

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

**LILLIAN EASLEY and all others**  
**similarly situated,**

**Plaintiff(s),**

**v.**

**HUMMINGBIRD FUNDS, D/B/A BLUE**  
**TRUST LOANS; JOHN (RANDY)**  
**CADOTTE; WILLIAM TREPANIA;**  
**DAYLENE SHARLOW; TWEED SHUMAN;**  
**DON CARLEY; LEE HARDEN; TRINA**  
**STARR; JAMES WILLIAMS, JR.**

**Defendant(s).**

**Case No. 1:19-CV-00937-KD-N**

## **FIRST AMENDED AND RESTATED COMPLAINT**

Defendants operate an illegal scheme hiding behind the facade of a Native American Tribe while they openly violate the usury laws of Alabama and other states. Operating solely online and therefore available to anyone in Alabama or the United States with a computer and a bank account, Defendant Hummingbird Funds, d/b/a Blue Trust Loans, made a loan (loan no. 107602917) to Plaintiff Lillian Easley (“Plaintiff” or “Mrs. Easley”) on March 26, 2019, with the principal amount of six hundred fifty dollars (\$650.00) and an annual interest rate of 609.72 percent. See Exhibit One at p. 5.

This Amended Class Action Complaint is made against the financial and operational backers of this unlawful online lending scheme that has taken advantage of people who are struggling financially by charging extortionate interest rates and engaging in illegal lending practices.

Mrs. Easley files this Amended Class Action Complaint under the Alabama Small Loan Act, Alabama Code § 5-18-1 *et seq.*, on her behalf and on behalf of a class of all other Alabama

residents who obtained loans from the defendants (the “Alabama Class”). Also, Mrs. Easley files this Amended Complaint under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c), on her behalf and on behalf of a class of residents of the United States who obtained loans from the defendants (the “RICO Class”).

## **I. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this litigation under 28 U.S.C. § 1331 as Plaintiff’s claims arise under the RICO Act, 18 U.S.C. § 1962. The Court also has diversity jurisdiction because Plaintiff and Defendants reside in different states. The Court has supplemental jurisdiction over Plaintiff’s state law claims under to 28 U.S.C. § 1967.

2. This Court also has original jurisdiction over this lawsuit under 28 U.S.C. § 1332(a)(1), as modified by the Class Action Fairness Act of 2005, because Plaintiff and Defendants are citizens of different states; there are more than 100 members of the Class (as defined herein); the aggregate amount in controversy exceeds \$5 million, exclusive of attorneys’ fees, interest and costs; and Class Members reside across the United States.

3. Venue is proper in this Court under 28 U.S.C. § 1391 because (i) Defendants conduct substantial business in this District and have intentionally availed themselves of the laws and markets of the United States and this District; and/or (ii) many of the acts and transactions giving rise to this action occurred in this District.

## **THE PARTIES**

4. Plaintiff, Mrs. Lillian Easley, is an adult resident of Mobile County, Alabama. Mrs. Easley, who is married and has two children in elementary school, is a registered nurse (“RN”) and has worked in that capacity since 2015. At the age of thirty, Mrs. Easley began her studies at Virginia College, which ultimately led to her earning a degree and her RN certification. Before

attending college, Mrs. Easley worked as a phlebotomist for several years and continued to work full time in that position while going to school. In school, Mrs. Easley incurred a considerable amount of student-loan debt and credit card debt to meet living expenses. In 2019, Mrs. Easley began to use “payday loans” to bridge the gap between her debt obligations and her paychecks.

5. Hummingbird Loans d/b/a Blue Trust Loans (“Blue Trust”) is an internet lender with no place of business in Alabama and its principal place of business at 13394 W Trepania Road, Hayward, Wisconsin 54843. Blue Trust purports to be an entity organized under the laws of the Lac Courte Oreilles (“LCO”) Band of Lake Superior Chippewa Indians (the “LCO Tribe”). *Id* at p. 1.

6. The LCO Financial Services Board of Directors is a regulatory board that oversees LCO Financial Services (LCO Financial Services is the board or department or division of the LCO Tribe, which manages internet loans made through Hummingbird Funds, d/b/a Blue Trust Loans). The board has five members as well as the Executive Director and the Director of Operations.

7. The members of the LCO Financial Services Board of Directors are sued in their individual capacities, as set forth below.

8. John (Randy) Cadotte is the Chairman of the LCO Financial Services Board of Directors. According to his profile on LinkedIn, he also serves as Executive Manager of the Sevenwinds Casino.

9. William Trepania is the Treasurer of the LCO Financial Services Board of Directors.

10. Daylene Sharlow is the Secretary of the LCO Financial Services Board of Directors. Defendant Sharlow also serves as the Lodge/FOH Director at the LCO Casino, according to her LinkedIn profile.

