

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN,

Plaintiff,

No. 19-cv-13078

v.

HUGGY LAMAR PRICE, in his official
capacity as President/CEO of SIERRA
FINANCIAL, LLC d/b/a SIERRA
LENDING, LLC, and/or SIERRA
FINANCIAL, and/or TALL GRASS
FINANCE

HON.

MAG.

and

VIRGIL PEREZ, in his official capacity as
Tribal Chairman of the Iipay Nation of
Santa Ysabel,

Defendants.

Aaron W. Levin (P81310)
Darrin F. Fowler (P53464)
Attorneys for Plaintiff
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
LevinA@michigan.gov

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Attorney General Dana Nessel, by and through Assistant

Attorneys General Aaron W. Levin and Darrin F. Fowler, brings this

Complaint for Declaratory and Injunctive Relief (Complaint) and makes the following allegations.

There are no pending or previously discontinued companion cases in this or any other court, including state court.

INTRODUCTION

Suffice to say that [the purpose of usury law] is to protect the necessitous borrower from extortion. In the accomplishment of this purpose a court must look squarely at the real nature of the transaction, thus avoiding, so far as lies within its power, the betrayal of justice by the cloak of words, the contrivances of form, or the paper tigers of the crafty. [*Wilcox v Moore*, 354 Mich. 499, 504 (1958).]

1. This lawsuit seeks to stop the usurious loan practices of an online lender that offers loans with interest rates between 388.55% and 1505.63%.

2. Sierra Financial, LLC d/b/a Sierra Lending, LLC, and/or Sierra Financial, and/or Tall Grass Finance (Sierra) is an online lender that markets, offers, issues, services, collects on, and otherwise provides these loans in an unfair, deceptive, and abusive manner to desperate and naïve borrowers, including borrowers who live in Michigan.

3. Sierra is purportedly affiliated with and acts as an arm and instrumentality of the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe.

4. The Michigan Interest Rates Act limits the interest rate charged on a written loan agreement to 7% annually. Mich. Comp. Laws § 438.31. Interest rates exceeding 25% are subject to criminal penalties under Michigan's criminal usury statute. Mich. Comp. Laws § 483.41

5. Sierra's loans violate Michigan's civil and criminal usury statutes.

6. Through Sierra, Defendants have committed and are committing unfair, deceptive, and/or abusive acts or practices under the Consumer Financial Protection Act, 12 U.S.C. § 5531 and § 5536.

7. The term "Indian country" as used in this complaint means:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

8. The Iipay Nation of Santa Ysabel has no Indian country anywhere inside the State of Michigan.

9. The Attorney General brings this action for declaratory and prospective injunctive relief against tribal officials in their official capacities for conduct occurring in Michigan. *See Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014).

10. Sierra purports to be wholly owned and operated by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe.

11. Upon information and belief, Sierra is not an arm of the tribe and therefore is not entitled to assert tribal sovereign immunity from suit.

12. Whether Sierra is, in fact, an arm of the Iipay Nation of Santa Ysabel is immaterial because this lawsuit seeks only declaratory and prospective injunctive relief from tribal officials sued in their official capacity, which federal law permits irrespective of tribal sovereign immunity from suit.

PARTIES

13. Plaintiff is the Attorney General of the State of Michigan, appearing on behalf of the People of the State of Michigan, pursuant to her statutory and common law authority to enforce the laws of the State of Michigan.

14. Defendant Huggy Lamar Price is named only in his official capacity as the President/CEO of Sierra, an online lending company with the following address:

Sierra Lending, LLC
PO Box 647
Santa Ysabel, CA 92070.

Upon information and belief, Price is responsible for the operations of Sierra.

15. Defendant Virgil Perez is named only in his official capacity as the Tribal Chairman of the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe with the following address:

Santa Ysabel Tribal Office
PO Box 130
Schoolhouse Canyon Rd
Santa Ysabel, CA 92070.

JURISDICTION AND VENUE

16. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 12 U.S.C. § 5565(a)(1) because claims are brought under Federal consumer financial law, specifically the Consumer Financial Protection Act.

17. This Court has supplemental jurisdiction over the claims brought under Michigan law pursuant to 28 U.S.C. § 1367. The conduct underlying the state and federal law claims form the same case or controversy because the underlying conduct is substantially the same.

18. This Court may enter a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 – 2202.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(f)(1) and (3) because a substantial part

of the events or omissions giving rise to the claim occurred in, and because Defendants do business in, this District.

FACTUAL ALLEGATIONS

20. Since 2014, the Attorney General has reviewed approximately 7 consumer complaints against Sierra. These complaints were either filed directly with the Attorney General's Office or with the Better Business Bureau. Copies of these complaints are attached as **Exhibit A**. Defendants have been served with an unredacted copy of the consumer complaints so that they can identify the affected consumers who filed consumer complaints and so that Defendants can provide meaningful answers to the allegations in this Complaint.

