



OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202
Antonio Salazar, Commissioner

January 21, 2021

EXHIBIT A

**VIA CERTIFIED MAIL--RETURN RECEIPT REQUESTED
AND FIRST CLASS REGULAR MAIL**

Adrian O. Breen
President & CEO
Bank of Missouri
916 North Kings Highway
Perryville, MO 63775

Bank of Missouri
d/b/a Mid-America Bank & Trust Company
916 North Kings Highway
Perryville, MO 63775

Fortiva Financial, LLC
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Fortiva Financial, LLC
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Atlanticus Service Corporation
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Atlanticus Service Corporation
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Re: CHARGE LETTER

Maryland Commissioner of Financial Regulation v. Fortiva Financial, et. al.
Case No.: CFR-FY2017-0033

Dear Respondent,

The Maryland Commissioner of Financial Regulation (the "Commissioner") hereby charges the following companies, Atlanticus Services Corporation ("Atlanticus"), Bank of

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Missouri (formerly Mid-America Bank & Trust Company)(the “Bank”), and Fortiva Financial, LLC, (“Fortiva”), (hereinafter referred to collectively as “Respondents”) with violating Annotated Code of Maryland, Commercial Law Article (“CL”) §12-301 *et seq.* and Financial Institution Article (“FI”) §11-201 *et seq.* (collectively the “Maryland Consumer Loan Law” or “MCLL”), CL § 12-901 *et seq.* (the “Credit Grantor Revolving Credit Provisions” or “RCP”), CL § 12-1001 *et seq.* (the “Credit Grantor Closed End Credit Provisions” or “CLEC”), Business Regulation Article (“BR”) § 7-101 *et seq.* (the “Maryland Collection Agency Licensing Act”), and CL § 14-901 (the “Maryland Credit Services Businesses Act”) as well as other applicable statutes and regulations. Specifically, Respondents violated the MCLL by making consumer loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated Maryland’s Credit Grantor Closed End Credit Provisions for offering and/or making installment loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents also violated Maryland’s Credit Revolving Credit Provisions, making a loan or extension of credit under this subtitle without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated the Maryland Credit Service Businesses Act by assisting Maryland consumers in obtaining an extension of credit by accepting and processing credit applications for credit owned and/or offered by a third-party. Respondents violated Maryland Collection Agency Licensing Act, soliciting and/or collecting a consumer claim on behalf of another. The allegations and charges against Respondents are set forth in more detail below.

These allegations and charges arise from an investigation conducted by the Office of the Commissioner of Financial Regulation (“OCFR”) into Respondents consumer lending activities in the State of Maryland. Based upon the investigation, the Commissioner determined that charges against the Respondents are warranted. In this Statement of Charges and Order for Hearing, the Commissioner sets forth with particularity the charges against the Respondents and applicable hearing procedures.

When the Commissioner determines, after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner’s authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner’s discretion, issue an order (i) requiring you to cease and desist from these violations and any further similar violations; and (ii) requiring you to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation pursuant to CL § 12-314(b)(2). Additionally, the Commissioner may, for each violation occurring before October 1, 2018, impose a civil monetary penalty up to the maximum amount of \$1,000.00 for the first violation and up to the maximum amount of \$5,000.00 for each subsequent violation as authorized by FI § 2-115. For each violation occurring on or after October 1, 2018, the Commissioner may impose a civil monetary penalty up to the maximum amount of \$10,000.00 for the first violation and up to the maximum amount of \$25,000.00 for each subsequent violation as authorized by FI § 2-115. The imposition of these sanctions is subject to the hearing rights described below.

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FACTUAL ALLEGATIONS

The charges brought against Respondents are based on the following factual allegations:

1. As a result of a consumer complaint, OCFR initiated an investigation on or about January 17, 2017, into the Bank's personal loan product program offered to Maryland consumers.

2. OCFR's investigation revealed that, on or about July 15, 2016, Loretta Alexander, a Maryland resident, obtained a "Fortiva Consumer Loan" in the amount of \$5,000 (less a \$99 fee), with an annual percentage rate of 35.98% payable over 48 months. The personal loan was originated by Mid-America Bank & Trust Company. The payments to be made by the consumer totaled \$9,308.16.

3. Mid-America Bank & Trust Company was a federally-insured, Missouri-chartered bank operating within the State of Missouri. It was acquired and merged with Bank of Missouri in 2017 (hereinafter, the "Bank"). At all times relevant to the factual allegations herein, neither Mid-America Bank & Trust Company nor Bank of Missouri were registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

4. Atlanticus Services Corporation, at all times relevant to the factual allegations herein, is a Georgia corporation that operates from 5 Concourse Parkway, Suite 300, Atlanta, Georgia, 30328. Atlanticus is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

5. Fortiva Financial, LLC, at all times relevant to the factual allegations herein, is a Georgia limited liability corporation that operates from 5 Concourse Parkway, Suite 400, Atlanta, Georgia, 30328. Fortiva is a wholly-owned subsidiary and/or affiliate company of Atlanticus. Fortiva is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

6. During its investigation, OCFR discovered that the Bank began offering and issuing personal loans to Maryland consumers via direct mail solicitation in 2014.¹

7. OCFR also discovered during its investigation, and Respondents collectively admit, that the Bank also offers in-store retail credit financing as well as store-branded credit card accounts to Maryland consumers. These retail credit products are available to Maryland consumers at over 150 retail locations in Maryland. Retailers offering Respondents' in-store credit products include, but are not limited to, Home Depot, Sears Home Services, Ashley Homestore, Guitar Center, Long Fence & Home, and Lasik Vision Institute.

8. According to Respondents, the total number of outstanding credit accounts issued by the Bank to Maryland residents and the total balance of those accounts as of January 2018 is as follows:

¹ Upon information and belief, the Bank no longer offers personal loans outside of Missouri and last offered and/or solicited Maryland residents for personal loans in August 2016.

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Bank Product	# of Maryland Accounts	Total Outstanding Balance
Store-branded Retail Credit Financing	3,990	\$5,088,879.01
Store-branded Credit Cards	3,025	\$2,097,985.68
Fortiva-branded Personal Loan	278	\$620,405.46

9. As of the date of this writing, the Bank continues to offer in-store retail credit financing as well as store-branded credit cards to Maryland consumers.

10. The Bank retains ownership of its retail credit accounts as well as the debtor-creditor relationship with Maryland consumers for the life of the loan account.

11. By contrast, Respondent Atlanticus, the parent company and/or affiliate of, Respondent Fortiva, is not a lender and does not issue credit to Maryland consumers.² Atlanticus/Fortiva however assist Maryland consumers in obtaining an extension of credit from the Bank by accepting and processing credit applications from Maryland consumers relating to the Bank's retail credit products, including its in-store retail credit financing, store-branded credit cards and Fortiva-branded personal consumer loans.

12. This relationship and lending scheme is further described and governed by a 2017 Program Management Agreement ("Program Management Agreement") entered into by and between the Respondents, collectively. "Fortiva" effectively operates as a brand-name for use by Maryland consumers as will be more specifically described herein.

13. Pursuant to Respondents' Program Management Agreement Atlanticus/Fortiva is responsible for working directly with consumers to perform "Application Processing" for the Bank, including submitting applications for automated processing, obtaining credit reports, processing ACH authorization requests for handling consumer payments, responding to inquiries from applicants about their application's status, provide all notices and documents required by law (including adverse action notices), and holding and maintaining all documents pertaining to the Bank's credit applications and accounts.

14. Pursuant to Respondents' Program Management Agreement, Atlanticus/Fortiva accepts consumers' credit applications and submits them for automated processing on behalf of the Bank to determine whether the applicant satisfies the eligibility requirements established by the Bank. Consumers may apply for a consumer loan at fortivafinancial.com.

² For purposes of these charges and allegations, "Atlanticus" and "Fortiva" may be used interchangeably, and "Atlanticus/Fortiva" may refer to Respondent Atlanticus and Respondent Fortiva interchangeably and/or collectively.

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15. Atlanticus/Fortiva is also authorized pursuant to Respondents' Program Management Agreement to respond to inquiries from Applicants, provide notices to applicants as required by law, such as adverse action notices and loan account agreements for approved loans. Atlanticus also holds and maintains all Bank documents pertaining to the loan accounts.

16. Additionally, in 2012, Respondents collectively entered into a Loan Servicing Agreement (hereinafter "Loan Servicing Agreement"), which expressly states that the services provided by Atlanticus/Fortiva for the Bank include "application fulfillment," "application processing," "review applications for completeness and fraud," "adverse action notification," and "application retention, storage and retrieval."

17. While the Bank maintains ownership of the loan accounts and thus retains the right to control the servicing and collection of loan accounts, Atlanticus/Fortiva performs all of the collections, servicing, payment and remittance operations of the Bank's consumer credit accounts described herein.

18. Pursuant to the Loan Servicing Agreement, the Bank authorizes Atlanticus/Fortiva to directly or indirectly through approved subcontractors service the installment loans, stating Atlanticus "shall perform Loan Account servicing on behalf of Bank...." This includes "processing payment authorization requests, preparing and mailing account statements, undertaking collections, providing customer service... crediting Loan Accounts in respect of unauthorized charges, chargebacks, refunds and adjustments, [and] resolving customer disputes."

19. All written correspondence and statements are branded "Fortiva." The initial deposit to Alexander's bank account indicated it was made by "FORTIVA LN FORTIVA LN." Payments made via ACH Transfer are reflected as credits on consumer's bank statements as "FORTIVA PL PMT AUTOPAY". All customer service telephone numbers and addresses relating to payments, collections, customer service and consumer complaints belong to "Fortiva Financial."

20. According to Respondent's 2012 "Loan Servicing Agreement," Atlanticus/Fortiva performs, either directly or indirectly and on behalf of the Bank, all collection and servicing activity for the Bank-owned credit accounts relating to the Bank's retail credit products offered to Maryland consumers. This agreement expressly states that the Bank retains ownership of loan accounts and the direct legal relationship with a consumer for the life of the loan account, that the Bank is the only entity entitled to enforce the credit agreement, and thus the Bank controls the servicing and collections of loan accounts.

21. The Agreement also provides that Atlanticus/Fortiva shall assist the Bank in preparing instructions for electronic funds transfers by the Bank's borrowers, either directly or indirectly by engaging and managing sub-servicers on behalf of the Bank for the Bank's retail credit products.

22. At no time relevant to the factual allegations herein was the Bank, Atlanticus or Fortiva licensed by the Commissioner or the Maryland Collection Agency Licensing Board to

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perform the above-referenced activity in Maryland in any capacity, nor were they exempt from licensure.

APPLICABLE LAWS

The Maryland Consumer Loan Law defines a loan as “any loan or advance of money or credit made under [the Maryland Consumer Loan Law – Credit Provisions.]” See FI § 11-201(e) and CL § 12-301(e).

Pursuant to FI § 11-203.1(a), “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan....”

Pursuant to FI § 11-204(a), a “person may not... [r]eceive any application for a loan or allow any note or contract for a loan to be signed at any place of business for which the person does not have a license.”

Pursuant to FI § 11-221, the provisions of Title 11, Subtitle 2 of the Financial Institutions Article “shall be interpreted and construed to effectuate [their] remedial purpose.”

Pursuant to CL § 12-301(c) of the MCLL, a “lender” means “a person who makes a loan under this subtitle.”

Pursuant to CL § 12-302, “[a] person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions.”

CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article, namely the Maryland Consumer Loan Law – Credit Provisions. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

CL § 12-308 sets forth various duties that lenders have towards borrowers. Among these duties, CL § 12-308(a) requires a lender to provide a borrower with a statement containing specific language and provisions at the time the loan is made, providing as follows:

(a) *Statement to borrower.-*

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(1) At the time a loan is made, the lender shall deliver to the borrower a statement in the English language which:

- (i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this subtitle, in their entireties; and
 - (ii) Complies with § 12-106(b) of this title.
- (2) If there are two or more borrowers, the lender:
- (i) May deliver the statement to any one of the borrowers; and
 - (ii) At the request of any other borrower, shall deliver a copy of the statement to that borrower within 10 days after the request.

CL § 12-308(b) requires that, at the time a lender receives a payment on a loan, the lender shall deliver to the person making the payment a statement containing information regarding the loan, provided as follows:

(b)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall deliver to the person making the payment a receipt which specifies:

- (i) The amount applied to principal;
 - (ii) The amount applied to interest and other charges; and
 - (iii) The unpaid principal balance of the loan.
- (2) The lender may deliver an unitemized receipt at the time of payment if he delivers the required itemized receipt within 10 days after the payment.
- (3) The lender is not required to issue a receipt if, before the due date of each payment, he regularly delivers to the borrower a billing statement which specifies:
- (i) The previous unpaid principal balance of the loan;
 - (ii) The amount and date of each payment made during the billing period;
 - (iii) The amount of each of these payments applied to interest;
 - (iv) The amount of each of these payments applied to principal;
 - (v) The current unpaid principal balance; and
 - (vi) The amount and due date of the next maturing installment.

Pursuant to CL § 12-313(a) (which was recodified at CL § 12-314 and amended effective January 1, 2019), a person is prohibited from lending \$6,000 or less “if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.” Prior to January 1, 2019, CL §§ 12-314(b)(1) and (2) provided as follows:

- (1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical

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error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

Effective January 1, 2019, CL § 12-313 was recodified at CL § 12-314 and the permissible loan amount was raised to \$25,000.

Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 of the Commercial Law Article (i.e., the Maryland Consumer Loan Law – Credit Provisions) “shall be interpreted and construed to effectuate its general remedial purpose.”

Various sections of the MCLL restrict the types and amounts of fees that lenders are permitted to charge in conjunction with consumer loans, these sections include, but are not limited to, CL §§ 12-307, 12-307.1, and 12-313(a)(1). Pursuant to CL § 12-307 (“Collection of certain fees”), the following fees are authorized:

(a) *In general.*- At the time a loan is made, a lender may collect from the borrower:

(1) As to any item of the total property that secures a loan:

(i) The fees paid to a public official or governmental agency for recording or satisfying a mortgage, encumbrance, or lien on any property securing the loan; or

(ii) An equal or lesser amount for nonfiling insurance premium on any property, or portion of the property, that is not recorded if:

1. The Insurance Commissioner approves the rates; and
2. A commission is not paid on the policy; and

(2) The title insurance premiums or reasonable attorney's fees paid for searching and insuring the title to any real property securing the loan.

(b) *Bad check fee.*- A lender may collect from the borrower a fee not exceeding \$15 if payment is made with a check that is dishonored on the second presentment.

Pursuant to CL § 12-1001 *et seq.*, (i.e., Credit Grantor Closed End Credit Provisions), which governs installment loans, defines installment loans as “any single extension of closed end credit, whether repayable in installments, on demand, or otherwise and whether extended in one or more advances.” CL § 12-1001(j).

Pursuant to CL § 12-1003 (a), an installment loan lender “may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.”

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Pursuant to CL § 12-1015 (a) “credit grantor making a loan or an extension of credit under this subtitle [i.e., an installment loan] is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

FI § 11-302(a) provides as follows: “[i]n this section, ‘installment loan’ means a loan or extension of credit made for consideration under... Title 12, Subtitle 10 of the Commercial Law Article.”

Pursuant to FI § 11-302(b), “[u]nless the person is licensed by the Commissioner, a person may not: (1) [e]ngage in the business of making installment loans...” In turn, FI § 11-303 provides that, “[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions.”

Pursuant to CL § 12-915(a), a “credit grantor making a loan or extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

Pursuant to BR § 7-301, except at otherwise provided, “a person must have a license whenever the person does business as a collection agency in the State.”

Pursuant to BR 7-101, a “collection agency” means

(d) “a person who engages directly or indirectly in the business of:

(1)(i) collecting for, or soliciting from another, a consumer claim; or

(ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;

(2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;

(3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or

(4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.

Pursuant to BR § 7-101(f), a “consumer claims” is defined as “a claim that:(1) is for money owed or said to be owed by a resident of the State; and (2) arises from a transaction in which, for

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a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services.”

Pursuant to BR § 7-401, “a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license, and any person “who violates this section is guilty of a misdemeanor, and on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months or both.

Pursuant to BR § 7-205, “if a violator fails to comply with a lawful order issued by the [Collection Agency Licensing Board], the Board may impose a penalty not exceeding \$10,000 for each violation cited in the order, not to exceed \$25,000, from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.”

Pursuant to CL § 14-1903, a credit services business “is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article.” Said license shall be issued by the Commissioner of Financial Regulation. CL § 14-1903.

Pursuant to CL § 14-1901(e), a “credit services business” means

(e) ... “any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record, or providing advice or assistance to a consumer with regard to improving the consumer's credit record, history, or rating or establishing a new credit file or record; or

(ii) Obtaining an extension of credit for a consumer, or providing advice or assistance to a consumer with regard to obtaining an extension of credit for the consumer.

Pursuant to § 14-1915, as otherwise provided, any person who violates any provision of the MCSBA is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 3 years or both, in addition to any civil penalties.

Pursuant to FI § 2-115(b), when the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;

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- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation; and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

CHARGES AGAINST THE RESPONDENTS

Based on the foregoing factual allegations and provisions of law, the Respondents are subject to, and charged with violations of, the foregoing laws, regulations, rules, and orders over which the Commissioner jurisdiction, including but not limited to CLEC, RCP, MCLL, MCALA as well as MCSBA, as follows:

COUNT 1: Respondent Bank violated Maryland law by offering and/or making installment loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-1015 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 2: Respondent Bank made consumer loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-302 and FI § 11-203.1. Moreover, pursuant to CL § 12-314(b)(2), Respondents, who are neither licensed nor exempt from licensing, “may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.” As a result, not only are the Respondents’ loans to all Maryland consumers unenforceable, but the Respondents, or its agents or assigns, are prohibited from collecting the principal amount of those loans from any of these consumers or from collecting any other money related to those loans.

COUNT 3: Respondent Bank violated CL § 12-915 by offering and/or making an extension of open-ended or revolving credit, such as credit cards, under this subtitle in Maryland without being licensed to do so and without being exempt from the licensing requirement; in violation of CL § 12-915 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 4: Respondents’ Atlanticus and Fortiva violated CL §§ 14-1901(e)(1)(ii) and 14-1903(b) of the Maryland Credit Services Business Act by providing advice and/or assistance to Maryland consumers with regard to obtaining an extension of credit for the consumer when accepting and/or processing credit applications on behalf of the Bank without a credit services business license as describe in the above-referenced retail lending scheme.

COUNT 5: Respondents’ Atlanticus and Fortiva violated BR § 7-401 of the Maryland Collection Agency Licensing Act by engaging in collection agency activities without being duly licensed by the Board or otherwise exempt from licensure. By engaging in unlicensed collection agency activities in Respondents are subject to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

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POTENTIAL FINES, PENALTIES & SANCTIONS

A violation of the above referenced provisions of law occurring on or after October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation, and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

A violation of the above referenced provisions of law occurring on or before October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$1,000 for a first violation, and
 - (ii) \$5,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

Additionally, pursuant to CL § 12-314(b)(2), the Commissioner may, in the Commissioner's discretion, issue an order requiring Respondents to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation which states:

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(b)(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under [the MCLL].

HEARING PROCEDURES

The hearing in this matter will be held before an Administrative Law Judge of the Office of Administrative Hearings. The Office of Administrative Hearings will mail written notice to the parties stating the date, time, place, and nature of the hearing.

Failure to Appear: A party's failure or refusal to appear for a scheduled hearing may result in an adverse action against the party including the finding of violations, suspension or revocation of a license, the imposition of civil monetary penalties, and/or other administrative sanctions allowed by law.

Representation: An individual may appear at a hearing with or without an attorney. An attorney representing an individual must be authorized to practice law in Maryland. An individual's appearance at a hearing without counsel indicates the individual's decision to waive the right to an attorney. Business entities such as corporations, limited liability companies, partnerships, business trusts, statutory trusts, or associations must be represented by an attorney admitted to practice law in the State of Maryland. The Commissioner may not grant the right to practice law to a person who is not authorized to practice law in Maryland.

Evidence: At the hearing, parties may call witnesses and submit documents or other evidence in the record. A party may cross-examine any witnesses called to testify against them and object to any documents submitted by the opposing party. A party may agree to the evidence and waive the right to appear at the hearing.

Postponements: A request for a postponement must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, be filed not less than five days before the scheduled hearing, include documentation of the reasons for the postponement, and establish good cause for the postponement. In the event of an emergency, meaning a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing, a request for postponement may be made by telephone. A request for a postponement will not be granted on the basis that a party did not retain the services of an attorney prior to the scheduled hearing date.

Subpoenas: On the request of a party, the Office of Administrative Hearings may issue subpoenas requiring the attendance and testimony of witnesses and the production at the hearing of any tangible item in the possession or control of the witness. A request for a subpoena must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative

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Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, at least ten days before a scheduled hearing date. The subpoena request must specify the name and full address of the person to be subpoenaed and the name, full address, and telephone number of the party requesting the subpoena. A subpoena that requests the production of tangible items, books, papers or other documents must describe those items with particularity. A subpoena may be served by personal delivery by an individual eighteen or older who is not party to the proceeding; by certified mail to the person at the addresses specified in the subpoena request; or if served by the Office of Administrative Hearings, by U.S. mail or other personal or courier delivery. Unless, the subpoena request specifies otherwise, the subpoena will be mailed by the Office of Administrative Hearings. The subpoena may not be enforced absent proof of service by certified mail or personal delivery. Costs of certified mailing or personal delivery of subpoenas are the responsibility of the person requesting the subpoena.

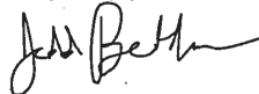
Hearing Procedures: The hearing will be conducted in accordance with Md. Code Ann., Financial Institutions Article, §2-115(b); the Administrative Procedure Act, Md. Code Ann., State Government Article, Title 10, Subtitle 2; the Maryland Department of Labor's ("MDOL") regulations found in the Code of Maryland Regulations ("COMAR") 09.01.02 and .03; and the Office of Administrative Hearings' regulations, found in COMAR Title 28, Subtitle 02. A copy of the hearing procedure is available upon request at no cost.

Questions/Settlement: Any questions regarding this Statement of Charges and Order for Hearing or to discuss settling this matter without a formal hearing should be directed to:

Kevin W. McGivern, Assistant Attorney General
Office of the Attorney General
Department of Labor
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202
(410) 230-6086

BY ORDER OF THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION.

Very truly yours,



Jedd Bellman
Assistant Commissioner

cc: Rebbie I. Frazier, Administrator
Kevin W. McGivern, Asst. A.G.



Important Information About Your Hearing: Please Read Carefully!

What is the Office of Administrative Hearings?

The Office of Administrative Hearings, or OAH, is an independent state agency where an Administrative Law Judge, or ALJ, hears cases when a party disagrees with the action of another State agency. These hearings protect your rights and give you a chance to explain why you disagree with an agency's action.