11. Tweed Shuman is one of the Tribal Governing Board Representatives serving on the LCO Financial Services Board of Directors. Defendant Shuman also serves as Chairman of the Sawyer County, Wisconsin, Board of Supervisors.

12. Don Carley is another of the Tribal Governing Board Representatives serving on the LCO Financial Services Board of Directors.

13. Lee Harden is the LCO Financial Services Executive Director. Defendant Harden also serves as CEO of the Lac Courte Oreilles Casino, Lodge & Convention Center.

14. Trina Starr is the LCO Financial Services Director of Operations. According to her LinkedIn profile, Defendant Starr is “responsible for supporting the LCO Financial Services, LLC small-dollar tribal lending/technology lease eCommerce operations with accounting and office management support,” and among other duties, she “oversees the daily operations and advances the expansion of the business.”

15. James Williams, Jr. (“Defendant Williams”), does not serve on the LCO Financial Services Board of Directors and, according to information on the LCO Tribe website and the website of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. Defendant Williams is not a member of the LCO Tribe.

16. Defendant Williams presently serves as Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. According to a published report on the website of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Defendant Williams “introduced the lending business opportunity to . . . [the LCO Tribe] over 5 years ago”.

17. Defendant Williams is thus not merely a co-conspirator with the other Defendants. Not only did Defendant Williams conspire with the other individual Defendants to create the unlawful internet lending business which made a usurious loan to Plaintiff, but is also the instigator

of the idea of organizing and creating the illegal lending business and the RICO Enterprise and took actions such as meeting with the other Defendants and engaging in conversations with them involved in a pattern of criminal activity with the other Defendants.

### **FACTUAL ALLEGATIONS**

18. Usurious small loans, sometimes called “payday loans” because some lenders in this unlawful industry require borrowers to hold a job and to give the lender access to the borrowers’ bank accounts, have been an ongoing financial burden on lower-income residents of Alabama and other states for decades. Payday lending takes advantage of people’s need for money. While marketed as short-term loans for emergency cash, the loans are usually not short term. A typical borrower cannot repay the entire amount of the loan right away. Instead, to avoid default, the borrower will often roll the loan over into another loan or take out a loan from an alternative lender. As interest continues to accrue on these loans, borrowers get stuck in a vicious debt trap from which they cannot escape. More of the borrowers’ limited resources are diverted to interest on the payday loans, and borrowers struggle to meet their basic needs, such as food, shelter and medical care.

19. Defendants charge over six hundred percent per annum in many instances, including the loan at issue in this case, on other loans of a few hundred dollars or less. Many borrowers have found themselves unable to pay the interest back, let alone the principal. The lenders would then attempt to collect by garnishing bank accounts and taking other collection actions.

20. Statutes regulating these schemes were passed in Alabama and other states as well. Some provisions of these statutes were intentionally enacted to avoid the toxic “rollover” scenario. Nevertheless, creative high-cost lenders devised other schemes attempting to circumvent these statutes.

21. In one scheme—the so-called “rent-a-bank” strategy—payday lenders convinced banks headquartered in states with high (or nonexistent) usury limits to form a lending venture to capitalize on the fact that the bank was obligated to comply only with the usury law of its home state, even for loans made elsewhere.

22. Federal banking regulators eventually shut down these “rent-a-bank” schemes. See *Michael A. Stegman, Payday Lending*, 21 *JOURNAL OF ECONOMIC PERSPECTIVES* 169, 178-9 (2007) (describing rent-a-bank scheme and regulatory reaction).

23. Some payday and high-cost lenders, ever-resourceful, developed a new method to attempt to avoid state usury laws—the “rent-a-tribe” scheme. The lending scheme at issue, in this case, is one such unlawful scheme.

24. In the rent-a-tribe scheme, the high-cost lender, operating online, associates with a Native American Tribe attempting to insulate itself from federal and state law by “renting” the Tribe’s sovereign legal status and its general immunity from suit under federal and state laws.

25. Like its predecessors, this scheme must fail. As courts and regulators examine the underlying relationship between the high-cost lender and the Tribe, they can only conclude that the relationship between the Tribe and the monied interests, which provide the capital for this scheme, is insufficient to permit the lender to avail itself of the Tribe’s immunity. In virtually every such instance, it is not the Tribe operating, or even benefiting, primarily from the usurious lending — it is the outside entity.

26. In recent years, these rent-a-tribe schemes have come under increasing scrutiny from regulators. One prominent perpetrator was convicted and sentenced to 16 years in prison related to federal racketeering and Truth In Lending laws.

