

**BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA**

IN THE MATTER OF THE INVESTIGATION OF:

**Avant, Inc.
222 N. LaSalle Dr.
17th Floor
Chicago, IL 60601**

ASSURANCE OF VOLUNTARY DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Avant, Inc. ("Avant"). In accordance with W. Va. Code § 46A-7-107, Avant, without in any way admitting that any of its prior practices were in violation of the West Virginia Consumer Credit and Protection Act, (the "Act"), W. Va. Code § 46A-1-101 *et seq.* or other applicable laws, has consented to observe the following terms, conditions, and agreements in paragraphs 31-44 in the future conduct of its business from and after the date of this Assurance of Voluntary Discontinuance.

BACKGROUND AND APPLICABLE LAW

1. Avant is a for-profit company and maintains a principal business office at 222 N. LaSalle Dr., 17th Floor, Chicago, IL 60601.
2. Avant is known as an "online lending platform," where unsecured installment loans are made to consumers via Avant's online platform. Avant also markets and promotes loans originated by third parties, including, but not limited to, FDIC-insured banks.

3. To make loans in West Virginia, a lender must obtain a license from the West Virginia Division of Financial Institutions. W. Va. Code § 31A-2-5; W. Va. Code § 46A-4-101 *et seq.*

4. Businesses making consumer loans or taking assignments of consumer loans must notify the state Department of Tax and Revenue of its business operations in the state 30 days after commencing business activities, and then yearly thereafter. W. Va. Code § 46A-7-115.

5. The West Virginia Credit Services Organizations Act (“CSO Act”), W. Va. Code § 46A-6C-1 *et seq.*, regulates the provision of “credit services” in exchange for the payment of money or consideration, pursuant to which it defines “credit services” as:

- (1) improving the buyer’s credit record, history or rating;
- (2) obtaining an extension of credit for a buyer; or
- (3) providing advice or assistance to a buyer with regard to subdivision (1) and (2) of this subsection.

See W. Va. Code § 46A-6C-2(a).

6. Violations of West Virginia’s Consumer Credit and Protection Act and other laws created to protect the public and foster fair and honest competition are deemed to be unfair or deceptive acts or practices as defined by the Act, W. Va. Code §§ 46A-6-102 and -104, which is regulated by the Attorney General. W. Va. Code § 46A-6-101.

7. The activities of “credit services organizations” are subject to the provisions set forth in the Act, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101 *et seq.*

8. Repeated and willful violations of the Act may subject the violator to civil penalties of up to \$5,000.00 for each violation, in accordance with West Virginia Code § 46A-7-111(2).

9. For purposes of this ASSURANCE, “West Virginia Consumers” shall mean and include all persons who resided at or provided Avant with a West Virginia address at the time of obtaining a loan on the Avant platform.

THE ATTORNEY GENERAL’S ALLEGATIONS

10. In May 2015, the Attorney General began reviewing Avant after receiving a consumer complaint disclosing that Avant was engaging in certain business practices which may have been violations of the Act as set forth herein below.

11. Avant engaged in marketing, promoting and enabling 90 unsecured, installment consumer loans to be made on the Avant online platform in West Virginia from April 2014 through August 2014, under what is known in the industry as the “bank partnership” business model. Avant also makes loans directly to consumers in the traditional sense, but did not make these loans to consumers in West Virginia.

12. The Attorney General alleges that under the “bank partnership” model, a company such as Avant does everything that a bank would do to make a loan to a customer. It advertises, markets and promotes loans; takes applications from prospective borrowers; evaluates the customer; analyzes the customer’s credit history and credit score; provides customer service and support. Avant then turns the customer over to a Bank with which it has “partnered” for the bank to make a final decision on whether to lend the money. Because the bank and the company have agreed on, and the bank has previously approved, the underwriting criteria in advance, the bank always loans the money. The bank holds the loan for two or three days and then sells the loan to Avant. Avant pays the bank full face value for the loan, plus an additional amount of money. Avant then services the loan, collecting payments and engaging in debt collection activities if and when payments are not made.

13. The Attorney General asserts that the practice of marketing and promoting loans to consumers is the business of a “credit services organization” as defined by the CSO Act, W. Va. Code § 46A-6C-2(a)(1) and 2(a)(3). The Attorney General asserts that promoting and marketing loans to consumers where consumers are actually loaned money based on Avant’s efforts is equal to obtaining an extension of credit, as defined by the CSO Act.

14. The Attorney General alleges that the bank partnership model is used by online lending platforms such as Avant in an attempt to take advantage of favorable treatment banks get under the law when making loans. Under federal law, a bank can “export” allowable interest rates from its home state to customers in other states. Thus, a bank in a state that does not have usury laws can export and charge higher interest rates to customers than the consumers’ home states may permit non-banks to charge.

15. The maximum interest rate on an installment loan made in West Virginia to a consumer by a licensed lender is 18 to 31%, depending on loan amount.

16. Loans made through the Avant platform to West Virginia consumers all exceeded 18%. Loans were made at interest rates ranging from 25% to 36% per annum. Through the end of July 2015, West Virginia consumers had paid Avant \$111,843.89 in interest on outstanding loans.

