

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**QUIK PAYDAY, INC., d/b/a QUIK
PAYDAY.COM, QUIK PAYDAY.COM
FINANCIAL SOLUTIONS ONLINE,
WWW.QUIKPAYDAY.COM, QUIK
PAYDAY**

Plaintiff,

v.

Case No. 06-2203-JWL

**JUDI M. STORK, in her official capacity
as Acting Bank Commissioner and
KEVIN C. GLENDENING, in his
official capacity as Deputy Commissioner
of the OFFICE OF THE STATE BANK
COMMISSIONER, STATE OF
KANSAS,**

Defendants.

COMPLAINT

Plaintiff Quik Payday, Inc. d/b/a Quik Payday.com, Quik Payday.com Financial Solutions Online, www.Quikpayday.com and Quik Payday (hereinafter “Quik Payday”), for its claims and causes of action against Defendants Judi M. Stork, in her official capacity as Acting Bank Commissioner and Kevin C. Glendening in his official capacity as Deputy Commissioner of the Office of the State Bank Commissioner, State of Kansas (hereinafter “Defendants” or “Commission”) alleges the following:

PARTIES

1. Plaintiff Quik Payday, Inc. is no longer operating as a payday lender. However, during its prior operation, its sole place of business was 87 East 1400 North, Logan, Utah 84341. Quik Payday’s sole purpose was providing payday loans by means of the internet to borrowers seeking such loans. In 2003 Quik Payday ceased making loans to Kansas residents. Moreover, in 2006 Quik Payday ceased all payday lending operations.

2. Defendant Judi M. Stork, in her official capacity as Acting Bank Commissioner of the Office of the State Bank Commissioner, State of Kansas is located at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

3. Defendant Kevin C. Glendening, in his capacity as Administrator, Deputy Commissioner for the Office of the State Bank Commissioner, Consumer and Mortgage Lending Division is located at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that the claims of Quik Payday arise under the Constitution, laws or treaties of the United States. This Court also has jurisdiction pursuant to 28 U.S.C. § 1343 in that the claims are to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States. Furthermore, jurisdiction is appropriate in aid of the Court's jurisdiction pursuant to 28 U.S.C. § 1651.

5. Venue is proper pursuant to 28 U.S.C. § 1391 because the Commission resides in this judicial district and the Commission's actions which gave rise to these claims occurred in this judicial district.

FACTS COMMON TO ALL COUNTS

The Utah Department of Financial Institutions Regulates Quik Payday

6. The Utah Department of Financial Institutions has comprehensively regulated Quik Payday from its inception in a manner that provides a full range of legal and supervisory protections comparable to the regulation of Kansas based lenders. Both the Utah Consumer Credit Code and the Kansas Consumer Credit Code have their origin in the Uniform Consumer Credit Code.

7. Quik Payday has been licensed as a deferred deposit lender in Utah and has been examined yearly by the Utah Department of Financial Institutions. Its operations are conducted in compliance with two sections of the Utah Code governing consumer credit transactions generally and deferred deposit loans in particular. These laws have numerous provisions to protect consumers from unfair and misleading credit practices. The Utah Department of Financial Institutions regulates and annually examines Utah based lenders, including state chartered depository institutions and deferred deposit lenders.

8. The Utah Banking Act also provides consumers a similar remedy to Kansas laws, in

that any Kansas citizen that might have a complaint against Quik Payday can contact a Utah regulator. Utah regulators have the same authority and power as a Kansas regulator to resolve any unlawful or improper action by the lender that might occur. Simple directions to contact the Utah Department of Financial Institutions about any complaints were at all relevant times published on Quik Payday's website as required by Utah law.

9. Nationally, and in Kansas, deferring to regulation by a lender's home state has become standard practice in the financial services markets today. Currently, regulators in Utah and many other states regulate a multitude of lenders that provide loans to residents of Kansas without duplicative regulation by a Kansas regulator. This facilitates the free flow of financial services throughout interstate commerce.