27. The Alabama Small Loan Act, Ala. Code § 5-18-1, et. seq. restricts the legal interest

rate of loans of less than \$1,500 and states in relevant part:

Maximum rates of interest and charge. Every licensee under this chapter may contract for and receive as interest on any loan of money less than one thousand five hundred dollars (\$1,500) an amount at a rate not exceeding three percent a month on that part of the unpaid principal balance not in excess of two hundred dollars (\$200), and two percent a month on that part of the unpaid principal balance in excess of two hundred dollars (\$200) but less than one thousand five hundred dollars (\$1,500). *Ala. Code § 5-18-15.*

28. Also, every business making such loans in Alabama must be licensed, *Ala. Code § 5-18-4(a)*, and have a place of business in Alabama.

29. A loan made in violation of the Small Loan Act is void. *Id.*, at § 5-18-4(d)

30. On March 26, 2019, Defendants made a loan (“loan no. 107602917”) to Plaintiff with the principal amount of six hundred fifty dollars and an annual interest rate of 609.72 percent.

31. A search of the website of the Alabama Secretary of State reveals that the defendants are not licensed to make loans in Alabama and do not have a place of business in Alabama. Failure to obtain a license and failure to operate a physical place of business in Alabama are separate and discrete violations of the Alabama Small Loan Act and render any loan by such an unlicensed entity void under Alabama law. Mrs. Easley has been damaged by the Defendants’ violation of these provisions because she cannot visit an office or speak to anyone in Alabama regarding the usurious interest rate on loan number 107602917. Defendants never sought to have any of the lending or loan servicing entities under their control apply for a license to lend in Alabama, and indeed took no action to attempt to comply with Alabama law in connection with loans made to and collected from Alabama borrowers.

32. Mrs. Easley made payments of principal and interest on loan number 107602917 as follows: one payment of \$109.25 on April 5 of 2019, seven bi-weekly payments of \$156.64, and a final payment of \$722.39 on July 26, 2019, for a total of \$1,928.12. She was therefore

damaged through Defendants' violations of the interest rate limitations of the Alabama Small Loan Act.

### **THE "TRIBAL DISPUTE RESOLUTION PROCEDURE"**

33. Defendants have employed and included on page eight of Exhibit One, a "Tribal Dispute Resolution Procedure" (the "TDRP"). The terms of the TDRP appear to constitute an attempt to create a sort of hybrid choice-of-law and choice-of-forum clause.

34. The TDRP is unenforceable because it is so one-sided as to be unconscionable, its purpose has been frustrated, and it is void under the Alabama Small Loan Act.

35. The TDRP does not waive and attempts to preserve tribal immunity: "Your complaint shall be considered similar in nature to a petition for redress submitted to a sovereign government, without waiver of sovereign immunity and exclusive jurisdiction...." Exhibit One at 8. In case this non-waiver provision is not clear, another one appears elsewhere in the document: "It is the express intention of the Tribe and us, operating as an economic arm-of-the-tribe, to fully preserve, and not waive either in whole or in part, exclusive jurisdiction, sovereign governmental immunity, and any other rights, titles, privileges, and immunities, to which they are entitled".

36. Furthermore, the TDRP "does not create any binding procedural or substantive rights for a petitioner." *Id.* This clause alone renders the TDRP and any possibility of relief for a petitioner illusory by its explicit terms. Moreover, for this reason alone, the TDRP is unconscionable.

37. There are, however, several additional indications that the Agreement is unconscionable, including the following:

a. Because the monetary damages suffered by each plaintiff and other members of the Class is small, the individual incentive to bring an action is minimal, mainly because payday



lenders target people who have few resources to bring a claim;

b. The doctrine of tribal immunity is a complicated legal doctrine with which few Americans, particularly the economically vulnerable people in this Class, are familiar;

c. The parties also have a significant imbalance in negotiating leverage. Defendants have highly paid attorneys, including from some of the country's leading corporate law firms, representing them in connection with the purported Loan Agreements and litigation matters; and

d. Plaintiff and members of the Class individually lack the personal resources necessary to hire counsel at similar, sophisticated corporate law firms.

38. The TDRP is fraudulent and an essential part of the scheme to defraud because it aims to deter victims from filing claims and, therefore federal court review of the illegal practices of the Enterprise.

39. The TDRP states that “[t]he laws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians govern this Loan Agreement, *without regard to the laws of any state* or other jurisdiction, including the conflict of laws rules of any state.” (Emphasis added). This statement is false because the loans at issue involve lending activity to persons outside the reservation and through the use of the internet and other forms of electronic communication with persons outside the reservation and are thus subject to state law.

40. Also, the statement is false because the terms of Exhibit One explicitly state that specific requirements of Federal Law do apply. Even though, as noted above, the Loan Agreement states that “[t]he laws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians govern this Loan Agreement, without regard to the laws of any state *or other jurisdiction*” (presumably, the United States) (emphasis added), the Loan Agreement nevertheless explicitly recognizes that the Truth-in-Lending Act and Equal Credit Opportunity Act applies to the Agreement:

**EQUAL CREDIT OPPORTUNITY ACT (ECOA) NOTICE:**

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

See Exhibit 1 at pp. 1-2 and 4-5.

