

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

PEOPLE OF THE STATE OF  
ILLINOIS, *ex rel.* LISA MADIGAN,  
Attorney General of the State of Illinois,

Plaintiff,

v.

CHECK INTO CASH OF ILLINOIS,  
LLC,

Defendant.

2017CH14224  
CALENDAR/ROOM 07  
TIME 00:00  
General Chancery

2017 CH \_\_\_\_\_

Judge \_\_\_\_\_

**COMPLAINT**

Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by and through LISA MADIGAN, Attorney General of the State of Illinois, bring this action against Defendant CHECK INTO CASH OF ILLINOIS, LLC for unlawful use of non-competition agreements in violation of the Freedom to Work Act, 820 ILCS.90/1, *et seq.*; the Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1, *et seq.*; and Illinois common law.

**INTRODUCTION**

1. Check Into Cash, Inc. owns and operates stores providing payday loans, title loans, check cashing, bill payment, and cash advances across the United States, including in Illinois. Employees at these stores perform routine customer service tasks such as entering data, interacting with customers, and completing other routine administrative duties. Defendant Check Into Cash of Illinois, LLC, a subsidiary of Check Into Cash, Inc., requires all employees working at store locations in Illinois to agree to a non-competition agreement. These non-competition agreements are not tailored to Check Into Cash of Illinois, LLC's actual legitimate business needs, particularly

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since any confidential customer and proprietary business information employees interact with is separately protected by other provisions of Check Into Cash of Illinois, LLC's employment agreement, but they severely limit employees' future employment options, thereby harming these employees and the State.

2. The Attorney General, on behalf of the People of the State of Illinois ("People"), now brings this action to remove the unlawful restraints on subsequent employment imposed by Check Into Cash of Illinois, LLC's burdensome non-competition agreements, to ensure that current and former employees bound by such agreements are informed that they are unenforceable and void, to stop the wage-suppressive effects these non-competition agreements may have, and to permit other businesses access to the skills of Illinois's workers in accordance with state law.

#### **PARTIES**

3. Check Into Cash, Inc. is a consumer financial services company that offers payday loans, title loans, check cashing, bill payment, and other similar services. Check Into Cash, Inc.'s services are sold in part through state-level subsidiaries that operate store locations (hereinafter "stores") throughout the United States, including in Illinois. There are more than 1,000 Check Into Cash, Inc. stores in 28 states throughout the United States.

4. Defendant Check Into Cash of Illinois, LLC ("Check Into Cash") operates approximately 33 such stores in Illinois. This includes ten stores in the Chicagoland area, as well as store locations in Carbondale, Champaign, Joliet, Kankakee, Rockford, Springfield, and 16 other cities and towns in Illinois. Other Check Into Cash, Inc. affiliates operate approximately 64 stores in 55 municipalities in Indiana; 28 stores in 24 municipalities in Iowa; 42 stores in 40 municipalities in Missouri; and 24 stores in 24 municipalities in Wisconsin.

5. The Attorney General believes this action to be in the public interest of the citizens of the State of Illinois and brings this lawsuit pursuant to Section 7 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7, and her authority under the doctrine of *parens patriae* to preserve the economic well-being of Illinois residents, consumers, and businesses affected by Check Into Cash's unlawful conduct.

6. Here, Check Into Cash's actions affect a substantial segment of the residents of Illinois, including individuals who are required to agree to these non-competition agreements, as well as the general public, which suffers the indirect impact of decreased employee mobility, wage suppression, and restraint of trade. Illinois businesses also suffer from the use of these non-competition agreements because—among other effects—such agreements limit the pool of available workers.

7. In addition to its longstanding and well-established interest in preventing undue economic limitations and contracts in restraint of trade, the State has adopted a strict statutory public policy, codified in the Freedom to Work Act, 820 ILCS 90/1 *et seq.*, of not applying such undue economic limitations to employees earning less than \$13.00 per hour.

8. Absent action by the Attorney General, the majority of individuals who agree to these provisions will be unaware that their non-competition agreements are illegal and unenforceable and will continue to experience economic harm as a result.

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to the Court's general jurisdiction and pursuant to the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(a) and section 2-209 of the Code of Civil Procedure, 735 ILCS 5/2-209(a), because the cause of action arises from actions taken by Check Into Cash in Illinois.

10. This Court has personal jurisdiction over Check Into Cash because it resides in Illinois and transacts business in Illinois, including in Cook County, Illinois.