The Demand for Quik Payday and Its Formation

10. Quik Payday was formed in 2001 for the sole purpose of providing on-line payday loans. Quik Payday found that demand for loans over the internet was surprisingly large. This type of loan is a mainstream financial product in high demand across the nation. Similar to a credit card, it is much more convenient to arrange a loan over the internet than to go to a retail loan office and obtain the loan in a face-to-face transaction. Under Quik Payday's system, a customer could go on-line anytime a short term loan is needed and obtain the funds.

11. An on-line payday loan can also help borrowers rebuild their credit if they have a bad credit history. Borrowers can be approved for a cash advance to help pay bills that otherwise a borrower would be delinquent in paying. Every time borrowers miss a payment, they lower their credit score, thereby resulting in higher interest rates, which result in higher payments. Thus, a payday loan can allow borrowers to survive a financial emergency without ruining the borrower's credit score.

12. On-line payday loan applications further allow for discreet and private transactions. The on-line process ensured speed and confidentiality as only Quik Payday and the borrower knew of the loan application. The process was convenient and the use of the internet ensured that the transaction was private.

13. The benefits of Quik Payday's program are evidenced by the fact that the number of complaints across the nation is substantially less than almost all other types of loan products. Nationwide there have been very few complaints about Quik Payday or its loans. With respect to Kansas in particular, Quik Payday has not been informed about any complaints filed at the Commission or at any other Kansas agency involving Quik Payday loans.

14. While some of Quik Payday's records reflect borrowers with addresses listed in Kansas, Quik Payday cannot confirm that any of those persons actually resided in Kansas when the loan was issued. This is because Quik Payday's record keeping system did not have the ability to track address history information in its system. If a customer notified Quik Payday of an address change or changed it on-line, the previous address was overwritten by the new address and there was no record of when or if a particular customer address was updated or changed. Thus, Quik Payday cannot confirm that any of those people resided in Kansas when a loan was made.

15. In September of 2003, Quik Payday ceased offering loans to any customer whose current address was in Kansas. Thus, a customer who obtained a loan from Quik Payday while residing in another state and subsequently moved to Kansas would not be permitted to obtain a loan from Quik Payday after he or she notified Quik Payday of the change of address. However, that person would show up in the current search information as having a Kansas address and all of the loans that person obtained in the past would be listed under that person's name without further reference to the state where the individual resided when any of those loans were made, thus making it appear as if they had received all previous loans in Kansas, which was not in fact the case.

16. Quik Payday did not obtain a Kansas lender license because it does not do business in Kansas. It has only conducted business in Utah. This was clearly disclosed on Quik Payday's website in numerous locations along with a notice that advised any borrower relying on the laws or regulations of his/her home state to borrow only from a lender based in that state.

17. Quik Payday does not now, nor at any time in the past, have any offices, employees, or other physical presence in Kansas. Quik Payday owns no property in Kansas and conducts no business operations in Kansas. Moreover, Quik Payday has not entered into contracts in Kansas.

The lending agreements between Quik Payday and consumers were not made in Kansas. They were made over the internet. Quik Payday's website clearly and expressly discloses that Quik Payday was a Utah lender that only made loans in Utah and the loans are governed by Utah law. Furthermore, the situs of the contracting between Quik Payday and consumers did not occur in Kansas. A consumer initiated a loan request by submitting a loan application electronically. The final act which approved and created the loan occurred entirely in Utah. The final act was not the consumer clicking the "submit." It was the lender approving the loan and transmitting the funds electronically, which occurred in Utah. Additionally, the loan payments are received electronically by Quik Payday in Utah. Quik Payday's actions are in accord with law underlying the financial services markets in the United States today. The financial services market has evolved with the advent of computer based networks, thus changing the localized cash and carry system to systems using credit and debit cards, ATMs, online banking, internet lending and the like. As the national financial services markets have evolved the situs of the lender has governed which state consumer credit laws apply to loans and credit transactions. If this were not so, the interstate financial services market would be impeded by the regulation of fifty separate, complex and non-uniform rules.