41. The Agreement also recognizes (by requiring the borrower to agree to a waiver) that the Telephone Consumer Protection Act applies to certain communications the lender may make to the borrower:

**TELEPHONE CONSUMER PROTECTION ACT DISCLOSURE:** If you agreed to be contacted by Blue Trust Loans, or our affiliates, at the phone numbers provided by you in your loan application. You agree that this authorization includes marketing calls to your wireless number if you have provided a wireless number. You agree that such contact may include phone calls generated from an automated telephone dialing system. You understand that you do not have to agree to such authorization in order to qualify for a loan. Phone Numbers: (251) 219-3720, (251) 377-9085. You further authorize Blue Trust Loans (or our agents) to send marketing text messages to the wireless number you provided using an automatic telephone dialing system. You are not required to authorize marketing text messages to obtain credit or other services from us. If you do not wish to receive sales or marketing text messages from us you should not check the yes box on the preceding page. You understand that any messages we send you may be accessed by anyone with access to your text messages. You also understand that your mobile phone service provider may charge you fees for text messages that we send you, and you agree that we shall have no liability for the cost of any such text messages.

*Id.*

42. Finally, the loan agreement recognizes coverage by the Fair Credit Reporting Act at page 3, Exhibit One.

**CLASS ALLEGATIONS**

43. Plaintiff asserts her claims individually and on behalf of the proposed Alabama Class defined as follows:

44. All Alabama residents from whom Defendants collected, or attempted to collect, loans and/or who engaged in a loan transaction, within the coverage of the Alabama Small Loans Act, with Defendants in the four years preceding the filing of this Amended Complaint to the date that the Class list is created.

45. Plaintiff asserts her claims on behalf of the proposed RICO Class defined as follows: All United States residents from whom Defendants collected, or attempted to collect, loans, and/or who engaged in a loan transaction with Defendants in the four years preceding the filing of this Amended Complaint to the date that the class list is created.

46. Excluded from the each Class are: (1) individuals who already have settled a lawsuit, claim or obtained a Judgment against Defendants arising from the wrongdoing complained of in the Amended Complaint or; (2) Defendants, their officers, directors, employees or any affiliate of Defendants, members of each of their immediate families and each of their legal representatives, heirs, successors or assigns; (3) any entity in which Defendants have, or had, a controlling interest; (4) all judicial officers in the United States; and (5) the undersigned Counsel and the members of their immediate families.

47. The Alabama Class and the RICO Class represented by Plaintiff are so numerous that the joinder of each member of the Class and Subclass is impracticable.

48. The claims of Plaintiff, representative of the Alabama and RICO Classes, are typical of the claims of the Alabama and RICO Classes. All claims of the Alabama and RICO Classes depend on a showing that Defendants engaged in a scheme to offer, sell and collect on small loans sold to residents of Alabama and the United States which violate the usury laws of Alabama and all states in which such loans are offered and which violate relevant provisions of the Racketeer Influenced and Corrupt Organizations Act as outlined in this Amended Complaint.

There is no conflict between the individual named Plaintiff and other members of the Classes concerning this Action or with respect to the claims for relief outlined in this Amended Complaint.

49. This Action is maintainable as a Class under Rule 23(b)(1) of the Federal Rules of Civil Procedure as the facts will show a uniform pattern of conduct by Defendants that will leave the Court with the task of answering the discreet legal questions as to whether their conduct is unlawful and in violation of the Alabama Small Loan Act and the Racketeer Influenced and Corrupt Organizations Act. Given these questions presented to the Court, maintenance of separate Actions against Defendants would create a substantial risk that adjudication of an individual member of the Class would be virtually dispositive of the interests of the other members of the Class and substantially impede their ability to protect their interests.

50. This action is maintainable under Rule 23(b)(2) if the Federal Rules of Civil Procedure as Defendant, through its actions as alleged herein, has acted, or refused to act, on grounds generally applicable to the Class, making declaratory relief appropriate to the Class as a whole.

51. The attorneys for Plaintiff are experienced and capable in litigation in the field of Class Actions and in the areas of consumer protection, debt collection and credit reporting.