17. Avant maintains at least one Internet website where it advertises the loans that it markets. <http://www.avant.com>. Avant previously operated under the name Avant Credit and maintained an Internet website at <http://www.avantcredit.com>.

18. Prior to the Attorney General’s inquiry, Avant’s website made repeated references to Avant being a lender and lending money to consumers which the Attorney General believes did not clearly and conspicuously explain on the front end the delineation between products that were

originated by licensed Avant entities and the ones that were originated by bank. Such statements including the following:

- a. “Over 100,000 people have experienced the convenience of our personal loans.”
- b. “Our Rates & Terms”
- c. “Our Products”
- d. “AvantCredit Personal Loan”
- e. “Why should I choose an AvantCredit personal loan?”
- f. “At AvantCredit we offer personal installment loans...with terms that range from 12-months to 48-months. **”

19. Prior to the Attorney General’s inquiry, Avant’s website allegedly mentioned the bank with which it partnered on just certain pages on its website, mostly in a font that was very small and difficult to read. As a result of modifying its product offering among licensed Avant entities, Avant now puts the disclaimer on most of its webpages.

20. The Attorney General alleges that statements such as the foregoing may have led consumers in West Virginia to believe that Avant was the lender.

21. For all 90 of the loans facilitated by Avant in West Virginia, Avant provided all the marketing, customer intake, customer analysis, credit history and score review, customer service and support. Avant services all of the loans. Avant owns the loans after acquiring them from the bank.

22. The West Virginia Supreme Court of Appeals has ruled that when a company attempts to operate under a “bank partnership” lending model and acquires all of the loans originated by the lender in West Virginia, the marketing company is the *de facto* lender because it

bears the predominant economic interest in the loan. As such, the *de facto* lender cannot avoid the State's consumer protection laws and charge usurious interest rates by partnering with a bank. *CashCall, Inc. v. Morrissey*, 2014WL2404300 (W. Va. 2014).

23. The Attorney General alleges that Avant was operating in West Virginia under a "bank partnership" lending business model where it acquired all of the loans originated by the lender in West Virginia, and thus, was the *de facto* lender to consumers in West Virginia.

24. Avant does not have a lender's license from the West Virginia Division of Financial Institutions as is required to make loans to consumers in West Virginia.

25. The Attorney General alleges that Avant's conduct was unfair or deceptive and in violation of the West Virginia Consumer Credit and Protection Act, W.Va. Code § 46A-6-101 *et seq.*, in the following ways:

- a. Avant's conduct misled consumers to believe that it was licensed to make loans in West Virginia or to operate as a Credit Services Organization, W. Va. Code § 46A-6-102(7)(B), (C) and (E);
- b. Avant misled consumers as to its affiliation with foreign banks, W. Va. Code § 46A-6-102(7) (B), (C) and (E);
- c. Avant advertised loans and credit services with intent not to sell the services as advertised, W. Va. Code § 46A-6-102(7)(I);
- d. Avant misled consumers to believe that it could make loans in West Virginia with interest rates higher than permitted by West Virginia law, W. Va. Code § 46A-6-102(7)(M) and (N);
- e. Avant caused misunderstanding and confusion among consumers as to who the lender was, W. Va. Code § 46A-6-102(7)(L).

26. Alternatively, the Attorney General alleges that Avant may have engaged in the business of providing “credit services” as defined by W. Va. Code § 46A-6C-2(a)(i) without registering with the West Virginia Secretary of State or otherwise complying with the CSO Act.

27. The Attorney General further alleges that Avant may have engaged, directly or indirectly, or through its agents, in the business of providing “credit services” as defined by West Virginia Code § 46A-6C-2(a)(i) by promising to obtain extensions of credit for consumers. Avant assisted in obtaining extensions of credit for 89 West Virginia consumers.

28. The Attorney General alleges that Avant and its agents are not exempt from the CSO Act and, therefore, may have violated the CSO Act as follows:

(a) By operating the business of a credit services organization without first filing a registration statement with the West Virginia Secretary of State, in violation of W. Va. Code § 46A-6C-5;

(b) By operating the business of a credit services organization without first obtaining a surety bond or establishing a surety account with the West Virginia Secretary of State, in violation of W. Va. Code § 46A-6C-4(a);

(c) By entering into contracts or agreements to provide credit services to West Virginia consumers without first providing consumers with a disclosure statement containing the terms required by W. Va. Code § 46A-6C-6; and

(d) By entering into contracts or agreements to provide credit services to consumers when the contracts did not comply in form or substance with the requirements of W. Va. Code § 46A-6C-7.

29. Violation of the CSO Act is a misdemeanor which carries criminal fines and potential incarceration for the offender. W. Va. Code § 46A-6C-10.

AVANT'S RESPONSE

30. Avant denies these allegations and potential claims and any others and represents that it has entered into this Assurance for the sole purpose of compromising disputed claims, without the necessity for protracted and expensive litigation, and that this Assurance does not constitute an admission by Avant of any violation of West Virginia law.