The Kansas Banking Commission Activities with Respect to Quik Payday

18. In mid-2005, the Commission first contacted Quik Payday regarding its on-line payday loans.

19. On July 9, 2005, the Commission requested certain documents and information from Quik Payday. On August 12, 2005, Quik Payday responded by producing documents and other information requested, but clearly stated that its response was not an acknowledgment that Kansas laws governing consumer credit and deferred deposit lending applies to these loans or that Quik Payday is required to have a Kansas license to make such loans.

20. On March 13, 2006 the Commission issued a "Summary Order to Cease and Desist, Pay Civil Penalty (Fine), to Bar From Future Application For Licensure, and To Pay Restitution For Violations" ("Summary Order"). Thus, the Commission waited more than two years after Quik Payday's last issuance of an internet loan to a borrower with a Kansas address to assert a claim that

Quik Payday violated Kansas law.

21. The Summary Order is made under the Kansas Uniform Consumer Credit Code, K.S.A. § 16a-1-101 et seq. This same statute, at K.S.A. § 16a-1-201(1), purports to apply to any situation where a “creditor induces the consumer who is a resident of this state to enter into the transaction by solicitation in this state by any means, including but not limited to: Mail, telephone, radio, television or any other electronic means.”

22. The Summary Order recites a total of approximately 3,077 supervised loans that were made with persons having addresses in Kansas and commands:

[Quik Payday] shall immediately cease and desist engaging in the business of making, and/or undertaking direct collection of payments from, supervised loans, as defined by K.S.A. 2005 Supp. 16a-1-301 (46), with Kansas consumers. All signage for payday loans/advances to Kansas consumers must be removed and any advertisements, including electronic internet solicitation, must be withdrawn from circulation.

[Quik Payday] shall pay a civil penalty (fine) in the amount of \$5,000,000.00 made payable to the Kansas Office of the State Bank Commissioner.

[Quik Payday] shall be barred from future application for licensure as a supervised lender pursuant to the Code.

[Quik Payday] shall pay restitution to 972 Kansas consumers in the form of refunding all profits and/or interest or service fees received as the result of engaging in the business of making and/or undertaking direct collection of payments from at least 3,077 supervised loans, as defined by K.S.A. 2005 Supp. 16a-1-301 (46), with these 972 Kansas consumers, and shall pay interest to these 972 Kansas consumers on all said profits and/or interest or service fees at the rate of 8% per annum from May 11, 2001. . . .

23. The comments to K.S.A. § 16a-1-201 recognize that “as a practical matter, nearly all consumer credit extended by out-of-state creditors to Kansas residents would be deemed to have been made in Kansas if an expansive interpretation is given . . . there simply would be precious few transactions that slip past the broad net cast by such an interpretation” Id. (emphasis added).

CAUSES OF ACTION

COUNT I- Violation of 42 U.S.C. § 1983 (Commerce Clause)

24. Plaintiff Quik Payday incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

25. The Defendants intentionally, knowingly or recklessly committed acts which operated to deprive the Plaintiff Quik Payday of its rights secured by the Constitution of the United States.

26. The Defendants are attempting to regulate Quik Payday without jurisdiction and in violation of the Constitution of the United States, specifically the Commerce Clause.

27. Regulation of interstate commerce is a power affirmatively granted to the Federal government. Defendants have no right to regulate it in a way that is unduly burdensome to interstate commerce. On its face and as applied by Defendants, the Kansas Consumer Credit Code (“KCCC”) purports to control commerce occurring wholly outside the boundaries of the State of Kansas.