52. The requirements of Rule 23(b)(3) are met by the following issues and facts of the case:

- a. There are common questions of law and fact involved with this action that affect the rights of each member of the Classes, and the relief sought is common to the classes, namely:
  - Whether Defendants' actions violated the usury laws of Alabama;
  - Whether Defendants' actions violated the usury laws of other states;

- Whether Defendants are protected by tribal sovereign immunity;
- Whether Defendants constitute an “enterprise” under RICO;
- Whether Defendants violated RICO by charging interest rates many times the legal limit under state law;
- What is the proper measure and amount of damages for the Classes?
  - a. A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy because:
    - the Class Members have little interest in or ability to bring separate actions as their monetary losses are relatively small;
    - it is desirable to concentrate all claims relating to the uniform business practice of Defendants in one judicial forum;
    - there are no foreseeable difficulties likely to be encountered in the management of this Class Action because Defendants have records indicating the number and identities of the of Class Members.
  - b. Plaintiff will fairly and adequately represent the interests of the Class and Subclasses as Plaintiffs are members of the Class and Subclasses, Plaintiffs’ claims are typical of those in the Class and Subclasses, and there are no conflicts between the claims of Plaintiffs and the claims of other members of the Class and Subclasses.

## **RICO ALLEGATIONS**

### **The Enterprise**

53. The RICO Enterprise (the “Enterprise”) consists of a group of persons, in this case, the defendants and other unnamed persons, associated together for a common purpose of engaging

in the unlawful course of conduct alleged herein.<sup>1</sup> Each named Defendant and the unnamed persons or entities who contributed to the actual inception, financing, management and operation of Defendants' unlawful scheme, taken together, constitute an association-in-fact "enterprise" as defined in 18 U.S.C. § 1961(4) because of Defendants and unnamed persons or entities associated with the common purpose of profiting off of the collection of unlawful debt by offering and collecting on illegal loans to consumers in Alabama and throughout the United States.

54. As described below, Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, in conjunction with Defendant Williams, Blue Trust and other unnamed conspirators, created and engaged in a scheme to defraud and to collect unlawful debts through the Enterprise.<sup>2</sup>

#### **Formation of the Enterprise**

55. At some time in early-to-mid 2014, Defendant James Williams, Jr. approached the Tribe on behalf of himself and others presently not known by name to

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<sup>1</sup> In their Motion to Dismiss the RICO Allegations of the original Complaint, Defendants allege that Plaintiff named the lender, Blue Trust, as the Enterprise. In fact, Plaintiff made no such allegation in her original Complaint, nor does she make it here.

<sup>2</sup> In their Motion to Dismiss the RICO Allegations in the original Complaint, Defendants also argue that, because Blue Trust is the Enterprise (which is a false premise; see footnote 1), Plaintiff cannot name Blue Trust and the members of its board of directors as the RICO enterprise. Defendants should have read the original Complaint more carefully and should also read this First Amended and Restated Complaint with care. The individual defendants are described herein and in the original Complaint as members of the LCO Financial Services Board of Directors, not members of any Blue Trust Board of Directors, if, indeed, there exists such a board. Blue Trust, according to the Application Agreement, describes itself as:

“a tribal limited liability company organized under tribal law.... [and] an economic development arm of, instrumentality of, and wholly-owned and controlled by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, a federally-recognized sovereign American Indian tribe (the “Tribe”). We are licensed and regulated by the Tribal Financial Services Regulatory Authority (the “Authority”) and operate in accordance with the Tribal Consumer Financial Services Regulatory Code.

Blue Trust is, therefore, not itself the LCO Financial Services Regulatory Authority; it instead describes itself as a separate “instrumentality of” the LCO Tribe which is regulated by the LCO Financial Services Regulatory Authority.

Plaintiff about forming a tribal entity in furtherance of a scheme to use the internet to market, sell and make unlawful loans and to collect illegal debts.

56. Formation of the Enterprise required that the Tribe adopt new laws that would be favorable to Defendant Blue Trust and otherwise enable the practice of illegal online payday lending.

### **Operation of the Enterprise**

57. Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden and Starr have collaborated with Blue Trust, Defendant Williams and/or other related entities in the operation of the Enterprise.

58. Defendant Williams is responsible for providing information critical to the successful creation and operation of the Enterprise. Defendant Williams is Chairman of the Lac Vieux Desert Band of the Lake Superior Chippewa Indians. That Tribe entered the business of online lending in 2011 when it organized Red Rock Lending as a tribally-owned LLC.

59. Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, Starr, and Williams were aware the loans to be made and that were and are being made by Blue Trust were unlawful under the laws of Alabama and other states.

60. Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden and Starr caused Blue Trust to enter into payday lending relationships with banks (presently not named as defendants herein) to process ACH transactions. Those bank relationships enabled Blue Trust to process ACH transactions for the Plaintiff and the Class. The ACH transactions involved interstate commerce because they flowed through Blue Trust in Wisconsin, Plaintiff in Alabama and Class Members throughout the United States, other targets of the illegal lending scheme and different intermediaries throughout the United States.