What are my options if I do not want to go to a hearing?

You may be offered an opportunity to informally resolve your case. If not, please contact OAH immediately if you wish to request a settlement conference or mediation.

A hearing before an ALJ is not necessary if all parties agree to the admission of evidence and waive their right to appear in person. To waive your appearance at the hearing, please send a written notice to OAH immediately. You have the right to withdraw this waiver later if you change your mind, but to do so your written notice of withdrawal must be received at OAH no later than five (5) days before the scheduled hearing.

What if I decide that I don't want to appeal the agency's decision?

If you are the requesting party, you have the right to withdraw your appeal. Requests to withdraw an appeal should be sent to OAH in writing; include the case name and number, the date of the hearing, and the reason you wish to withdraw your appeal. If the notice of hearing that you received contains a form for this purpose, you also may withdraw by signing and returning a copy of that notice. Withdrawals of appeal can be scanned and emailed to oah.hearingwithdrawal@maryland.gov.

Do I need to have a lawyer to come to OAH?

You have a right to have a lawyer present your case or you may do so yourself. If you would like a lawyer, you must contact one on your own. Depending on your income, you may be able to obtain a lawyer from one of the following agencies:

- Maryland Volunteer Lawyers Service (410-547-6537/collect) Maryland Volunteer Lawyers Service operates in Baltimore City and all counties except Montgomery, Prince George's and Allegany.
- The Legal Aid Bureau (1-800-999-8904)

Corporations appearing before the OAH

Corporations, partnerships, and similar business entities are required to be represented by an attorney in most actions before OAH. In some instances, a corporate party may be represented by a non-attorney. The law requires that non-attorney corporate employees/designees must provide a Power of Attorney authorizing their representation of the corporation at the hearing; a Power of Attorney form may be obtained from OAH.

What if I need a special accommodation such as an interpreter?

If you need accommodation because you have a disability or because you do not speak English, please contact OAH or complete the enclosed Request for Accommodation form and send it to OAH immediately.

What if I cannot attend my hearing?

Once your hearing has been scheduled, you must come to your hearing. If you do not come to your hearing and you do not receive a postponement, your case may be dismissed or the ALJ may proceed with the hearing without you and may make a decision against you.

You may request a postponement for good cause. To request a postponement, send a request, in writing, to the OAH. The request must be received no later than five (5) days before the hearing. The request should contain the case name and number, the original date of the hearing and the reason for requesting the postponement. The request must include any documentation that you have to show why you need the postponement. Also include three (3) dates within the next thirty (30) days when you would be available for a rescheduled hearing and a telephone number where you can be reached Monday through Friday between 8:30 a.m. and 4:30 p.m.



Request for Accommodations

Foreign and sign language interpreters, and/or other appropriate accommodations for individuals with disabilities will be provided upon request. Please be advised that interpreters must be provided by the Office of Administrative Hearings. A family member or friend is not permitted to interpret for you.

Requests for accommodations should be submitted 10 days prior to the hearing date.

Hearing Location and Date: _____ Case Number: _____

Name: _____ Telephone #: _____

Foreign Language Interpreter

- Amharic
- Arabic
- Chinese - Cantonese
- Chinese - Mandarin
- French
- German
- Hindi
- Japanese
- Korean
- Persian / Farsi
- Italian
- Russian
- Romanian
- Spanish
- Urdu
- Vietnamese
- Other: _____

Interpreter for the Deaf

- American Sign Language
- Signed English Transliteration
- Oral Interpreter

Assistive Listening Devices

- Microloop (for use with hearing aids and cochlear implants)
- Microloop w/ Induction Loop Receiver (amplifies sound without a hearing aid)
- Communications Access Realtime Translation (CART)

Other Accommodations: _____

Signature: _____ Date: _____

Return this form to: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031 or fax it to (410) 229-4266.

If you have any questions, please call the number located at the bottom of your mediation or hearing notice. Maryland Relay: 711

OFFICE OF ADMINISTRATIVE HEARINGS
11101 GILROY ROAD
HUNT VALLEY, MARYLAND 21031



NOTICE OF HEARING

Atlanticus Service Corporation
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Date: 02-26-2021
Case#: LABOR-CFR-76-21-03142
RE: CFR vs. Fortiva Financial, et.al.
CFR File No. CFR-FY2017-0033

THIS IS TO ADVISE YOU THAT A HEARING IN THE ABOVE-REFERENCED CASE HAS BEEN SCHEDULED FOR:
Wednesday, May 05, 2021 AT 9:30AM AT: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031.

AT ISSUE IS WHETHER THE ATTACHED ORDER ISSUED TO THE RESPONDENT, INCLUDING ANY FINES AND/OR RESTITUTION, IS LEGALLY AUTHORIZED AND CONSISTENT WITH APPLICABLE STATUTES, REGULATIONS, POLICIES AND PROCEDURES.

Unless you have withdrawn your appeal, waived your appearance at the hearing (if available), or obtained a postponement, FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF YOUR CASE OR A DECISION AGAINST YOU.

PLEASE INCLUDE THE CASE NUMBER LISTED AT THE TOP OF THIS PAGE IN ANY COMMUNICATIONS WITH THIS OFFICE. All filings concerning this contested case must be mailed to this Office. A copy also must be sent to the opposing party or parties, or if they are represented, to their representative(s).

ALL SUBPOENAS ISSUED DURING THIS PROCEEDING SHALL BE BINDING AND REMAIN IN FULL FORCE AND EFFECT UNTIL THIS MATTER HAS BEEN RESOLVED.

* * * * *

If you no longer need or want your hearing, you may withdraw your request for a hearing by signing this form and mailing it back to the address on the top of this Notice. You may also fax it to (443) 681-1042 or scan and email it to oah.hearingwithdrawal@maryland.gov.

Date

Signature and Printed Name

OAH Contact: Docket Specialist, LABOR Unit
410-229-4283



OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202
Antonio Salazar, Commissioner

January 21, 2021

VIA CERTIFIED MAIL--RETURN RECEIPT REQUESTED
AND FIRST CLASS REGULAR MAIL

Adrian O. Breen
President & CEO
Bank of Missouri
916 North Kings Highway
Perryville, MO 63775

Bank of Missouri
d/b/a Mid-America Bank & Trust Company
916 North Kings Highway
Perryville, MO 63775

Fortiva Financial, LLC
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Fortiva Financial, LLC
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Atlanticus Service Corporation
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Atlanticus Service Corporation
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Re: CHARGE LETTER

Maryland Commissioner of Financial Regulation v. Fortiva Financial, et. al.
Case No.: CFR-FY2017-0033

Dear Respondent,

The Maryland Commissioner of Financial Regulation (the "Commissioner") hereby charges the following companies, Atlanticus Services Corporation ("Atlanticus"), Bank of

rebbie.frazier@maryland.gov | 410-230-6346 | www.labor.maryland.gov

Fortiva Financial, LLC

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Missouri (formerly Mid-America Bank & Trust Company)(the “Bank”), and Fortiva Financial, LLC, (“Fortiva”), (hereinafter referred to collectively as “Respondents”) with violating Annotated Code of Maryland, Commercial Law Article (“CL”) §12-301 *et seq.* and Financial Institution Article (“FI”) §11-201 *et seq.* (collectively the “Maryland Consumer Loan Law” or “MCLL”), CL § 12-901 *et seq.* (the “Credit Grantor Revolving Credit Provisions” or “RCP”), CL § 12-1001 *et seq.* (the “Credit Grantor Closed End Credit Provisions” or “CLEC”), Business Regulation Article (“BR”) § 7-101 *et seq.* (the “Maryland Collection Agency Licensing Act”), and CL § 14-901 (the “Maryland Credit Services Businesses Act”) as well as other applicable statutes and regulations. Specifically, Respondents violated the MCLL by making consumer loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated Maryland’s Credit Grantor Closed End Credit Provisions for offering and/or making installment loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents also violated Maryland’s Credit Revolving Credit Provisions, making a loan or extension of credit under this subtitle without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated the Maryland Credit Service Businesses Act by assisting Maryland consumers in obtaining an extension of credit by accepting and processing credit applications for credit owned and/or offered by a third-party. Respondents violated Maryland Collection Agency Licensing Act, soliciting and/or collecting a consumer claim on behalf of another. The allegations and charges against Respondents are set forth in more detail below.

These allegations and charges arise from an investigation conducted by the Office of the Commissioner of Financial Regulation (“OCFR”) into Respondents consumer lending activities in the State of Maryland. Based upon the investigation, the Commissioner determined that charges against the Respondents are warranted. In this Statement of Charges and Order for Hearing, the Commissioner sets forth with particularity the charges against the Respondents and applicable hearing procedures.

When the Commissioner determines, after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner’s authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner’s discretion, issue an order (i) requiring you to cease and desist from these violations and any further similar violations; and (ii) requiring you to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation pursuant to CL § 12-314(b)(2). Additionally, the Commissioner may, for each violation occurring before October 1, 2018, impose a civil monetary penalty up to the maximum amount of \$1,000.00 for the first violation and up to the maximum amount of \$5,000.00 for each subsequent violation as authorized by FI § 2-115. For each violation occurring on or after October 1, 2018, the Commissioner may impose a civil monetary penalty up to the maximum amount of \$10,000.00 for the first violation and up to the maximum amount of \$25,000.00 for each subsequent violation as authorized by FI § 2-115. The imposition of these sanctions is subject to the hearing rights described below.

Fortiva Financial, LLC

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FACTUAL ALLEGATIONS

The charges brought against Respondents are based on the following factual allegations:

1. As a result of a consumer complaint, OCFR initiated an investigation on or about January 17, 2017, into the Bank's personal loan product program offered to Maryland consumers.

2. OCFR's investigation revealed that, on or about July 15, 2016, Loretta Alexander, a Maryland resident, obtained a "Fortiva Consumer Loan" in the amount of \$5,000 (less a \$99 fee), with an annual percentage rate of 35.98% payable over 48 months. The personal loan was originated by Mid-America Bank & Trust Company. The payments to be made by the consumer totaled \$9,308.16.

3. Mid-America Bank & Trust Company was a federally-insured, Missouri-chartered bank operating within the State of Missouri. It was acquired and merged with Bank of Missouri in 2017 (hereinafter, the "Bank"). At all times relevant to the factual allegations herein, neither Mid-America Bank & Trust Company nor Bank of Missouri were registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

4. Atlanticus Services Corporation, at all times relevant to the factual allegations herein, is a Georgia corporation that operates from 5 Concourse Parkway, Suite 300, Atlanta, Georgia, 30328. Atlanticus is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

5. Fortiva Financial, LLC, at all times relevant to the factual allegations herein, is a Georgia limited liability corporation that operates from 5 Concourse Parkway, Suite 400, Atlanta, Georgia, 30328. Fortiva is a wholly-owned subsidiary and/or affiliate company of Atlanticus. Fortiva is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

6. During its investigation, OCFR discovered that the Bank began offering and issuing personal loans to Maryland consumers via direct mail solicitation in 2014.¹

7. OCFR also discovered during its investigation, and Respondents collectively admit, that the Bank also offers in-store retail credit financing as well as store-branded credit card accounts to Maryland consumers. These retail credit products are available to Maryland consumers at over 150 retail locations in Maryland. Retailers offering Respondents' in-store credit products include, but are not limited to, Home Depot, Sears Home Services, Ashley Homestore, Guitar Center, Long Fence & Home, and Lasik Vision Institute.