28. The KCCC purports to directly regulate interstate commerce and, therefore, is subject to rigorous scrutiny. The authority for Defendants to regulate an out of state business requires Quik Payday to have a substantial nexus before Defendants can assert such authority. There is no substantial nexus between Quik Payday and Kansas. Quik Payday operated its business solely inside of Utah and did not make loans in Kansas. Quik Payday did not have any officers, agents or employees in Kansas and, in fact, never had any physical presence whatsoever in Kansas. All loan applications, loan approvals, loan proceeds and loan payments were submitted, processed and/or received in Utah. Quik Payday did not direct its activities into the State of Kansas, rather, Kansas residents solicited information from Quik Payday. Notwithstanding, the practical effect of the KCCC, on its face and as applied by Defendants, is to control conduct outside the boundaries of Kansas. As such, the statute and regulatory enforcement activity of Defendants acts as a roadblock and impedes interstate commerce.

29. Defendants’ application of the KCCC further discriminates against interstate commerce by seeking to regulate transactions between Quik Payday’s borrowers who obtained the

Quik Payday loan while residing outside of Kansas but have since moved to Kansas. Defendants are penalizing Quik Payday for making out-of-state loans to out-of-state borrowers. Under Defendants' interpretation and application of the KCCC, Defendants have the authority to regulate every lender in the United States based on the mere chance that a consumer may subsequently move to Kansas.

30. Defendants' application of the KCCC unduly burdens interstate commerce by increasing transaction costs and causing a likelihood of inconsistent state regulation. Defendants' current application of the KCCC forces Quik Payday and every other potential internet lender to comply with each state's individualized consumer credit laws, even if they do not advertise or maintain any physical presence in that state.

31. Defendants' application of the KCCC imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits. Quik Payday's website advises anyone who prefers to obtain a loan governed by the law of his or her own state that person should not obtain a loan from Quik Payday. The customers of Quik Payday have the full benefit of the regulatory protections afforded by Utah and are notified of such when obtaining a loan from Quik Payday. Utah's consumer credit laws have similar protections and rights as in Kansas and ensure that Utah's Department of Financial Institutions protects consumers from unfair lending activities in Utah.

32. The Defendants acted under color of the authority of the State of Kansas in issuing their Summary Order.

33. The Defendants' acts are an unconstitutional infringement of Quik Payday's rights and in violation of Article I, § 8, cl. 3 of the United States Constitution.

COUNT II- Violation of 42 U.S.C. §1983 (Due Process)

31. Plaintiff Quik Payday incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

32. The Defendants intentionally, knowingly or recklessly committed acts which operated to deprive the Plaintiff Quik Payday of its rights secured by the Constitution of the United

States.

33. The Defendants are attempting to regulate Quik Payday without jurisdiction and in violation of the Constitution of the United States, specifically the Due Process Clause. The Due Process Clause prevents Defendants from exercising jurisdiction to regulate and control activities, such as Quik Payday's, wholly beyond the boundaries of Kansas.

34. The Due Process Clause requires that nonresident lenders, such as was Quik Payday, have a substantial nexus with the regulating state as a condition precedent to regulation. Thus, merely showing minimal contacts, as required for personal jurisdiction, is not sufficient for judicial jurisdiction to regulate Quik Payday. There is no substantial nexus between Quik Payday and Kansas. Quik Payday operated its business solely inside of Utah and did not make loans in Kansas. Quik Payday did not have any officers, agents or employees in Kansas and, in fact, never had any physical presence whatsoever in Kansas. All loan applications, loan approvals, loan proceeds and loan payments were submitted, processed and/or received in Utah. Quik Payday did not direct its activities into the State of Kansas, rather, Kansas residents solicited information from Quik Payday. Notwithstanding, the practical effect of the KCCC, on its face and as applied by Defendants, is to subject Quik Payday and other non-resident lenders to unwarranted, overly broad and unduly burdensome state regulation.