61. Blue Trust operates a website at <https://www.blustrustloans.com>. The website furthers illegal financial transactions. The website allows individuals to enter information to execute ACH wire transfers to the individual and to debit the person's account in the purported repayment of the illegal debt. The website involves transactions in interstate commerce.

62. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr intentionally and willfully committed mail fraud and wire fraud through the use of ACH transactions to put money into Plaintiffs' and Class Members' bank accounts by withdrawing funds from the accounts of Plaintiff and Class Members, while maintaining that the withdrawals were legitimate, by using the Internet to obtain consent to a fraudulent Lending Agreement and Tribal Dispute Resolution Procedure, and by using the mail to collect payments and communicate with other parts of the Enterprise.

63. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, created and implemented a plan, or scheme, to defraud thousands of people in a financially challenged position by extending loans at illegally high and extortionate interest rates, while at the same time claiming that the business was legitimate and in compliance with the law. To advance this scheme, Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden and Starr, along with Defendant Williams, established intermediaries to initiate wire transfers and mailings, and to operate the website through which information was collected from the victims of the scheme and purported Agreements were exchanged with targets of the scheme.

64. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley,



Harden, and Starr, along with Defendant Williams, intended to defraud the victims of the scheme.

65. The use of the mail and wires was reasonably foreseeable because the form documents that Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, created specifically called for the use of ACH transactions or other online financial transactions or the United States mails to make payments on the illegal loans.

66. The racketeering activity described herein and engaged in by all Defendants is related and continuous. The thousands of ACH transactions served, and continue to serve, the central scheme created by Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, to make illegal loans at extortionate interest rates. The thousands of ACH transactions served the purpose of the Enterprise evading state laws, defrauding people in financially challenged positions and making unlawful profits. The scheme to evade state laws was carried out by Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden and Starr, along with Defendant Williams, with and through their control and domination of the Enterprise.

67. The use of the Blue Trust website is also related and continuous. The website was used and continues to be used to deceive the victims of the Enterprise into believing that the transactions were, and are, legitimate and consistent with the law. The website collects personal data that is then used to take money from individuals who have fallen victim to the fraudulent scheme. The site transmits, and transmitted, the Loan Agreements to potential victims through the wires.

68. The Blue Trust website also makes several misrepresentations. For example, the site creates the impression that the loans are a good option for short term financing by claiming

that the loans are “A BETTER ALTERNATIVE TO PAYDAY LOANS because they are paid back ‘in installments’.”

69. The Blue Trust website also boldly admits that “APR’s range from 471.7846% to 841.4532% 124”.

70. Defendants, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, exercise control over and operate all elements of the website. Software created or leased by them determines which loan requests generated through the site will be accepted by Blue Trust and which loan requests will be declined.

71. Defendants Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr also perform the function of customer service, verification of accounts and collection of debt on behalf of Blue Trust.

72. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, exercised control over the drafting of the lending and choice of law and venue agreements through their close association with the attorneys drafting the documents. Defendants did so to ensure that victims of Blue Trust would opt for ACH transfers to accept money and then Defendants would be able to take money from the victims’ bank accounts. Directing the targets of the fraudulent scheme to choose ACH transfers increases the chances of being able to take money from the victims of the scheme on a regular basis. With the authorization to take money from the bank accounts, Defendants did not have to rely on the targets sending money to them. Also, by creating an ACH authorization, Defendants forced the targets of the fraudulent scheme to take many actions to stop the transfers. The additional time needed to complete these tasks meant that Defendants could extract other periodic payments before their authorization was

revoked.

73. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr used Loan Agreements as tools to further deceive Plaintiffs. Defendants used both the website and the ACH transactions in conjunction with each other to further the Enterprise and the fraudulent schemes.

74. The illegal activity started in or around late 2014 and has continued to the present. Blue Trust has used the above-described ACH system and website for almost six years.

75. Had Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, not established and run the Enterprise, they would not have ensnared Plaintiff in the illegal scheme and obtained Plaintiff's personal information, including access to their bank accounts, through the Blue Trust website.

76. Plaintiff and the Class would not have had their bank accounts debited with illegal ACH transactions over any legal amount of interest but for Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, establishing and running the corrupt Enterprise.

77. Plaintiff and the Class were injured when Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, chose to defraud them and collect extortionate and usurious interest rates far over the legal limit. The withdrawal of money by Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, part of the Racketeering activity and itself a predicate act, caused Plaintiff and the Class injury.

78. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, chose Plaintiff and Class Members as the intended targets

for the Enterprise and the Racketeering activity. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden and Starr, along with Defendant Williams, targeted Plaintiff and the Class because they met underwriting criteria that showed they badly needed money in the short term but could pay off small amounts over the long run. Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, used computer algorithms to make that determination.

