

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN,

Plaintiff,

No. 19-cv-13078

v.

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

HON.

MAG.

and

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

Defendants.

Aaron W. Levin (P81310)
Darrin F. Fowler (P53464)
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MOTION FOR PRELIMINARY INJUNCTION

Pursuant to a Fed. R. Civ. P. 7 and 65(a), and E.D. Mich. L.R. 7.1
and 65.1, the Attorney General brings this motion for a preliminary
injunction enjoining Defendants, through their operation of Sierra

Financial, LLC d/b/a Sierra Lending, LLC and/or Sierra Financial and/or Tall Grass Finance (Sierra), from marketing, offering, issuing, servicing, collecting on, or otherwise providing usurious loans in Michigan.

Concurrence to this motion was not sought or obtained because it was filed and served in conjunction with the Complaint in this matter. Upon the filing of an appearance by Defendants, concurrence in this motion will be sought pursuant to E.D. Mich. L.R. 7.1(a).

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: October 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that on 18th, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Aaron W. Levin

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**BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**

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CONCISE STATEMENT OF ISSUES PRESENTED

1. To warrant a preliminary injunction the Attorney General must show (1) a strong likelihood of success on the merits; (2) that she is likely to suffer irreparable harm without an injunction; (3) that the injunction will not cause substantial harm to others; and (4) that the injunction is in the public interest. Where the Attorney General is substantially likely to succeed on the merits and the significant harms are ongoing, should the Court enter a preliminary injunction?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

- *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014) (“[T]ribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct.”)

STATEMENT OF FACTS

The Attorney General's Complaint alleges violations of Michigan usury laws and the federal Consumer Financial Protection Act. The Attorney General seeks only declaratory and prospective injunctive relief against Defendants Huggy Lamar Price, in his official capacity as President/CEO of Sierra Financial, LLC d/b/a Sierra Lending, LLC, and/or Sierra Financial, and/or Tall Grass Finance (Sierra), and Virgil Perez, in his official capacity as Tribal Chairman of the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe by which Sierra purports to be wholly owned and operated. In response to requests for information from the Attorney General, Defendant Price stated that Sierra is entitled to assert tribal immunity because of its relationship to the Iipay Nation of Santa Ysabel.¹

As described in the Complaint, Defendants, through their operation of Sierra, offer loans with interest rates ranging from 388.85% to 1505.63%. These interest rates violate Mich. Comp. Laws § 438.31, which caps annual interest rates at 7%, and Mich. Comp. Laws

¹ The Attorney General does not concede that Sierra is an arm of the tribe and does not waive any argument relating to that issue.

§ 438.41, which subjects lenders with annual interest rates greater than 25% to criminal penalties. Defendants, through Sierra, are also committing unfair, deceptive, and/or abusive acts or practices under the Consumer Financial Protection Act, 12 U.S.C. § 5531 and § 5536. Violation of these statutes constitutes a public nuisance, which the Attorney General may seek to enjoin. The relief requested in the Complaint is limited to declaratory and prospective injunctive relief.

The Attorney General now seeks a preliminary injunction enjoining Defendants from marketing, offering, issuing, servicing, collecting on, or otherwise providing these usurious loans to Michigan residents.

ARGUMENT

“The granting or denial of a preliminary injunction is within the sound judicial discretion of the trial court.” *Mason Cty. Med. Ass’n v. Knebel*, 563 F.2d 256, 261 (6th Cir. 1977). To succeed on such a motion, “Plaintiffs must establish (1) a strong likelihood of success on the merits; (2) that they are likely to suffer irreparable harm without an injunction; (3) that the injunction would not cause substantial harm to others; and (4) that the injunction is in the public interest.” *CLT*

Logistics v. River W. Brands, 777 F. Supp. 2d 1052, 1064 (E.D. Mich. 2011) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).)

I. The Attorney General is substantially likely to succeed on the merits.

“Indians going beyond reservation boundaries are subject to any generally applicable state law.” *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795 (2014). Sierra offers loans to Michigan residents that exceed the limits of Michigan’s usury laws. That fact is not expected to be in dispute, and is evidenced by Sierra’s websites, the experience detailed in the Affidavit of Latisha M., and the other consumer complaints received by the Attorney General. (Complaint Exhibits A, B, and C.) The proofs will also demonstrate Defendants are responsible for Sierra’s business practices, including but not limited to its usurious interest rates, loan approval process, misrepresenting contract terms over the phone, ability to automatically deduct money from a consumer’s bank account, harassing or pressuring consumers into signing up for loans, and refusing to let consumers pay off their loans early, which viewed together or independently constitute unfair,

deceptive, and/or abusive acts or practices under the Consumer Financial Protection Act.

