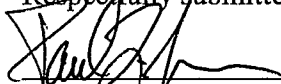
deter conduct that is lawful in other States is unconstitutional under the Due Process Clause. *See, e.g., BMW of North America, Inc. v. Gore*, 517 U.S. 559, 573 (1996).

9. Plaintiff has filed its Verified Complaint and incorporates its Verified Complaint into this Motion. Plaintiff will support its Motion with a brief and evidence at or prior to the preliminary injunction hearing, consistent with Local Rule 65.2.

WHEREFORE, Plaintiff requests that the Court hold a hearing on this motion and grant preliminary injunctive relief enjoining enforcement of the Indiana UCCC against Plaintiff. Plaintiff estimates that this hearing will require less than one hour.

Dated: November 16' 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2007, a copy of the foregoing was served via United States First Class Mail, postage prepaid to each of the following:

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