### **Unlawful Debt**

79. Through the Enterprise, Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr intentionally and willfully engaged in the collection of unlawful debts. Indeed, Defendants Blue Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, Harden, and Starr, along with Defendant Williams, formed Blue Trust to lend money at a usurious rate and avoid state laws related to usury. Blue Trust's website demonstrates that it is continuing in the business of lending at usurious rates.

80. The Application Agreement and the Loan Agreement are void *ab initio* in Alabama because the documents contemplate activities which are unlawful in Alabama, namely, the offering of loans and collection of debts thereunder at rates, and under the circumstances, which violate Alabama law. Similarly, the debts incurred by Plaintiff and the Class are uncollectible under Alabama law and the laws of other states throughout the United States. The interest rates on the debt that they incurred were many times the interest rate allowed under Alabama law.

81. The interest rates charged to Class Members exceed the maximum allowable interest in their respective states by many times the legal limit.

82. In operating and conducting the affairs of the Enterprise, Defendants Blue

Trust, Cadotte, Trepania, Sharlow, Shuman, Carley, and Harden, Starr, along with Defendant Williams, used the proceeds from the collection of lawful debt to further the operations and objectives of the Enterprise.

**COUNT ONE**  
**Violation of the Alabama Small Loan Act**

83. Loans for amounts less than \$1,500.00 (such as the loan to Plaintiff at issue here) are regulated in Alabama by the Alabama Small Loan Act (“ASLA”). The maximum interest that may be charged on such loans is “a rate not exceeding three percent a month on that part of the unpaid principal balance, not in excess of two hundred dollars (\$200), and two percent a month on that part of the unpaid principal balance in excess of two hundred dollars (\$200) but less than one thousand five hundred dollars (\$1,500)”. *Ala. Code (1975) § 5-18-15*.

84. Plaintiff’s loan carries a principal amount of \$600, thus falling within the jurisdiction of the ASLA.

85. Plaintiff’s loan has a stated annual interest rate of 609.72%, vastly exceeding the limitation on interest imposed on such loans in Alabama by the Alabama Legislature.

86. The ASLA requires every lender making loans within the ambit of the ASLA to be licensed. *Ala. Code (1975) § 5-18-4*.

87. The ASLA requires every lender making loans within the ambit of the ASLA to operate out of a physical location. *Ala. Code (1975) § 5-18-5-8*.

88. Defendants do not have a physical location in Alabama, are not registered with the Alabama Secretary of State and have never been licensed in Alabama.

89. The ASLA declares that every loan made in violation of the ASLA is void: “Any contract of loan in the making or collection of which any act shall have been done which violates this section shall be void, and the lender shall have no right to collect, receive or retain any principal,

interest or charges whatsoever”. *Ala. Code § 5-18-4*.

Wherefore, Plaintiff prays on behalf of the Alabama Class that this Court holds all loans made to any Alabama resident since the inception of Defendants’ unlawful scheme to be void and to order all interest collected on each such loan to be returned to the borrowers.

**COUNT TWO**  
**Conspiracy to Violate the Alabama Small Loan Act**

90. Plaintiff realleges and incorporates by reference the relevant factual allegations set forth in the preceding paragraphs.

91. As a separate and distinct Cause of Action, Plaintiff complains against all Defendants as follows: At some time during or around the inception of the illegal loan business described herein, in or about 2014, each and every Defendant and other nonparties knowingly and willfully conspired and agreed among themselves to violate the Alabama Small Loan Act by failing to register the business in Alabama as required by Alabama law, failing to establish and maintain a physical place of business in Alabama as required by Alabama law and by offering loans to Plaintiff and others in Alabama at interest rates which vastly exceeded the legal maximum rate of interest as set forth in the Alabama Small Loan Act.

92. Defendants, each of them, along with other nonparties, each of them, took actions from the inception of the conspiracy to further the operation of their illegal internet lending Enterprise, for example, without limitation, advertising, maintaining the Blue Trust website, entering into unlawful contracts with borrowers and accepting, processing and distributing illegal interest payments through electronic and other means of payment.

93. Plaintiff was damaged by said conspiracy and by each Defendant when she was enticed into entering and did enter into a usurious loan arrangement with Defendant Blue Trust.

94. As stated above Plaintiff made interest payments to Defendant Blue Trust and was thus damaged by the conspiracy among all Defendants.

**COUNT THREE**  
**Violation of RICO, 18 U.S.C. §§ 1962 (c) (On Behalf of Plaintiff and The RICO Class)**  
**(Class Claims against All Defendants)**

95. Plaintiff realleges and incorporates by reference the relevant factual allegations outlined in the preceding paragraphs.