8. According to Respondents, the total number of outstanding credit accounts issued by the Bank to Maryland residents and the total balance of those accounts as of January 2018 is as follows:

¹ Upon information and belief, the Bank no longer offers personal loans outside of Missouri and last offered and/or solicited Maryland residents for personal loans in August 2016.

Fortiva Financial, LLC

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Bank Product	# of Maryland Accounts	Total Outstanding Balance
Store-branded Retail Credit Financing	3,990	\$5,088,879.01
Store-branded Credit Cards	3,025	\$2,097,985.68
Fortiva-branded Personal Loan	278	\$620,405.46

9. As of the date of this writing, the Bank continues to offer in-store retail credit financing as well as store-branded credit cards to Maryland consumers.

10. The Bank retains ownership of its retail credit accounts as well as the debtor-creditor relationship with Maryland consumers for the life of the loan account.

11. By contrast, Respondent Atlanticus, the parent company and/or affiliate of, Respondent Fortiva, is not a lender and does not issue credit to Maryland consumers.² Atlanticus/Fortiva however assist Maryland consumers in obtaining an extension of credit from the Bank by accepting and processing credit applications from Maryland consumers relating to the Bank's retail credit products, including its in-store retail credit financing, store-branded credit cards and Fortiva-branded personal consumer loans.

12. This relationship and lending scheme is further described and governed by a 2017 Program Management Agreement ("Program Management Agreement") entered into by and between the Respondents, collectively. "Fortiva" effectively operates as a brand-name for use by Maryland consumers as will be more specifically described herein.

13. Pursuant to Respondents' Program Management Agreement Atlanticus/Fortiva is responsible for working directly with consumers to perform "Application Processing" for the Bank, including submitting applications for automated processing, obtaining credit reports, processing ACH authorization requests for handling consumer payments, responding to inquiries from applicants about their application's status, provide all notices and documents required by law (including adverse action notices), and holding and maintaining all documents pertaining to the Bank's credit applications and accounts.

14. Pursuant to Respondents' Program Management Agreement, Atlanticus/Fortiva accepts consumers' credit applications and submits them for automated processing on behalf of the Bank to determine whether the applicant satisfies the eligibility requirements established by the Bank. Consumers may apply for a consumer loan at fortivafinancial.com.

² For purposes of these charges and allegations, "Atlanticus" and "Fortiva" may be used interchangeably, and "Atlanticus/Fortiva" may refer to Respondent Atlanticus and Respondent Fortiva interchangeably and/or collectively.

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15. Atlanticus/Fortiva is also authorized pursuant to Respondents' Program Management Agreement to respond to inquiries from Applicants, provide notices to applicants as required by law, such as adverse action notices and loan account agreements for approved loans. Atlanticus also holds and maintains all Bank documents pertaining the loan accounts.

16. Additionally, in 2012, Respondents collectively entered into a Loan Servicing Agreement (hereinafter "Loan Servicing Agreement"), which expressly states that the services provided by Atlanticus/Fortiva for the Bank include "application fulfillment," "application processing," "review applications for completeness and fraud," "adverse action notification," and "application retention, storage and retrieval."

17. While the Bank maintains ownership of the loan accounts and thus retains the right to control the servicing and collection of loan accounts, Atlanticus/Fortiva performs all of the collections, servicing, payment and remittance operations of the Bank's consumer credit accounts described herein.

18. Pursuant to the Loan Servicing Agreement, the Bank authorizes Atlanticus/Fortiva to directly or indirectly through approved subcontractors service the installment loans, stating Atlanticus "shall perform Loan Account servicing on behalf of Bank..." This includes "processing payment authorization requests, preparing and mailing account statements, undertaking collections, providing customer service... crediting Loan Accounts in respect of unauthorized charges, chargebacks, refunds and adjustments, [and] resolving customer disputes."

19. All written correspondence and statements are branded "Fortiva." The initial deposit to Alexander's bank account indicated it was made by "FORTIVA LN FORTIVA LN." Payments made via ACH Transfer are reflected as credits on consumer's bank statements as "FORTIVA PL PMT AUTOPAY". All customer service telephone numbers and addresses relating to payments, collections, customer service and consumer complaints belong to "Fortiva Financial."

20. According to Respondent's 2012 "Loan Servicing Agreement," Atlanticus/Fortiva performs, either directly or indirectly and on behalf of the Bank, all collection and servicing activity for the Bank-owned credit accounts relating to the Bank's retail credit products offered to Maryland consumers. This agreement expressly states that the Bank retains ownership of loan accounts and the direct legal relationship with a consumer for the life of the loan account, that the Bank is the only entity entitled to enforce the credit agreement, and thus the Bank controls the servicing and collections of loan accounts.

21. The Agreement also provides that Atlanticus/Fortiva shall assist the Bank in preparing instructions for electronic funds transfers by the Banks borrowers, either directly or indirectly by engaging and managing sub-servicers on behalf of the Bank for the Bank's retail credit products.

22. At no time relevant to the factual allegations herein was the Bank, Atlanticus or Fortiva licensed by the Commissioner or the Maryland Collection Agency Licensing Board to

Fortiva Financial, LLC

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perform the above-referenced activity in Maryland in any capacity, nor were they exempt from licensure.

APPLICABLE LAWS

The Maryland Consumer Loan Law defines a loan as “any loan or advance of money or credit made under [the Maryland Consumer Loan Law – Credit Provisions.]” *See* FI § 11-201(e) and CL § 12-301(e).

Pursuant to FI § 11-203.1(a), “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan....”

Pursuant to FI § 11-204(a), “a person may not... [r]eceive any application for a loan or allow any note or contract for a loan to be signed at any place of business for which the person does not have a license.”

Pursuant to FI § 11-221, the provisions of Title 11, Subtitle 2 of the Financial Institutions Article “shall be interpreted and construed to effectuate [their] remedial purpose.”

Pursuant to CL § 12-301(c) of the MCLL, a “lender” means “a person who makes a loan under this subtitle.”

Pursuant to CL § 12-302, “[a] person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions.”

CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article, namely the Maryland Consumer Loan Law – Credit Provisions. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

CL § 12-308 sets forth various duties that lenders have towards borrowers. Among these duties, CL § 12-308(a) requires a lender to provide a borrower with a statement containing specific language and provisions at the time the loan is made, providing as follows:

(a) *Statement to borrower.-*

Fortiva Financial, LLC

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- (1) At the time a loan is made, the lender shall deliver to the borrower a statement in the English language which:
 - (i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this subtitle, in their entireties; and
 - (ii) Complies with § 12-106(b) of this title.
- (2) If there are two or more borrowers, the lender:
 - (i) May deliver the statement to any one of the borrowers; and
 - (ii) At the request of any other borrower, shall deliver a copy of the statement to that borrower within 10 days after the request.

CL § 12-308(b) requires that, at the time a lender receives a payment on a loan, the lender shall deliver to the person making the payment a statement containing information regarding the loan, provided as follows:

- (b)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall deliver to the person making the payment a receipt which specifies:
 - (i) The amount applied to principal;
 - (ii) The amount applied to interest and other charges; and
 - (iii) The unpaid principal balance of the loan.
- (2) The lender may deliver an unitemized receipt at the time of payment if he delivers the required itemized receipt within 10 days after the payment.
- (3) The lender is not required to issue a receipt if, before the due date of each payment, he regularly delivers to the borrower a billing statement which specifies:
 - (i) The previous unpaid principal balance of the loan;
 - (ii) The amount and date of each payment made during the billing period;
 - (iii) The amount of each of these payments applied to interest;
 - (iv) The amount of each of these payments applied to principal;
 - (v) The current unpaid principal balance; and
 - (vi) The amount and due date of the next maturing installment.

Pursuant to CL § 12-313(a) (which was recodified at CL § 12-314 and amended effective January 1, 2019), a person is prohibited from lending \$6,000 or less "if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State." Prior to January 1, 2019, CL §§ 12-314(b)(1) and (2) provided as follows:

- (1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical

Fortiva Financial, LLC

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error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

Effective January 1, 2019, CL § 12-313 was recodified at CL § 12-314 and the permissible loan amount was raised to \$25,000.

Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 of the Commercial Law Article (i.e., the Maryland Consumer Loan Law – Credit Provisions) “shall be interpreted and construed to effectuate its general remedial purpose.”

Various sections of the MCLL restrict the types and amounts of fees that lenders are permitted to charge in conjunction with consumer loans, these sections include, but are not limited to, CL §§ 12-307, 12-307.1, and 12-313(a)(1). Pursuant to CL § 12-307 (“Collection of certain fees”), the following fees are authorized:

(a) *In general.*- At the time a loan is made, a lender may collect from the borrower:

(1) As to any item of the total property that secures a loan:

(i) The fees paid to a public official or governmental agency for recording or satisfying a mortgage, encumbrance, or lien on any property securing the loan; or

(ii) An equal or lesser amount for nonfiling insurance premium on any property, or portion of the property, that is not recorded if:

1. The Insurance Commissioner approves the rates; and
2. A commission is not paid on the policy; and

(2) The title insurance premiums or reasonable attorney's fees paid for searching and insuring the title to any real property securing the loan.

(b) *Bad check fee.*- A lender may collect from the borrower a fee not exceeding \$15 if payment is made with a check that is dishonored on the second presentment.

Pursuant to CL § 12-1001 *et seq.*, (i.e., Credit Grantor Closed End Credit Provisions), which governs installment loans, defines installment loans as “any single extension of closed end credit, whether repayable in installments, on demand, or otherwise and whether extended in one or more advances.” CL § 12-1001(j).

Pursuant to CL § 12-1003 (a), an installment loan lender “may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.”

Fortiva Financial, LLC

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Pursuant to CL § 12-1015 (a) “credit grantor making a loan or an extension of credit under this subtitle [i.e., an installment loan] is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

FI § 11-302(a) provides as follows: “[i]n this section, ‘installment loan’ means a loan or extension of credit made for consideration under... Title 12, Subtitle 10 of the Commercial Law Article.”

Pursuant to FI § 11-302(b), “[u]nless the person is licensed by the Commissioner, a person may not: (1) [e]ngage in the business of making installment loans...” In turn, FI § 11-303 provides that, “[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions.”

Pursuant to CL § 12-915(a), a “credit grantor making a loan or extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

Pursuant to BR § 7-301, except at otherwise provided, “a person must have a license whenever the person does business as a collection agency in the State.”

Pursuant to BR 7-101, a “collection agency” means

(d) “a person who engages directly or indirectly in the business of:

(1)(i) collecting for, or soliciting from another, a consumer claim; or

(ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;

(2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;

(3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or

(4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.

Pursuant to BR § 7-101(f), a “consumer claims” is defined as “a claim that:(1) is for money owed or said to be owed by a resident of the State; and (2) arises from a transaction in which, for

Fortiva Financial, LLC

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a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services.”

Pursuant to BR § 7-401, “a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license, and any person “who violates this section is guilty of a misdemeanor, and on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months or both.

Pursuant to BR § 7-205, “if a violator fails to comply with a lawful order issued by the [Collection Agency Licensing Board], the Board may impose a penalty not exceeding \$10,000 for each violation cited in the order, not to exceed \$25,000, from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.”

Pursuant to CL § 14-1903, a credit services business “is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article.” Said license shall be issued by the Commissioner of Financial Regulation. CL § 14-1903.

Pursuant to CL § 14-1901(e), a “credit services business” means

(e) ... “any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record, or providing advice or assistance to a consumer with regard to improving the consumer's credit record, history, or rating or establishing a new credit file or record; or

(ii) Obtaining an extension of credit for a consumer, or providing advice or assistance to a consumer with regard to obtaining an extension of credit for the consumer.