The crux of these claims is likely to be the applicability of Michigan law and substantive federal law to a purportedly tribal lender. Because the Attorney General seeks only declaratory and prospective injunctive relief, that issue is not in dispute either.

States may bring a lawsuit against tribal officials for prospective injunctive relief, analogous to *Ex Parte Young*, because “tribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct.” *Bay Mills Indian Cmty.*, 572 U.S. at 796; *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 117 (2d Cir. 2019) (“[F]ederal courts may entertain suits against tribal officers in their official capacities seeking prospective, injunctive relief prohibiting off-reservation conduct that violates state and substantive federal law.”); *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1290 (11th Cir. 2015) (“[T]ribal officials may be subject to suit in federal court for violations of state law under the fiction of *Ex parte Young* when their conduct occurs outside of Indian lands.”)

Because Michigan’s usury laws are nondiscriminatory state laws, and because the Attorney General seeks only declaratory and prospective injunctive relief against tribal officials in their official capacity, whether or not Sierra would be entitled to assert tribal immunity is immaterial. At a minimum, the Attorney General may seek prospective injunctive relief—and the Attorney General only seeks this minimum relief.

Defendants, through their operation of Sierra, are extending usurious loans to Michigan residents. The Attorney General is authorized to seek, and this Court is authorized to enter, an injunction stopping this violation of Michigan and federal law. With the occurrence of the conduct at issue not expected to be in dispute, and the Attorney General’s ability to obtain injunctive relief also settled, the Attorney General is substantially likely to prevail on the merits. This factor weighs in favor of entering a preliminary injunction.

II. The People of the State of Michigan are likely to suffer irreparable harm without an injunction.

“To constitute irreparable harm, an injury must be certain, great, and actual.” *Lucero v. Detroit Pub. Sch.*, 160 F. Supp. 2d 767, 801 (E.D.

Mich. 2001). In Michigan, “[h]arm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety and welfare.” *Attorney Gen ex rel Michigan Bd of Optometry v Peterson*, 381 Mich. 445, 465 (1969).

Sierra’s predatory and usurious loan practices cause certain, great, and actual harm to Michigan residents every day. Consumers are trapped in loans they cannot afford with exorbitant interest rates that violate the law. Loan payments are automatically withdrawn from consumers’ accounts, sometimes in varying amounts and, on information and belief, as a condition of receiving the loan, which can cause accounts to become overdrawn, resulting in additional fees being required to pay back an illegal loan. These injuries are significant and ongoing.

Further, because the Attorney General seeks only declaratory and injunctive relief, money damages are not an appropriate or available remedy. Failure to grant an otherwise justified injunction at this stage simply cannot be repaired at the conclusion of this case. This factor weighs in favor of granting the Attorney General’s motion.

III. An injunction would not cause substantial harm to others.

An injunction in this case would not cause substantial harm to others. At this time, it is unknown how many Michigan residents have been issued loans from Sierra because Defendants did not answer the Attorney General's request for this information. While the Attorney General has reviewed 7 consumer complaints, it is expected that there are many more with these usurious loans. Based on the information on Sierra's most recent website, even if an injunction were entered, Sierra would still offer loans in as many as 32 states and an unknown number of other jurisdictions. It is anticipated that Michigan residents make up only a small percentage of Sierra's business. Therefore, any harm to Defendants arising from the injunction would not be substantial, and for the reasons stated above would be warranted by the Attorney General's substantial likelihood of success on the merits. This factor weighs in favor of entering a preliminary injunction.

IV. An injunction is in the public interest.

Presently, Michigan residents suffer under Sierra's usurious loans every day, and more may be signing up for such loans online at any moment. Given the great injuries already suffered by Michigan

residents and the potential for more to be impacted, an injunction is greatly in the public interest. This factor weighs in favor of granting the preliminary injunction.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, the Attorney General respectfully requests that this Court grant her motion and enter a preliminary injunction enjoining Defendants, through their operation of Sierra Sierra, from marketing, offering, issuing, servicing, collecting on, or otherwise providing usurious loans in Michigan.

Respectfully submitted,

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