35. There are also insufficient contacts between the regulated subject matter and Kansas. Most of the credit and financial services, including internet lending, used by consumers across the nation are provided through interstate commerce. Defendants' application of the KCCC impedes the development of these markets since transactions occurring across the nation would be subject to regulation of fifty separate, complex and non-uniform state laws. Quik Payday, like many other financial service providers, is located in Utah where the loan was processed, approved, and payments were received.

36. The Defendants acted under color of the authority of the State of Kansas in issuing their Summary Order.

37. The Defendants' acts are an unconstitutional infringement of Quik Payday's rights

under the 14th Amendment of the United States Constitution

COUNT III- Declaration of K.S.A. § 16a-1-201(1) as Unconstitutional

38. Plaintiff Quik Payday incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

39. K.S.A. § 16a-1-201(1) is in patent violation of the federal Due Process Clause and/or the Commerce Clause because it is vague, unintelligible, overbroad and fails to give Quik Payday (and other internet lenders) adequate notice regarding to whom the statute applies. Even the comments to K.S.A. § 16a-1-201(1) state that “as a practical matter, nearly all consumer credit extended by out-of-state creditors to Kansas residents would be deemed to have been made in Kansas if an expansive interpretation is given . . . there simply would be precious few transactions that slip past the broad net cast by such an interpretation . . .” Therefore, the statute literally applies to any situation where a “creditor induces the consumer who is a resident of this state to enter into the transaction by solicitation in this state by any means, including but not limited to: Mail, telephone, radio, television or any other electronic means.”

40. On its face and as applied, the KCCC directly regulates interstate commerce and, therefore, is subject to rigorous scrutiny. Defendants lack the authority to regulate Quik Payday because Quik Payday, at all times relevant hereto, lacked a substantial nexus to the State of Kansas. The mere showing of minimum contacts sufficient for the assertion of personal jurisdiction, even if such existed, would not be sufficient to allow the assertion of regulatory authority over Quik Payday. Because the KCCC unlawfully purports to regulate commerce occurring outside the boundaries of Kansas, the statute is an unconstitutional burden on interstate commerce.

41. In addition, Defendants’ application of the KCCC discriminates against interstate commerce by seeking to regulate transactions between Quik Payday’s borrowers who obtained the Quik Payday loan while residing outside of Kansas but have since moved to Kansas. Defendants are penalizing Quik Payday for making those out-of-state loans to out-of-state borrowers. Under Defendants’ application of the KCCC, Defendants are regulating every lender in the United States based on the mere chance a consumer may subsequently move to Kansas.

42. Defendants' application of the KCCC unduly burdens interstate commerce by increasing transaction costs and causing a likelihood of inconsistent state regulation. Defendants' current application of the KCCC forces Quik Payday and every other potential internet lender to comply with each state's individualized consumer credit laws, even if they do not advertise or maintain any physical presence in that state.

43. Defendants' application of the KCCC imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits. Quik Payday's website advises anyone who prefers to obtain a loan governed by the law of his or her own state should not obtain a loan from Quik Payday. The customers of Quik Payday have the full benefit of the regulatory protections afforded by Utah and are notified of such when obtaining a loan from Quik Payday. Utah's consumer credit laws have similar protections and rights as in Kansas and ensure that Utah's Department of Financial Institutions protects consumers from unfair lending activities in Utah.

44. The Defendants' overbroad application of the KCCC violates Quik Pay's constitutional rights pursuant to the Commerce and Due Process Clauses of the United States Constitution. Moreover, the territorial scope of the KCCC, as defined by K.S.A. § 16a-1-201(1), is unconstitutional because it is vague, unintelligible, overly broad, and seeks to regulate activities that occur wholly outside the State of Kansas.

RELIEF

First Claim for Relief- Declaratory Relief

45. Plaintiff Quik Payday incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

46. Defendants are attempting to regulate Quik Payday without jurisdiction and in violation of the Constitution of the United States. Furthermore, K.S.A. § 16a-1-201(1) is patently violative of federal Due Process rights and/or the Commerce Clause.