Pursuant to § 14-1915, as otherwise provided, any person who violates any provision of the MCSBA is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 3 years or both, in addition to any civil penalties.

Pursuant to FI § 2-115(b), when the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;

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- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation; and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

CHARGES AGAINST THE RESPONDENTS

Based on the foregoing factual allegations and provisions of law, the Respondents are subject to, and charged with violations of, the foregoing laws, regulations, rules, and orders over which the Commissioner jurisdiction, including but not limited to CLEC, RCP, MCLL, MCALA as well as MCSBA, as follows:

COUNT 1: Respondent Bank violated Maryland law by offering and/or making installment loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-1015 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 2: Respondent Bank made consumer loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-302 and FI § 11-203.1. Moreover, pursuant to CL § 12-314(b)(2), Respondents, who are neither licensed nor exempt from licensing, “may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.” As a result, not only are the Respondents’ loans to all Maryland consumers unenforceable, but the Respondents, or its agents or assigns, are prohibited from collecting the principal amount of those loans from any of these consumers or from collecting any other money related to those loans.

COUNT 3: Respondent Bank violated CL § 12-915 by offering and/or making an extension of open-ended or revolving credit, such as credit cards, under this subtitle in Maryland without being licensed to do so and without being exempt from the licensing requirement; in violation of CL § 12-915 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 4: Respondents’ Atlanticus and Fortiva violated CL §§ 14-1901(e)(1)(ii) and 14-1903(b) of the Maryland Credit Services Business Act by providing advice and/or assistance to Maryland consumers with regard to obtaining an extension of credit for the consumer when accepting and/or processing credit applications on behalf of the Bank without a credit services business license as describe in the above-referenced retail lending scheme.

COUNT 5: Respondents’ Atlanticus and Fortiva violated BR § 7-401 of the Maryland Collection Agency Licensing Act by engaging in collection agency activities without being duly licensed by the Board or otherwise exempt from licensure. By engaging in unlicensed collection agency activities in Respondents are subject to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

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POTENTIAL FINES, PENALTIES & SANCTIONS

A violation of the above referenced provisions of law occurring on or after October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation, and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

A violation of the above referenced provisions of law occurring on or before October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$1,000 for a first violation, and
 - (ii) \$5,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

Additionally, pursuant to CL § 12-314(b)(2), the Commissioner may, in the Commissioner's discretion, issue an order requiring Respondents to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation which states:

Fortiva Financial, LLC

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(b)(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under [the MCLL].

HEARING PROCEDURES

The hearing in this matter will be held before an Administrative Law Judge of the Office of Administrative Hearings. The Office of Administrative Hearings will mail written notice to the parties stating the date, time, place, and nature of the hearing.

Failure to Appear: A party's failure or refusal to appear for a scheduled hearing may result in an adverse action against the party including the finding of violations, suspension or revocation of a license, the imposition of civil monetary penalties, and/or other administrative sanctions allowed by law.

Representation: An individual may appear at a hearing with or without an attorney. An attorney representing an individual must be authorized to practice law in Maryland. An individual's appearance at a hearing without counsel indicates the individual's decision to waive the right to an attorney. Business entities such as corporations, limited liability companies, partnerships, business trusts, statutory trusts, or associations must be represented by an attorney admitted to practice law in the State of Maryland. The Commissioner may not grant the right to practice law to a person who is not authorized to practice law in Maryland.

Evidence: At the hearing, parties may call witnesses and submit documents or other evidence in the record. A party may cross-examine any witnesses called to testify against them and object to any documents submitted by the opposing party. A party may agree to the evidence and waive the right to appear at the hearing.

Postponements: A request for a postponement must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, be filed not less than five days before the scheduled hearing, include documentation of the reasons for the postponement, and establish good cause for the postponement. In the event of an emergency, meaning a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing, a request for postponement may be made by telephone. A request for a postponement will not be granted on the basis that a party did not retain the services of an attorney prior to the scheduled hearing date.

Subpoenas: On the request of a party, the Office of Administrative Hearings may issue subpoenas requiring the attendance and testimony of witnesses and the production at the hearing of any tangible item in the possession or control of the witness. A request for a subpoena must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative

Fortiva Financial, LLC

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Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, at least ten days before a scheduled hearing date. The subpoena request must specify the name and full address of the person to be subpoenaed and the name, full address, and telephone number of the party requesting the subpoena. A subpoena that requests the production of tangible items, books, papers or other documents must describe those items with particularity. A subpoena may be served by personal delivery by an individual eighteen or older who is not party to the proceeding; by certified mail to the person at the addresses specified in the subpoena request; or if served by the Office of Administrative Hearings, by U.S. mail or other personal or courier delivery. Unless, the subpoena request specifies otherwise, the subpoena will be mailed by the Office of Administrative Hearings. The subpoena may not be enforced absent proof of service by certified mail or personal delivery. Costs of certified mailing or personal delivery of subpoenas are the responsibility of the person requesting the subpoena.

Hearing Procedures: The hearing will be conducted in accordance with Md. Code Ann., Financial Institutions Article, §2-115(b); the Administrative Procedure Act, Md. Code Ann., State Government Article, Title 10, Subtitle 2; the Maryland Department of Labor's ("MDOL") regulations found in the Code of Maryland Regulations ("COMAR") 09.01.02 and .03; and the Office of Administrative Hearings' regulations, found in COMAR Title 28, Subtitle 02. A copy of the hearing procedure is available upon request at no cost.

Questions/Settlement: Any questions regarding this Statement of Charges and Order for Hearing or to discuss settling this matter without a formal hearing should be directed to:

Kevin W. McGivern, Assistant Attorney General
Office of the Attorney General
Department of Labor
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202
(410) 230-6086

BY ORDER OF THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION.

Very truly yours,



Jedd Bellman
Assistant Commissioner

cc: Rebbie I. Frazier, Administrator
Kevin W. McGivern, Asst. A.G.



Important Information About Your Hearing: Please Read Carefully!

What is the Office of Administrative Hearings?

The Office of Administrative Hearings, or OAH, is an independent state agency where an Administrative Law Judge, or ALJ, hears cases when a party disagrees with the action of another State agency. These hearings protect your rights and give you a chance to explain why you disagree with an agency's action.

What are my options if I do not want to go to a hearing?

You may be offered an opportunity to informally resolve your case. If not, please contact OAH immediately if you wish to request a settlement conference or mediation.

A hearing before an ALJ is not necessary if all parties agree to the admission of evidence and waive their right to appear in person. To waive your appearance at the hearing, please send a written notice to OAH immediately. You have the right to withdraw this waiver later if you change your mind, but to do so your written notice of withdrawal must be received at OAH no later than five (5) days before the scheduled hearing.

What if I decide that I don't want to appeal the agency's decision?

If you are the requesting party, you have the right to withdraw your appeal. Requests to withdraw an appeal should be sent to OAH in writing; include the case name and number, the date of the hearing, and the reason you wish to withdraw your appeal. If the notice of hearing that you received contains a form for this purpose, you also may withdraw by signing and returning a copy of that notice. Withdrawals of appeal can be scanned and emailed to oah.hearingwithdrawal@maryland.gov.

Do I need to have a lawyer to come to OAH?

You have a right to have a lawyer present your case or you may do so yourself. If you would like a lawyer, you must contact one on your own. Depending on your income, you may be able to obtain a lawyer from one of the following agencies:

- Maryland Volunteer Lawyers Service (410-547-6537/collect) Maryland Volunteer Lawyers Service operates in Baltimore City and all counties except Montgomery, Prince George's and Allegany.
- The Legal Aid Bureau (1-800-999-8904)

Corporations appearing before the OAH

Corporations, partnerships, and similar business entities are required to be represented by an attorney in most actions before OAH. In some instances, a corporate party may be represented by a non-attorney. The law requires that non-attorney corporate employees/designees must provide a Power of Attorney authorizing their representation of the corporation at the hearing; a Power of Attorney form may be obtained from OAH.

What if I need a special accommodation such as an interpreter?

If you need accommodation because you have a disability or because you do not speak English, please contact OAH or complete the enclosed Request for Accommodation form and send it to OAH immediately.

What if I cannot attend my hearing?

Once your hearing has been scheduled, you must come to your hearing. If you do not come to your hearing and you do not receive a postponement, your case may be dismissed or the ALJ may proceed with the hearing without you and may make a decision against you.

You may request a postponement for good cause. To request a postponement, send a request, in writing, to the OAH. The request must be received no later than five (5) days before the hearing. The request should contain the case name and number, the original date of the hearing and the reason for requesting the postponement. The request must include any documentation that you have to show why you need the postponement. Also include three (3) dates within the next thirty (30) days when you would be available for a rescheduled hearing and a telephone number where you can be reached Monday through Friday between 8:30 a.m. and 4:30 p.m.

You must send a copy of your postponement request to each party in your case. Requests for postponements should be mailed to OAH at 11101 Gilroy Road, Hunt Valley, MD, 21031-1301, faxed to (410) 229-4266 or scanned and emailed to oah.postponements@maryland.gov. Emergency postponements for good cause arising within five (5) days of the hearing date may be requested by contacting OAH, in writing, using the fax number or email address noted above.

If you wish to request to have your case heard as a telephone hearing, you must submit your request in writing to OAH immediately.

What happens at the hearing and what should I bring?

The ALJ will explain the hearing to you. You should ask questions if you do not understand. Bring with you all of the evidence, such as papers, that you want to present as part of your case; also bring copies for each of the parties and a separate copy for the ALJ. You may present witnesses; each side will give evidence and question the other side's witnesses. The hearing will be recorded. The ALJ will then decide the case based on the facts and the law. The decision in your case will be mailed to you; the ALJ will tell you when to expect to receive the decision. Please do not call OAH to ask about the decision in your case.

If you wish to subpoena documents or a witness, you must request a subpoena in writing. That request must be received at OAH at least fifteen (15) days before your hearing. Include in your request the case name and number and the date of the hearing. You must also include the complete name and address of each witness you want to subpoena. You must include a \$5.00 fee for each subpoena unless you have been granted a fee waiver.

Does OAH have a library? Can I make copies there?

The OAH has a law library that is open to the public located and accessible by light rail (Gilroy station stop) at its main office in Hunt Valley. Library hours are Monday through Friday from 9:00 a.m. to 4:00 p.m. If you need to make copies, you may do so in the library during normal open hours for \$0.25 a page. Please bring exact change or a personal check.

What if the weather becomes severe?

In case of severe weather, please check our website at <http://www.oah.maryland.gov> or listen to one of the following radio stations for cancellation information:

Central Maryland—WBAL AM 1090
Western Maryland—WCBC AM 1270
Southern Maryland and the Eastern Shore—WQHQ FM 104.7
Washington Metro Area—WTOP FM 103.5 or 103.9

NOTE: If your proceeding is scheduled with a school system, and the school system is opening late, the proceeding will also begin late. For instance, if the school system is opening 1 or 2 hours late, the proceeding will begin 1 or 2 hours later than scheduled. If the school system or State offices are closed, all proceedings will be postponed and rescheduled for a future date.

This document is available in alternate formats, including large print, upon request.
A copy of the hearing procedures for your case is available from OAH for \$0.25 a page.
For more information, please visit our website at <http://www.oah.maryland.gov>

Para leer este documento en español, vaya a <http://www.oah.maryland.gov/sp/docs/108571.pdf>



Request for Accommodations

Foreign and sign language interpreters, and/or other appropriate accommodations for individuals with disabilities will be provided upon request. Please be advised that interpreters must be provided by the Office of Administrative Hearings. A family member or friend is not permitted to interpret for you.