21. The complaints contain similar stories: consumers located and residing in Michigan report applying for a loan online, receiving the loan, and being surprised to find hidden terms and exorbitant interest rates and fees. Consumers' money is taken directly from their bank accounts. Several consumers wanted to pay off their loans early and were told they could not or that they had to wait, which resulted in additional fees and interest being owed. Consumers report paying interest rates of 300% or more.

22. For example, Latisha M. received many emails from Sierra telling her she was approved for a minimum of \$500 and a maximum of \$5,000. She needed some help paying her bills and after numerous phone calls from Sierra she accepted a \$500 loan. The next month, Sierra began automatically withdrawing money from her bank account. Latisha noticed that her second payment was much larger than her first payment and was shocked to find out the terms of the loan were not what she had been told on the phone and she was on a ridiculous payment schedule. She wanted to pay off her loan early but was told she had to wait, which increased the amount due tremendously and forced her to wait a few more weeks. She was able to pay off her loan early, but still paid approximately \$1,200-\$1,300 for a \$500 loan. Affidavit of Latisha M. is attached as **Exhibit B**.

23. Sierra has operated under multiple websites. These websites state that Sierra's loans have very high interest rates (Annual Percentage Rates, or APR,) between 388.55% and 1505.63%. Images of these websites are attached as **Exhibit C**.

24. Upon information and belief, through Sierra, Defendants market and provide loans to consumers and take unreasonable advantage of a

consumer's lack of understanding of the material risks, costs, or conditions of Sierra's financial products or services. Moreover, upon information and belief, Defendants, through Sierra, take unreasonable advantage of consumers' inability to protect their interests in selecting or using Sierra's financial products or services.

25. Upon information and belief, Defendants, through Sierra's marketing and loan servicing practices, cause or are likely to cause substantial injury to consumers and these injuries are not reasonably avoidable by consumers and the substantial injury is not outweighed by benefits to consumers or to competition.

26. Sierra's websites indicate that at various times it has not offered loans to persons who live in Arizona, Connecticut, California, Washington D.C., Maine, Montana, Ohio, Oregon, Vermont, Virginia, Arkansas, Colorado, Georgia, Massachusetts, Maryland, New Hampshire, New York, Washington, Pennsylvania, West Virginia, Kansas, Missouri, North Carolina, Oregon, or New Jersey. (Exhibit C.)

27. Thus, upon information and belief, through their operation of Sierra, Defendants are and at all relevant times have been engaging in conduct outside of the Iipay Nation of Santa Ysabel's Indian country

through its ongoing marketing, offering, issuing, servicing, collecting on, and otherwise providing loans to Michigan residents.

**COUNT I – UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR
PRACTICES IN VIOLATION OF THE FEDERAL CONSUMER
FINANCIAL PROTECTION ACT
12 U.S.C. § 5531 AND § 5536**

28. The Attorney General incorporates the allegations contained in paragraphs 1 through 27 as though fully set forth here.

29. Under the Consumer Financial Protection Act, it is unlawful for any covered person or service provider to offer or provide to a consumer a product or service not in conformity with Federal consumer financial law or to engage in any unfair, deceptive, or abusive act or practice. 12 U.S.C. § 5531; 12 U.S.C. § 5536.

30. Sierra is a covered person under the Consumer Financial Protection Act because it is an entity that engages in offering or providing a consumer financial product or service. 12 U.S.C. § 5481.

31. An abusive act or practice is one that materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or takes unreasonable advantage of a consumer's lack of understanding of the material risks, costs, or

conditions of the product or service; a consumer's inability to protect their interests in selecting or using a consumer financial product or service; or a consumer's reasonable reliance on a covered person to act in the interests of the consumer. 12 U.S.C. § 5531(d).

32. Sierra's practices, viewed together and independently, including but not limited to their usurious interest rates, loan approval process, misrepresenting contract terms over the phone, ability to automatically deduct money from a consumer's bank account, harassing or pressuring consumers into signing up for loans, and refusing to let consumers pay off their loans early materially interferes with the ability of a consumer to understand a term or condition of Sierra's product or service or takes unreasonable advantage of a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; a consumer's inability to protect their interests in selecting or using a consumer financial product or service; or a consumer's reasonable reliance on a covered person to act in the interests of the consumer.

33. An unfair act or practice is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable

by consumers and the substantial injury is not outweighed by benefits to consumers or to competition. 12 U.S.C. § 5531(c).

34. Sierra's practices, viewed together and independently, including but not limited to their loan approval process, misrepresenting contract terms over the phone, ability to automatically deduct money from a consumer's bank account, harassing or pressuring consumers into signing up for loans, and refusing to let consumers pay off their loans early causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and the substantial injury is not outweighed by benefits to consumers or to competition.