47. Pursuant to Fed. R. Civ. P. 57, Quik Payday seeks a judgment declaring that Defendants do not have jurisdiction to regulate Quik Payday and, furthermore, that Defendants'

attempt to regulate Quik Payday are in violation of the Commerce Clause and the Due Process Clause of the United States Constitution. In addition, Quik Payday seeks a judgment declaring that the territorial scope of the KCCC, as defined by K.S.A. § 16a-1-201(1), is unconstitutional because it is vague, unintelligible, overly broad, and seeks to regulate activities that occur wholly outside the State of Kansas.

48. There is an actual and justiciable controversy as to whether the Defendants have jurisdiction and the ability to regulate Quik Payday as well as whether K.S.A. § 16a-1-201(1) is constitutional.

WHEREFORE, Plaintiff Quik Payday prays for judgment against Defendants as follows:

- (1) Declaring the Defendants are without jurisdiction to regulate Quik Payday with respect to internet payday loans, specifically the Defendants are in violation of the Constitution of the United States;
- (2) Declaring the Defendants' attempt to regulate Quik Payday is in violation of the Commerce Clause;
- (3) Declaring the Defendants' attempt to regulate Quik Payday is in violation of the Due Process Clause; and
- (4) Declaring K.S.A. § 16a-1-201(1) unconstitutional.

Second Claim for Relief- Injunctions

49. Plaintiff Quik Payday incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

50. Quik Payday will suffer irreparable injury to its constitutional rights unless the injunction issues. By attempting to apply the KCCC to Quik Payday, and commencing an administrative enforcement action, Defendants have violated and continue to violate Quik Payday's rights pursuant to the Commerce and Due Process Clauses. Furthermore, money damages are not a remedy available pursuant to 42 U.S.C. § 1983 against these Defendants, thus Quik Payday has no adequate remedy at law.

51. The injury to the Quik Payday outweighs whatever damage the proposed injunction

may allegedly cause the Defendants. Defendants are currently violating Quik Payday's constitutional rights by attempting to use extraterritorial jurisdiction and regulate Quik Payday in Kansas, despite the fact that Quik Payday has no substantial nexus to Kansas.

52. The injunction, if issued, would not be adverse to the public interest. Most of the credit and financial services, including internet lending, used by consumers across the nation are provided through interstate commerce. Defendants' application of the KCCC impedes the development of these markets since transactions occurring across the nation would be subject to regulation of fifty separate, complex and non-uniform state laws. Ultimately consumers would likely pay a higher price for internet loans, as consumers would have fewer lenders to chose from. The proposed injunction, therefore, is not adverse to the public interest.

53. As demonstrated above, Plaintiff Quik Payday is likely to succeed on the merits of this case. Defendants' application of the KCCC violates the Due Process Clause and the Commerce Clause. In addition, the territorial scope of the KCCC, as defined by K.S.A. § 16a-1-201(1), is unconstitutional because it seeks to subject Quik Payday and other non-resident internet lenders to unwarranted, overly broad and unduly burdensome state regulation.

54. An injunction is necessary in aid of this Court's jurisdiction.

WHEREFORE, Plaintiff Quik Payday prays for a preliminary and permanent injunction against Defendants, after hearing and upon notice to Defendants:

- (1) Enjoining the Defendants, or anyone acting on the Commission's behalf, from taking or bringing any action against Quik Payday now or in the future;
and
- (2) Enjoining the Defendants, or anyone acting on the Commission's behalf, from proceeding in the current administrative action against Quik Payday;
and
- (3) Enjoining the Defendants, or anyone acting on the Commission's behalf, from taking or bringing any action pursuant to K.S.A. § 16a-1-201(1).

Pursuant to Rule 40.2 of the Rules of the United States District Court for the District of Kansas, Plaintiff Quik Payday, Inc. designates Kansas City, Kansas as the place of trial for the above-captioned matter.

Respectfully submitted,

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