Requests for accommodations should be submitted 10 days prior to the hearing date.

Hearing Location and Date: _____ Case Number: _____

Name: _____ Telephone #: _____

Foreign Language Interpreter

- Amharic
- Arabic
- Chinese - Cantonese
- Chinese - Mandarin
- French
- German
- Hindi
- Japanese
- Korean
- Persian / Farsi
- Italian
- Russian
- Romanian
- Spanish
- Urdu
- Vietnamese
- Other: _____

Interpreter for the Deaf

- American Sign Language
- Signed English Transliteration
- Oral Interpreter

Assistive Listening Devices

- Microloop (for use with hearing aids and cochlear implants)
- Microloop w/ Induction Loop Receiver (amplifies sound without a hearing aid)
- Communications Access Realtime Translation (CART)

Other Accommodations: _____

Signature: _____ Date: _____

Return this form to: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031 or fax it to (410) 229-4266.

If you have any questions, please call the number located at the bottom of your mediation or hearing notice. Maryland Relay: 711

ZIP 21031 \$ 008.05
00 0378149MAR 01 2021



PLEASE SIGNER AT TOP OF ENVELOPE TO THE RIGHT
OF RETURN ADDRESS ONLY AT DOTTED LINE

CERTIFIED MAIL



9434 7266 9904 2972 3433 84
RETURN RECEIPT REQUESTED

STATE OF MARYLAND
OFFICE OF ADMINISTRATIVE HEARINGS
 ADMINISTRATIVE LAW BUILDING
 11101 GILROY ROAD
 HUNT VALLEY, MD. 21031-1301

ATLANTICUS SERVICE CORPORATION
 C/O CORPORATION SERVICE COMPANY
 40 TECHNOLOGY PARKWAY, SOUTH, SUITE 300
 NOCROSS, GA 30092

Baltimore P&DC 212
 MON 01 MAR 2021 PM



OFFICE OF ADMINISTRATIVE HEARINGS
11101 GILROY ROAD
HUNT VALLEY, MARYLAND 21031



NOTICE OF HEARING

Fortiva Financial, LLC
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Date: 03-01-2021
Case#: LABOR-CFR-76-21-03142
RE: CFR vs. Fortiva Financial, et.al.
CFR File No. CFR-FY2017-0033

THIS IS TO ADVISE YOU THAT A HEARING IN THE ABOVE-REFERENCED CASE HAS BEEN SCHEDULED FOR:
Wednesday, May 05, 2021 AT 9:30AM AT: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031.

AT ISSUE IS WHETHER THE ATTACHED ORDER ISSUED TO THE RESPONDENT, INCLUDING ANY FINES AND/OR RESTITUTION, IS LEGALLY AUTHORIZED AND CONSISTENT WITH APPLICABLE STATUTES, REGULATIONS, POLICIES AND PROCEDURES.

Unless you have withdrawn your appeal, waived your appearance at the hearing (if available), or obtained a postponement, FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF YOUR CASE OR A DECISION AGAINST YOU.

PLEASE INCLUDE THE CASE NUMBER LISTED AT THE TOP OF THIS PAGE IN ANY COMMUNICATIONS WITH THIS OFFICE. All filings concerning this contested case must be mailed to this Office. A copy also must be sent to the opposing party or parties, or if they are represented, to their representative(s).

ALL SUBPOENAS ISSUED DURING THIS PROCEEDING SHALL BE BINDING AND REMAIN IN FULL FORCE AND EFFECT UNTIL THIS MATTER HAS BEEN RESOLVED.

* * * * *

If you no longer need or want your hearing, you may withdraw your request for a hearing by signing this form and mailing it back to the address on the top of this Notice. You may also fax it to (443) 681-1042 or scan and email it to oah.hearingwithdrawal@maryland.gov.

Date

Signature and Printed Name

OAH Contact: Docket Specialist, LABOR Unit
410-229-4283



OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202
Antonio Salazar, Commissioner

January 21, 2021

VIA CERTIFIED MAIL--RETURN RECEIPT REQUESTED
AND FIRST CLASS REGULAR MAIL

Adrian O. Breen
President & CEO
Bank of Missouri
916 North Kings Highway
Perryville, MO 63775

Bank of Missouri
d/b/a Mid-America Bank & Trust Company
916 North Kings Highway
Perryville, MO 63775

Fortiva Financial, LLC
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Fortiva Financial, LLC
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Atlanticus Service Corporation
5 Concourse Parkway, Suite 400
Atlanta, GA 30328

Atlanticus Service Corporation
c/o Corporation Service Company
40 Technology Parkway South, Suite 300
Norcross, GA 30092

Re: CHARGE LETTER

Maryland Commissioner of Financial Regulation v. Fortiva Financial, et. al.
Case No.: CFR-FY2017-0033

Dear Respondent,

The Maryland Commissioner of Financial Regulation (the "Commissioner") hereby charges the following companies, Atlanticus Services Corporation ("Atlanticus"), Bank of

rebbie.frazier@maryland.gov | 410-230-6346 | www.labor.maryland.gov

Fortiva Financial, LLC

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Missouri (formerly Mid-America Bank & Trust Company)(the “Bank”), and Fortiva Financial, LLC, (“Fortiva”), (hereinafter referred to collectively as “Respondents”) with violating Annotated Code of Maryland, Commercial Law Article (“CL”) §12-301 *et seq.* and Financial Institution Article (“FI”) §11-201 *et seq.* (collectively the “Maryland Consumer Loan Law” or “MCLL”), CL § 12-901 *et seq.* (the “Credit Grantor Revolving Credit Provisions” or “RCP”), CL § 12-1001 *et seq.* (the “Credit Grantor Closed End Credit Provisions” or “CLEC”), Business Regulation Article (“BR”) § 7-101 *et seq.* (the “Maryland Collection Agency Licensing Act”), and CL § 14-901 (the “Maryland Credit Services Businesses Act”) as well as other applicable statutes and regulations. Specifically, Respondents violated the MCLL by making consumer loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated Maryland’s Credit Grantor Closed End Credit Provisions for offering and/or making installment loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents also violated Maryland’s Credit Revolving Credit Provisions, making a loan or extension of credit under this subtitle without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents violated the Maryland Credit Service Businesses Act by assisting Maryland consumers in obtaining an extension of credit by accepting and processing credit applications for credit owned and/or offered by a third-party. Respondents violated Maryland Collection Agency Licensing Act, soliciting and/or collecting a consumer claim on behalf of another. The allegations and charges against Respondents are set forth in more detail below.

These allegations and charges arise from an investigation conducted by the Office of the Commissioner of Financial Regulation (“OCFR”) into Respondents consumer lending activities in the State of Maryland. Based upon the investigation, the Commissioner determined that charges against the Respondents are warranted. In this Statement of Charges and Order for Hearing, the Commissioner sets forth with particularity the charges against the Respondents and applicable hearing procedures.

When the Commissioner determines, after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner’s authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner’s discretion, issue an order (i) requiring you to cease and desist from these violations and any further similar violations; and (ii) requiring you to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation pursuant to CL § 12-314(b)(2). Additionally, the Commissioner may, for each violation occurring before October 1, 2018, impose a civil monetary penalty up to the maximum amount of \$1,000.00 for the first violation and up to the maximum amount of \$5,000.00 for each subsequent violation as authorized by FI § 2-115. For each violation occurring on or after October 1, 2018, the Commissioner may impose a civil monetary penalty up to the maximum amount of \$10,000.00 for the first violation and up to the maximum amount of \$25,000.00 for each subsequent violation as authorized by FI § 2-115. The imposition of these sanctions is subject to the hearing rights described below.

Fortiva Financial, LLC

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FACTUAL ALLEGATIONS

The charges brought against Respondents are based on the following factual allegations:

1. As a result of a consumer complaint, OCFR initiated an investigation on or about January 17, 2017, into the Bank's personal loan product program offered to Maryland consumers.

2. OCFR's investigation revealed that, on or about July 15, 2016, Loretta Alexander, a Maryland resident, obtained a "Fortiva Consumer Loan" in the amount of \$5,000 (less a \$99 fee), with an annual percentage rate of 35.98% payable over 48 months. The personal loan was originated by Mid-America Bank & Trust Company. The payments to be made by the consumer totaled \$9,308.16.

3. Mid-America Bank & Trust Company was a federally-insured, Missouri-chartered bank operating within the State of Missouri. It was acquired and merged with Bank of Missouri in 2017 (hereinafter, the "Bank"). At all times relevant to the factual allegations herein, neither Mid-America Bank & Trust Company nor Bank of Missouri were registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

4. Atlanticus Services Corporation, at all times relevant to the factual allegations herein, is a Georgia corporation that operates from 5 Concourse Parkway, Suite 300, Atlanta, Georgia, 30328. Atlanticus is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

5. Fortiva Financial, LLC, at all times relevant to the factual allegations herein, is a Georgia limited liability corporation that operates from 5 Concourse Parkway, Suite 400, Atlanta, Georgia, 30328. Fortiva is a wholly-owned subsidiary and/or affiliate company of Atlanticus. Fortiva is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

6. During its investigation, OCFR discovered that the Bank began offering and issuing personal loans to Maryland consumers via direct mail solicitation in 2014.¹

7. OCFR also discovered during its investigation, and Respondents collectively admit, that the Bank also offers in-store retail credit financing as well as store-branded credit card accounts to Maryland consumers. These retail credit products are available to Maryland consumers at over 150 retail locations in Maryland. Retailers offering Respondents' in-store credit products include, but are not limited to, Home Depot, Sears Home Services, Ashley Homestore, Guitar Center, Long Fence & Home, and Lasik Vision Institute.

8. According to Respondents, the total number of outstanding credit accounts issued by the Bank to Maryland residents and the total balance of those accounts as of January 2018 is as follows:

¹ Upon information and belief, the Bank no longer offers personal loans outside of Missouri and last offered and/or solicited Maryland residents for personal loans in August 2016.

Fortiva Financial, LLC

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Bank Product	# of Maryland Accounts	Total Outstanding Balance
Store-branded Retail Credit Financing	3,990	\$5,088,879.01
Store-branded Credit Cards	3,025	\$2,097,985.68
Fortiva-branded Personal Loan	278	\$620,405.46

9. As of the date of this writing, the Bank continues to offer in-store retail credit financing as well as store-branded credit cards to Maryland consumers.

10. The Bank retains ownership of its retail credit accounts as well as the debtor-creditor relationship with Maryland consumers for the life of the loan account.

11. By contrast, Respondent Atlanticus, the parent company and/or affiliate of, Respondent Fortiva, is not a lender and does not issue credit to Maryland consumers.² Atlanticus/Fortiva however assist Maryland consumers in obtaining an extension of credit from the Bank by accepting and processing credit applications from Maryland consumers relating to the Bank's retail credit products, including its in-store retail credit financing, store-branded credit cards and Fortiva-branded personal consumer loans.

12. This relationship and lending scheme is further described and governed by a 2017 Program Management Agreement ("Program Management Agreement") entered into by and between the Respondents, collectively. "Fortiva" effectively operates as a brand-name for use by Maryland consumers as will be more specifically described herein.

13. Pursuant to Respondents' Program Management Agreement Atlanticus/Fortiva is responsible for working directly with consumers to perform "Application Processing" for the Bank, including submitting applications for automated processing, obtaining credit reports, processing ACH authorization requests for handling consumer payments, responding to inquiries from applicants about their application's status, provide all notices and documents required by law (including adverse action notices), and holding and maintaining all documents pertaining to the Bank's credit applications and accounts.