31. Avant operates both as a direct lender and as a bank-affiliated online lending platform, using a bank-partner model. The bank-partner model, which the Attorney General challenges in this matter, is widely used by many banks and other creditors throughout the United States. Although Avant believes federal law authorizes the bank-partner model and preempts state law, Avant voluntarily ceased purchasing loans from its bank partner in West Virginia following the decision in *CashCall, Inc. v. Morrissey*. It took this action on its own initiative before any communication from the Attorney General's office. It is Avant's policy to comply with the consumer protection laws and collection laws in every state, and the Attorney General does not allege that Avant engaged in any collection practice abuses other than those specifically related to the fact that the loans to West Virginia customers were originated via a "bank-partnership" lending model. With respect to the allegations that Avant may alternatively be a "credit services organization," Avant contends that even if its services constituted "credit services," such services are not being provided in exchange for the payment of money or other consideration and therefore Avant would not be a "credit services organization." Avant considers these matters to be the result of a good-faith disagreement over the application of West Virginia licensing laws to a bank-partner lending model.

AGREEMENT

32. Notwithstanding the foregoing and without admitting that it has committed any of the alleged violations set forth herein, Avant promises to take the actions set forth hereinbelow in order to resolve the concerns of the Attorney General.

33. Avant, its employees, agents, servants, successors, and assigns do hereby promise and voluntarily assure the Attorney General that it will comply with the Act, W. Va. Code § 46A-1-101 *et seq.*, and the CSO Act, W. Va. Code § 46A-6C-101 *et seq.* and other applicable laws.

34. Avant agrees to permanently refrain from promoting or marketing personal installment loans in West Virginia or making installment loans in West Virginia in violation of applicable law.

35. Avant agrees to cease all efforts to collect any interest, fees or charges owing on the 90 West Virginia loans, and to delete all negative credit reports that it provided to credit reporting agencies with regard to these loans. Avant agrees not to delete positive credit reports made to credit reporting agencies and to make no negative credit reports in the future with regard to the 90 West Virginia loans.

36. Avant agrees to refund all interest, fees and charges collected from West Virginia consumers with regard to the 90 loans. Avant agrees to refund all sums paid no later than 30 days after execution of this **ASSURANCE**. Avant, at its option, may apply money to be refunded to principal balances owing on each loan. Avant further agrees to provide a sworn, written report to the Attorney General detailing the amounts of money refunded to or applied on balances owed by each consumer. Avant further agrees to notify, in writing, each of the consumer borrowers who have outstanding balances on the loans of the changes in the terms of the loans within 30 days of the execution of this **ASSURANCE**.

37. Avant may continue to collect principal amounts owing on the 90 loans made in West Virginia prior to the execution of this **ASSURANCE**.

38. As part of any collection effort by Avant with regard to the 90 West Virginia loans, Avant agrees, when initiating contact with consumers by telephone, to limit telephone communications to West Virginia customers to a small group of specially trained employees, without the use of an automatic telephone dialing system, and to call no more than twice a week or no more than once a week after Avant representative speaks to the consumer. Avant further agrees that it will not bring any civil action against borrowers in default and agrees not to engage any third party to collect delinquent payments or sell the obligations to any third party.

39. Avant shall pay a civil penalty to the Attorney General in the amount of \$225,000.00, which represents one negotiated civil penalty in the amount of \$2,500.00 for each of the 90 consumer loans made in West Virginia prior to the execution of this **ASSURANCE**. This amount will be paid in the form of a check made payable to the State of West Virginia. This sum may be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

40. Avant shall provide all of its employees who are engaged, directly or indirectly, in the provision or administration of consumer lending, credit services or debt collections to West Virginia consumers with a summary of Avant's obligations under this **ASSURANCE**.

41. Avant further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its business operation, unless written authorization is obtained

from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this ASSURANCE are and shall be public information.

42. It is further agreed and understood that, while the parties to this ASSURANCE presently intend to cooperate in securing and obtaining compliance with the terms of this ASSURANCE, the matters settled by the filing of this agreement may be reopened at any time by the Attorney General of West Virginia for further proceedings in the public interest in the event Avant fails to abide by its obligations hereunder, including such actions as may be necessary to monitor compliance with this ASSURANCE.

IN WITNESS WHEREOF, Avant has caused this ASSURANCE to be executed and represents that the person whose signature appears below is authorized to bind Avant to the terms and conditions set forth herein. The Attorney General of West Virginia or his designate has approved this ASSURANCE.

May 26, 2016
DATE

Avant, Inc.

BY: [Signature]
(Signature)

TITLE: Ryan McDevon, General Counsel
(Print Name and Title)

STATE OF ILLINOIS,

COUNTY OF Cook, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 26th day of MAY, 2016.

My commission expires 12/04/2016.

[Signature]
NOTARY PUBLIC
OFFICIAL SEAL
LINDA KO
Notary Public - State of Illinois
My Commission Expires Dec 4, 2016

APPROVED BY:

Douglas L. Davis

DOUGLAS DAVIS
ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division

DATED: June 2, 2016

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this 2nd day
of June, 2016.

My commission expires April 13, 2020.

Peggy S. Means
NOTARY PUBLIC