35. Sierra's business practices, viewed together and independently, including but not limited to their loan approval process, misrepresenting contract terms over the phone, harassing or pressuring consumers into signing up for loans, and refusing to let consumers pay off their loans early constitute deceptive acts or practices under the Consumer Financial Protection Act.

36. Upon information and belief, Defendants are responsible for the operations of Sierra.

37. The Attorney General may bring a civil action to enforce the Consumer Financial Protection Act. 12 U.S.C. § 5552.

38. In total, Defendants are responsible for Sierra's business practices which, viewed together and independently, including but not limited to their usurious interest rates, loan approval process, misrepresenting contract terms over the phone, ability to automatically deduct money from a consumer's bank account, harassing or pressuring consumers into signing up for loans, and refusing to let consumers pay off their loans early constitute unfair, deceptive, and/or abusive acts or practices under the Consumer Financial Protection Act.

39. Defendants' violations of the Consumer Financial Protection Act are ongoing.

40. Upon information and belief, Michigan consumers have been and continue to be economically damaged by Defendants' unfair, deceptive, and/or abusive acts or practices.

41. Defendants have records allowing them to identify Michigan residents that have received loans from Sierra but have failed to provide these records to the Michigan Attorney General's office, despite requests.

42. Before initiating this action, the Michigan Attorney General's office sent a complete copy of this Complaint and written notice describing this action to the Consumer Protection Financial Bureau in accordance with 12 U.S.C. § 5552(b)(1).

**COUNT II – ILLEGAL INTEREST RATE
VIOLATION OF MICH. COMP. LAWS § 438.31**

43. The Attorney General incorporates the allegations contained in paragraphs 1 through 42 as though fully set forth here.

44. Defendants, through their operation of Sierra, have offered and are currently offering loans to Michigan residents with an annual interest rate greater than 7%, in violation of Mich. Comp. Laws § 438.31.

45. Mich. Comp. Laws § 438.31 is a nondiscriminatory state law applicable to all persons.

46. The Attorney General may bring this claim pursuant to her broad statutory and common law authority to enforce the laws of the State of Michigan. Mich. Comp. Laws § 14.28; *State of Mich. ex rel. Kelley v. C.R. Equip. Sales, Inc.*, 898 F. Supp. 509, 513-514 (W.D. Mich. 1995) (citing *Mundy v. McDonald*, 216 Mich. 444, 450 (1921)).

47. Upon information and belief, Michigan residents have been and continue to be economically damaged by Sierra's illegal interest rates.

48. Defendants have records allowing them to identify Michigan residents that have received loans from Sierra but have failed to provide these records to the Michigan Attorney General's office, despite requests.

COUNT III - NUISANCE

49. The Attorney General incorporates the allegations contained in paragraphs 1 through 48 as though fully set forth here.

50. Defendants, through their operation of Sierra, have offered and are currently offering loans to Michigan residents with an annual interest rate greater than 25%, in violation of Mich. Comp. Laws § 438.41.

51. Mich. Comp. Laws § 438.41 is a nondiscriminatory state law applicable to all persons.

52. Through their violations of 12 U.S.C. § 5531, 12 U.S.C. § 5536, Mich. Comp. Laws § 438.31, and Mich. Comp. Laws § 438.41,

Defendants are engaged in activities constituting common law nuisance.

53. The Attorney General has broad authority to bring a civil action enjoining such nuisances. *Attorney Gen. v. PowerPick Club*, 287 Mich. App. 13, 44-45 (2010) (citing *Attorney Gen., ex rel. Optometry Bd. of Examiners v. Peterson*, 381 Mich. 445, 465-466 (1969)).

RELIEF REQUESTED

Accordingly, the Attorney General respectfully requests that this Court enter an order granting the following relief:

A. Declaring Defendants' marketing, offering, issuing, servicing, collecting on, or otherwise providing loans with usurious interest rates in Michigan through their operation of Sierra is in violation of Mich. Comp. Laws § 438.31, Mich. Comp. Laws § 438.41, and 12 U.S.C. § 5531 and § 5536.

B. Declaring Defendants, through their operation of Sierra, have committed and are committing unfair, deceptive, and/or abusive acts or practices under the Consumer Financial Protection Act, 12 U.S.C. § 5531 and § 5536.

C. Permanently enjoining the current Defendants and their successors, as well as their current and successor agents, servants, employees, officers and attorneys, and anyone acting in concert with them; and any future person or entity that operates as an arm or instrumentality of the Iipay Nation of Santa Ysabel from marketing, offering, issuing, servicing, collecting on, or otherwise providing usurious loans in Michigan in the future.

D. Any other relief the Court deems appropriate.

Respectfully submitted,

DANA NESSEL
Attorney General

/s/ Aaron W. Levin
Aaron W. Levin (P81310)
Darrin F. Fowler (P53464)
Assistant Attorneys General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
LevinA@michigan.gov

Dated: October 18, 2019