96. Each Defendant is a “person” as that term is defined in 18 U.S.C. § 1964(3).

97. The RICO Enterprise, consisting of each named Defendant and the unnamed persons or entities who contributed to the actual financing of Defendants’ unlawful scheme, constitute an association-in-fact “enterprise” as that term is defined in 18 U.S.C. § 1961(4), because Defendants associated for the common purpose of profiting off of the collection on unlawful debt by offering and collecting on loans to consumers in Alabama and throughout the United States through the online lender Blue Trust.

98. The Enterprise had an ongoing organization with an ascertainable structure and functioned as a continuing unit with separate roles and responsibilities.

99. Defendants violated § 1962(c) of RICO by participating, directly or indirectly, in the conduct of the Enterprise’s affairs in the collection of unlawful debt.

100. RICO defines “unlawful debt” as a debt which was incurred in connection with “the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate”. 18 U.S.C. § 1961(6).

101. All of the loans made to the RICO Class Members and collected by Defendants included an interest rate far in excess of twice the enforceable rate in Alabama and in the other states in which Defendants conducted their unlawful scheme.

102. Plaintiff and the RICO Class Members were injured as a result of Defendants' violations of 18 U.S.C. § 1962(c) by, among other things, the payment of unlawful and usurious rates of interest on loans made by the Enterprise.

103. This conduct began sometime in 2012, continues to date and will be repeated again and again in the future to the detriment of consumers in Alabama and other states with similar usury laws.

104. Accordingly, Defendants are jointly and severally liable to Plaintiffs and the RICO Class for their actual damages, treble damages, costs and attorneys' fees under 18 U.S.C. § 1964(c).

WHEREFORE, Plaintiff, for herself and on behalf of the Alabama Class and the RICO Class demands judgment as follows:

- a. The certification of this Action as a class action;
- b. Actual damages;
- c. Statutory damages;
- d. Punitive damages
- e. Statutory attorney's fees;
- f. Costs provided for by statute and court rule;
- g. Declaratory relief;
- h. Injunctive relief; and such other relief the Court deems just, equitable and proper.

**COUNT FOUR**  
**Violation of RICO, 18 U.S.C. §§ 1962 (d) (On Behalf of Plaintiff and the RICO Class)**  
**(Class Claims against All Defendants)**

105. Plaintiff realleges and incorporates by reference each and every allegation outlined in the preceding paragraphs.

106. Each Defendant is a "person" as that term is defined in 18 U.S.C. § 1964(3).



107. The Enterprise, consisting of each named Defendant and the named and unnamed persons or entities who contributed to the actual financing of Defendants' unlawful scheme, is in fact an "enterprise" as that term is defined in 18 U.S.C. § 1961(4), associated for the common purpose of profiting off of the collection on unlawful debt by offering and collecting on loans to consumers throughout the United States through the online lender Blue Trust.

108. The Enterprise has an ongoing organization with an ascertainable structure and functioned as a continuing unit with separate roles and responsibilities.

109. Defendants violated 18 U.S.C. § 1962(d) by conspiring to use the Enterprise to collect unlawful debt. Each Defendant knowingly agreed to participate in the scheme alleged herein that allowed the Enterprise to make, and collect, unlawful debt at more than twice the lawful rate of interest under state usury laws.

110. This conduct began sometime in 2012, continues to date and will be repeated again and again in the future to the detriment of consumers in Alabama and all other states with similar usury laws.

111. For these reasons, Defendants are jointly and severally liable to Plaintiff and the RICO Class for their actual damages, treble damages, costs and attorneys' fees pursuant to 18 U.S.C. § 1964(c).

WHEREFORE, Plaintiff, for herself and on behalf of the Alabama Class and the RICO Class demands Judgment as follows:

- a. The certification this Action as a Class Action;
- b. Actual damages;
- c. Statutory damages;
- d. Punitive damages;

- e. Statutory attorney's fees;
- f. Costs provided for by statute and court rule;
- g. Declaratory relief;
- h. Injunctive relief; and such other relief the Court deems just, equitable, and proper.

DATED: January 27, 2020

**/s/ Earl P. Underwood, Jr.**

**Earl P. Underwood, Jr.  
Underwood & Riemer, P.C.  
21 S. Section Street  
Fairhope, Alabama 36532  
Telephone: 251-990-5558  
Facsimile: 251-990-0626  
epunderwood@alalaw.com  
Attorney for Plaintiff Lillian Easley**

**/s/ Steven P. Gregory**

**Steven P. Gregory  
Gregory Law Firm, P.C.  
2700 Corporate Drive, Suite 200  
Birmingham, Alabama 35242  
Telephone: 205-799-0380  
steve@gregorylawfirm.us  
Attorney for Plaintiff Lillian  
Easley**

**PLAINTIFF REQUESTS TRIAL BY JURY AS TO EACH OF THE CLAIMS ASSERTED  
HEREIN.**

**/s/ Earl P. Underwood, Jr.**

**EARL P. UNDERWOOD, JR.**