14. Pursuant to Respondents' Program Management Agreement, Atlanticus/Fortiva accepts consumers' credit applications and submits them for automated processing on behalf of the Bank to determine whether the applicant satisfies the eligibility requirements established by the Bank. Consumers may apply for a consumer loan at fortivafinancial.com.

² For purposes of these charges and allegations, "Atlanticus" and "Fortiva" may be used interchangeably, and "Atlanticus/Fortiva" may refer to Respondent Atlanticus and Respondent Fortiva interchangeably and/or collectively.

Fortiva Financial, LLC

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15. Atlanticus/Fortiva is also authorized pursuant to Respondents' Program Management Agreement to respond to inquiries from Applicants, provide notices to applicants as required by law, such as adverse action notices and loan account agreements for approved loans. Atlanticus also holds and maintains all Bank documents pertaining the loan accounts.

16. Additionally, in 2012, Respondents collectively entered into a Loan Servicing Agreement (hereinafter "Loan Servicing Agreement"), which expressly states that the services provided by Atlanticus/Fortiva for the Bank include "application fulfillment," "application processing," "review applications for completeness and fraud," "adverse action notification," and "application retention, storage and retrieval."

17. While the Bank maintains ownership of the loan accounts and thus retains the right to control the servicing and collection of loan accounts, Atlanticus/Fortiva performs all of the collections, servicing, payment and remittance operations of the Bank's consumer credit accounts described herein.

18. Pursuant to the Loan Servicing Agreement, the Bank authorizes Atlanticus/Fortiva to directly or indirectly through approved subcontractors service the installment loans, stating Atlanticus "shall perform Loan Account servicing on behalf of Bank..." This includes "processing payment authorization requests, preparing and mailing account statements, undertaking collections, providing customer service... crediting Loan Accounts in respect of unauthorized charges, chargebacks, refunds and adjustments, [and] resolving customer disputes."

19. All written correspondence and statements are branded "Fortiva." The initial deposit to Alexander's bank account indicated it was made by "FORTIVA LN FORTIVA LN." Payments made via ACH Transfer are reflected as credits on consumer's bank statements as "FORTIVA PL PMT AUTOPAY". All customer service telephone numbers and addresses relating to payments, collections, customer service and consumer complaints belong to "Fortiva Financial."

20. According to Respondent's 2012 "Loan Servicing Agreement," Atlanticus/Fortiva performs, either directly or indirectly and on behalf of the Bank, all collection and servicing activity for the Bank-owned credit accounts relating to the Bank's retail credit products offered to Maryland consumers. This agreement expressly states that the Bank retains ownership of loan accounts and the direct legal relationship with a consumer for the life of the loan account, that the Bank is the only entity entitled to enforce the credit agreement, and thus the Bank controls the servicing and collections of loan accounts.

21. The Agreement also provides that Atlanticus/Fortiva shall assist the Bank in preparing instructions for electronic funds transfers by the Bank's borrowers, either directly or indirectly by engaging and managing sub-servicers on behalf of the Bank for the Bank's retail credit products.

22. At no time relevant to the factual allegations herein was the Bank, Atlanticus or Fortiva licensed by the Commissioner or the Maryland Collection Agency Licensing Board to

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perform the above-referenced activity in Maryland in any capacity, nor were they exempt from licensure.

APPLICABLE LAWS

The Maryland Consumer Loan Law defines a loan as “any loan or advance of money or credit made under [the Maryland Consumer Loan Law – Credit Provisions.]” See FI § 11-201(e) and CL § 12-301(e).

Pursuant to FI § 11-203.1(a), “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan....”

Pursuant to FI § 11-204(a), a “person may not... [r]eceive any application for a loan or allow any note or contract for a loan to be signed at any place of business for which the person does not have a license.”

Pursuant to FI § 11-221, the provisions of Title 11, Subtitle 2 of the Financial Institutions Article “shall be interpreted and construed to effectuate [their] remedial purpose.”

Pursuant to CL § 12-301(c) of the MCLL, a “lender” means “a person who makes a loan under this subtitle.”

Pursuant to CL § 12-302, “[a] person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions.”

CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article, namely the Maryland Consumer Loan Law – Credit Provisions. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

CL § 12-308 sets forth various duties that lenders have towards borrowers. Among these duties, CL § 12-308(a) requires a lender to provide a borrower with a statement containing specific language and provisions at the time the loan is made, providing as follows:

(a) *Statement to borrower.-*

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- (1) At the time a loan is made, the lender shall deliver to the borrower a statement in the English language which:
 - (i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this subtitle, in their entireties; and
 - (ii) Complies with § 12-106(b) of this title.
- (2) If there are two or more borrowers, the lender:
 - (i) May deliver the statement to any one of the borrowers; and
 - (ii) At the request of any other borrower, shall deliver a copy of the statement to that borrower within 10 days after the request.

CL § 12-308(b) requires that, at the time a lender receives a payment on a loan, the lender shall deliver to the person making the payment a statement containing information regarding the loan, provided as follows:

- (b)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall deliver to the person making the payment a receipt which specifies:
 - (i) The amount applied to principal;
 - (ii) The amount applied to interest and other charges; and
 - (iii) The unpaid principal balance of the loan.
- (2) The lender may deliver an unitemized receipt at the time of payment if he delivers the required itemized receipt within 10 days after the payment.
- (3) The lender is not required to issue a receipt if, before the due date of each payment, he regularly delivers to the borrower a billing statement which specifies:
 - (i) The previous unpaid principal balance of the loan;
 - (ii) The amount and date of each payment made during the billing period;
 - (iii) The amount of each of these payments applied to interest;
 - (iv) The amount of each of these payments applied to principal;
 - (v) The current unpaid principal balance; and
 - (vi) The amount and due date of the next maturing installment.

Pursuant to CL § 12-313(a) (which was recodified at CL § 12-314 and amended effective January 1, 2019), a person is prohibited from lending \$6,000 or less "if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State." Prior to January 1, 2019, CL §§ 12-314(b)(1) and (2) provided as follows:

- (1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical

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error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

Effective January 1, 2019, CL § 12-313 was recodified at CL § 12-314 and the permissible loan amount was raised to \$25,000.

Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 of the Commercial Law Article (i.e., the Maryland Consumer Loan Law – Credit Provisions) “shall be interpreted and construed to effectuate its general remedial purpose.”

Various sections of the MCLL restrict the types and amounts of fees that lenders are permitted to charge in conjunction with consumer loans, these sections include, but are not limited to, CL §§ 12-307, 12-307.1, and 12-313(a)(1). Pursuant to CL § 12-307 (“Collection of certain fees”), the following fees are authorized:

(a) *In general.*- At the time a loan is made, a lender may collect from the borrower:

(1) As to any item of the total property that secures a loan:

(i) The fees paid to a public official or governmental agency for recording or satisfying a mortgage, encumbrance, or lien on any property securing the loan; or

(ii) An equal or lesser amount for nonfiling insurance premium on any property, or portion of the property, that is not recorded if:

1. The Insurance Commissioner approves the rates; and
2. A commission is not paid on the policy; and

(2) The title insurance premiums or reasonable attorney's fees paid for searching and insuring the title to any real property securing the loan.

(b) *Bad check fee.*- A lender may collect from the borrower a fee not exceeding \$15 if payment is made with a check that is dishonored on the second presentment.

Pursuant to CL § 12-1001 *et seq.*, (i.e., Credit Grantor Closed End Credit Provisions), which governs installment loans, defines installment loans as “any single extension of closed end credit, whether repayable in installments, on demand, or otherwise and whether extended in one or more advances.” CL § 12-1001(j).

Pursuant to CL § 12-1003 (a), an installment loan lender “may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.”

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Pursuant to CL § 12-1015 (a) “credit grantor making a loan or an extension of credit under this subtitle [i.e., an installment loan] is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

FI § 11-302(a) provides as follows: “[i]n this section, ‘installment loan’ means a loan or extension of credit made for consideration under... Title 12, Subtitle 10 of the Commercial Law Article.”

Pursuant to FI § 11-302(b), “[u]nless the person is licensed by the Commissioner, a person may not: (1) [e]ngage in the business of making installment loans...” In turn, FI § 11-303 provides that, “[a] license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law – Licensing Provisions.”

Pursuant to CL § 12-915(a), a “credit grantor making a loan or extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.”

Pursuant to BR § 7-301, except at otherwise provided, “a person must have a license whenever the person does business as a collection agency in the State.”

Pursuant to BR 7-101, a “collection agency” means

(d) “a person who engages directly or indirectly in the business of:

(1)(i) collecting for, or soliciting from another, a consumer claim; or

(ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;

(2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;

(3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or

(4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.

Pursuant to BR § 7-101(f), a “consumer claims” is defined as “a claim that:(1) is for money owed or said to be owed by a resident of the State; and (2) arises from a transaction in which, for

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a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services.”

Pursuant to BR § 7-401, “a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license, and any person “who violates this section is guilty of a misdemeanor, and on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months or both.

Pursuant to BR § 7-205, “if a violator fails to comply with a lawful order issued by the [Collection Agency Licensing Board], the Board may impose a penalty not exceeding \$10,000 for each violation cited in the order, not to exceed \$25,000, from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.”

Pursuant to CL § 14-1903, a credit services business “is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article.” Said license shall be issued by the Commissioner of Financial Regulation. CL § 14-1903.

Pursuant to CL § 14-1901(e), a “credit services business” means

(e) ... “any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record, or providing advice or assistance to a consumer with regard to improving the consumer's credit record, history, or rating or establishing a new credit file or record; or

(ii) Obtaining an extension of credit for a consumer, or providing advice or assistance to a consumer with regard to obtaining an extension of credit for the consumer.

Pursuant to § 14-1915, as otherwise provided, any person who violates any provision of the MCSBA is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 3 years or both, in addition to any civil penalties.

Pursuant to FI § 2-115(b), when the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;

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- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation; and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

CHARGES AGAINST THE RESPONDENTS

Based on the foregoing factual allegations and provisions of law, the Respondents are subject to, and charged with violations of, the foregoing laws, regulations, rules, and orders over which the Commissioner jurisdiction, including but not limited to CLEC, RCP, MCLL, MCALA as well as MCSBA, as follows:

COUNT 1: Respondent Bank violated Maryland law by offering and/or making installment loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-1015 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 2: Respondent Bank made consumer loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-302 and FI § 11-203.1. Moreover, pursuant to CL § 12-314(b)(2), Respondents, who are neither licensed nor exempt from licensing, “may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.” As a result, not only are the Respondents’ loans to all Maryland consumers unenforceable, but the Respondents, or its agents or assigns, are prohibited from collecting the principal amount of those loans from any of these consumers or from collecting any other money related to those loans.

COUNT 3: Respondent Bank violated CL § 12-915 by offering and/or making an extension of open-ended or revolving credit, such as credit cards, under this subtitle in Maryland without being licensed to do so and without being exempt from the licensing requirement; in violation of CL § 12-915 as well as FI §§ 11-302, 11-203, and 11-203.1.

COUNT 4: Respondents’ Atlanticus and Fortiva violated CL §§ 14-1901(e)(1)(ii) and 14-1903(b) of the Maryland Credit Services Business Act by providing advice and/or assistance to Maryland consumers with regard to obtaining an extension of credit for the consumer when accepting and/or processing credit applications on behalf of the Bank without a credit services business license as describe in the above-referenced retail lending scheme.

COUNT 5: Respondents’ Atlanticus and Fortiva violated BR § 7-401 of the Maryland Collection Agency Licensing Act by engaging in collection agency activities without being duly licensed by the Board or otherwise exempt from licensure. By engaging in unlicensed collection agency activities in Respondents are subject to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

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POTENTIAL FINES, PENALTIES & SANCTIONS

A violation of the above referenced provisions of law occurring on or after October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$10,000 for a first violation, and
 - (ii) \$25,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

A violation of the above referenced provisions of law occurring on or before October 1, 2018, subjects Respondents to the following actions by the Commissioner, pursuant to FI § 2-115(b):

(b) *Other authorized actions for violations.* When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule, or order over which the Commissioner has jurisdiction, pursuant to the Commissioner's authority set forth in FI §2-115(b), in addition to taking any other actions authorized under Maryland law, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty not exceeding:
 - (i) \$1,000 for a first violation, and
 - (ii) \$5,000 for each subsequent violation; or
- (4) Take any combination of the aforementioned actions.

Additionally, pursuant to CL § 12-314(b)(2), the Commissioner may, in the Commissioner's discretion, issue an order requiring Respondents to take affirmative action to correct the violations, including the restitution of all monies, including principal, interest and other fees, paid by any person aggrieved by any violation which states:

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(b)(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under [the MCLL].

HEARING PROCEDURES

The hearing in this matter will be held before an Administrative Law Judge of the Office of Administrative Hearings. The Office of Administrative Hearings will mail written notice to the parties stating the date, time, place, and nature of the hearing.

Failure to Appear: A party's failure or refusal to appear for a scheduled hearing may result in an adverse action against the party including the finding of violations, suspension or revocation of a license, the imposition of civil monetary penalties, and/or other administrative sanctions allowed by law.

Representation: An individual may appear at a hearing with or without an attorney. An attorney representing an individual must be authorized to practice law in Maryland. An individual's appearance at a hearing without counsel indicates the individual's decision to waive the right to an attorney. Business entities such as corporations, limited liability companies, partnerships, business trusts, statutory trusts, or associations must be represented by an attorney admitted to practice law in the State of Maryland. The Commissioner may not grant the right to practice law to a person who is not authorized to practice law in Maryland.

Evidence: At the hearing, parties may call witnesses and submit documents or other evidence in the record. A party may cross-examine any witnesses called to testify against them and object to any documents submitted by the opposing party. A party may agree to the evidence and waive the right to appear at the hearing.

Postponements: A request for a postponement must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, be filed not less than five days before the scheduled hearing, include documentation of the reasons for the postponement, and establish good cause for the postponement. In the event of an emergency, meaning a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing, a request for postponement may be made by telephone. A request for a postponement will not be granted on the basis that a party did not retain the services of an attorney prior to the scheduled hearing date.

Subpoenas: On the request of a party, the Office of Administrative Hearings may issue subpoenas requiring the attendance and testimony of witnesses and the production at the hearing of any tangible item in the possession or control of the witness. A request for a subpoena must be made in writing to: Maryland Department of Labor Docket Clerk, Office of Administrative

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Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland, 21031, at least ten days before a scheduled hearing date. The subpoena request must specify the name and full address of the person to be subpoenaed and the name, full address, and telephone number of the party requesting the subpoena. A subpoena that requests the production of tangible items, books, papers or other documents must describe those items with particularity. A subpoena may be served by personal delivery by an individual eighteen or older who is not party to the proceeding; by certified mail to the person at the addresses specified in the subpoena request; or if served by the Office of Administrative Hearings, by U.S. mail or other personal or courier delivery. Unless, the subpoena request specifies otherwise, the subpoena will be mailed by the Office of Administrative Hearings. The subpoena may not be enforced absent proof of service by certified mail or personal delivery. Costs of certified mailing or personal delivery of subpoenas are the responsibility of the person requesting the subpoena.

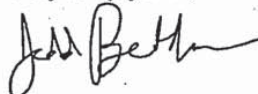
Hearing Procedures: The hearing will be conducted in accordance with Md. Code Ann., Financial Institutions Article, §2-115(b); the Administrative Procedure Act, Md. Code Ann., State Government Article, Title 10, Subtitle 2; the Maryland Department of Labor's ("MDOL") regulations found in the Code of Maryland Regulations ("COMAR") 09.01.02 and .03; and the Office of Administrative Hearings' regulations, found in COMAR Title 28, Subtitle 02. A copy of the hearing procedure is available upon request at no cost.

Questions/Settlement: Any questions regarding this Statement of Charges and Order for Hearing or to discuss settling this matter without a formal hearing should be directed to:

Kevin W. McGivern, Assistant Attorney General
Office of the Attorney General
Department of Labor
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202
(410) 230-6086

BY ORDER OF THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION.

Very truly yours,



Jedd Bellman
Assistant Commissioner

cc: Rebbie I. Frazier, Administrator
Kevin W. McGivern, Asst. A.G.



Important Information About Your Hearing: Please Read Carefully!

What is the Office of Administrative Hearings?

The Office of Administrative Hearings, or OAH, is an independent state agency where an Administrative Law Judge, or ALJ, hears cases when a party disagrees with the action of another State agency. These hearings protect your rights and give you a chance to explain why you disagree with an agency's action.

What are my options if I do not want to go to a hearing?

You may be offered an opportunity to informally resolve your case. If not, please contact OAH immediately if you wish to request a settlement conference or mediation.

A hearing before an ALJ is not necessary if all parties agree to the admission of evidence and waive their right to appear in person. To waive your appearance at the hearing, please send a written notice to OAH immediately. You have the right to withdraw this waiver later if you change your mind, but to do so your written notice of withdrawal must be received at OAH no later than five (5) days before the scheduled hearing.

What if I decide that I don't want to appeal the agency's decision?

If you are the requesting party, you have the right to withdraw your appeal. Requests to withdraw an appeal should be sent to OAH in writing; include the case name and number, the date of the hearing, and the reason you wish to withdraw your appeal. If the notice of hearing that you received contains a form for this purpose, you also may withdraw by signing and returning a copy of that notice. Withdrawals of appeal can be scanned and emailed to eah.hearingwithdrawal@maryland.gov.

Do I need to have a lawyer to come to OAH?

You have a right to have a lawyer present your case or you may do so yourself. If you would like a lawyer, you must contact one on your own. Depending on your income, you may be able to obtain a lawyer from one of the following agencies:

- Maryland Volunteer Lawyers Service (410-547-6537/collect) Maryland Volunteer Lawyers Service operates in Baltimore City and all counties except Montgomery, Prince George's and Allegany.
- The Legal Aid Bureau (1-800-999-8904)

Corporations appearing before the OAH

Corporations, partnerships, and similar business entities are required to be represented by an attorney in most actions before OAH. In some instances, a corporate party may be represented by a non-attorney. The law requires that non-attorney corporate employees/designees must provide a Power of Attorney authorizing their representation of the corporation at the hearing; a Power of Attorney form may be obtained from OAH.

What if I need a special accommodation such as an interpreter?

If you need accommodation because you have a disability or because you do not speak English, please contact OAH or complete the enclosed Request for Accommodation form and send it to OAH immediately.

What if I cannot attend my hearing?

Once your hearing has been scheduled, you must come to your hearing. If you do not come to your hearing and you do not receive a postponement, your case may be dismissed or the ALJ may proceed with the hearing without you and may make a decision against you.

You may request a postponement for good cause. To request a postponement, send a request, in writing, to the OAH. The request must be received no later than five (5) days before the hearing. The request should contain the case name and number, the original date of the hearing and the reason for requesting the postponement. The request must include any documentation that you have to show why you need the postponement. Also include three (3) dates within the next thirty (30) days when you would be available for a rescheduled hearing and a telephone number where you can be reached Monday through Friday between 8:30 a.m. and 4:30 p.m.

You must send a copy of your postponement request to each party in your case. Requests for postponements should be mailed to OAH at 11101 Gilroy Road, Hunt Valley, MD, 21031-1301, faxed to (410) 229-4266 or scanned and emailed to oah.postponements@maryland.gov. Emergency postponements for good cause arising within five (5) days of the hearing date may be requested by contacting OAH, in writing, using the fax number or email address noted above.

If you wish to request to have your case heard as a telephone hearing, you must submit your request in writing to OAH immediately.

What happens at the hearing and what should I bring?

The ALJ will explain the hearing to you. You should ask questions if you do not understand. Bring with you all of the evidence, such as papers, that you want to present as part of your case; also bring copies for each of the parties and a separate copy for the ALJ. You may present witnesses; each side will give evidence and question the other side's witnesses. The hearing will be recorded. The ALJ will then decide the case based on the facts and the law. The decision in your case will be mailed to you; the ALJ will tell you when to expect to receive the decision. Please do not call OAH to ask about the decision in your case.

If you wish to subpoena documents or a witness, you must request a subpoena in writing. That request must be received at OAH at least fifteen (15) days before your hearing. Include in your request the case name and number and the date of the hearing. You must also include the complete name and address of each witness you want to subpoena. You must include a \$5.00 fee for each subpoena unless you have been granted a fee waiver.

Does OAH have a library? Can I make copies there?

The OAH has a law library that is open to the public located and accessible by light rail (Gilroy station stop) at its main office in Hunt Valley. Library hours are Monday through Friday from 9:00 a.m. to 4:00 p.m. If you need to make copies, you may do so in the library during normal open hours for \$0.25 a page. Please bring exact change or a personal check.

What if the weather becomes severe?

In case of severe weather, please check our website at <http://www.oah.maryland.gov> or listen to one of the following radio stations for cancellation information:

Central Maryland—WBAL AM 1090
Western Maryland—WCBC AM 1270
Southern Maryland and the Eastern Shore—WQHQ FM 104.7
Washington Metro Area—WTOP FM 103.5 or 103.9

NOTE: If your proceeding is scheduled with a school system, and the school system is opening late, the proceeding will also begin late. For instance, if the school system is opening 1 or 2 hours late, the proceeding will begin 1 or 2 hours later than scheduled. If the school system or State offices are closed, all proceedings will be postponed and rescheduled for a future date.

This document is available in alternate formats, including large print, upon request.
A copy of the hearing procedures for your case is available from OAH for \$0.25 a page.
For more information, please visit our website at <http://www.oah.maryland.gov>

Para leer este documento en español, vaya a <http://www.oah.maryland.gov/sp/docs/108571.pdf>



Request for Accommodations

Foreign and sign language interpreters, and/or other appropriate accommodations for individuals with disabilities will be provided upon request. Please be advised that interpreters must be provided by the Office of Administrative Hearings. A family member or friend is not permitted to interpret for you.

Requests for accommodations should be submitted 10 days prior to the hearing date.

Hearing Location and Date: _____ Case Number: _____

Name: _____ Telephone #: _____

Foreign Language Interpreter

- Amharic
- Arabic
- Chinese - Cantonese
- Chinese - Mandarin
- French
- German
- Hindi
- Japanese
- Korean
- Persian / Farsi
- Italian
- Russian
- Romanian
- Spanish
- Urdu
- Vietnamese
- Other: _____

Interpreter for the Deaf

- American Sign Language
- Signed English Transliteration
- Oral Interpreter

Assistive Listening Devices

- Microloop (for use with hearing aids and cochlear implants)
- Microloop w/ Induction Loop Receiver (amplifies sound without a hearing aid)
- Communications Access Realtime Translation (CART)

Other Accommodations: _____

Signature: _____ Date: _____

Return this form to: Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031 or fax it to (410) 229-4266.

If you have any questions, please call the number located at the bottom of your mediation or hearing notice. Maryland Relay: 711

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STATE OF MARYLAND
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW BUILDING
11101 GILROY ROAD
HUNT VALLEY, MD. 21031-1301

FORTIVA FINANCIAL, LLC
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