11. Venue is proper in Cook County pursuant to the Code of Civil Procedure, 735 ILCS 5/2-101 and 5/2-102(a), because Check Into Cash is doing business in Cook County, Illinois, and some of the transactions from which this cause of action arose occurred in Cook County, Illinois.

### **STATEMENT OF FACTS**

*A. Store Employees Perform Customer Service Duties for Check Into Cash*

12. The store employees at issue here have one of three job titles: Customer Service Representative, Assistant Manager, or Store Manager. In the regular course of business, all three types of employees assist customers at store locations, complete routine administrative tasks, and perform collections duties.

13. Customer Service Representatives interact with customers, answer telephones, process money orders, cash checks, and perform routine computer functions and data entry, such as entering a new customer's name and contact information into the system or inputting vehicle information for a customer seeking a car loan. They also make phone calls to customers regarding repayment, help open and close the store, and balance the cash drawer, among other tasks. Check Into Cash prefers that Customer Service Representatives have a high school diploma or GED but does not require it.

14. Assistant Managers perform all of the same customer service and administrative job duties as Customer Service Representatives, but also assist Store Managers in managing the operations of the store, sending collections notices, mailing flyers and advertisements, and completing required internal reports such as those summarizing delinquent accounts or progress towards store sales goals.

15. Store Managers perform all of the same job responsibilities of Customer Service Representatives and Assistant Managers. In addition, Store Managers interview prospective employees, develop work schedules for store staff, conduct employee evaluations, and complete internal reports such as a daily log of phone calls made or a daily new customer log.

16. The employees described in paragraphs 12 through 15 are collectively referred to as "Store employees," no matter how they are titled by Check Into Cash.

17. Store employees may interact with customers who come to a Check Into Cash location to, among other things: seek out payday loans, title loans, or cash advances; cash checks; or make payments on existing accounts. Store employees may also sell new services to or interact with any existing customer through collections activities on various accounts. Store employees are not assigned to individual accounts which they alone service.

18. Store employees do not provide highly individualized products or services to Check Into Cash's customers. Rather, they provide standardized and non-unique products or services.

19. Store employees have little-to-no access to trade secrets developed by Check Into Cash.

20. Store employees are employed at-will.

21. All Customer Service Representatives and Assistant Managers are paid on an hourly basis.

22. Store Managers are paid on a fixed-salary-for-fluctuating-hours basis, which permits an employee to receive a fixed amount of pay for a fluctuating number of hours worked per week, so long as the employee receives an hourly straight-time rate of at least the federal minimum wage, which is currently \$7.25 per hour. *See* 29 C.F.R. § 778.114; *see also* 29 U.S.C. § 206(a)(1)(C).

23. Many of Check Into Cash's Store employees earn less than \$13.00 per hour.

*B. All Check Into Cash Store Employees Are Required To Agree To An Employment Agreement Containing Overly Broad Non-Competition Provisions*

24. Illinois law disfavors contracts in restraint of trade. Accordingly, courts will not uphold a non-competition agreement unless it is supported by consideration and narrowly tailored to fit a legitimate business purpose. The non-competition agreement that Check Into Cash requires its employees to agree to as a condition of employment is not supported by consideration and is not narrowly tailored to fit the company's legitimate business interests.

25. When a person applies for employment with Check Into Cash, he or she is informed that "employment with the Employer will be contingent upon my signing a non-compete, confidentiality, and non-solicitation agreement, and refusal to sign such agreement will be grounds to rescind any employment offer made." When a Store employee reports for his or her first day of work or shortly thereafter, he or she is required to sign documents containing an "Employment, Confidentiality and Non-Competition Agreement" ("Employment Agreement").

26. Check Into Cash has used this Employment Agreement since September 2014. Before that time, Check Into Cash required employees to sign a substantially similar agreement.

27. Check Into Cash's Employment Agreement contains a restrictive covenant that includes non-competition provisions that have been and continue to be required for all Store employees of Check Into Cash, irrespective of title or job function, as a condition of employment.

28. Store employees did not and do not receive any consideration for agreeing to the non-competition provisions of the Employment Agreement other than the prospect of at-will employment.

29. The non-competition provisions (hereinafter the "non-competition agreement") require Store employees to agree that, during their employment with Check Into Cash and for a period of one year thereafter, they will not:

solicit, call upon, transact, offer, or render any deferred presentment, deferred deposit, and/or any other payday advance services, check-cashing services, pawn or title pawn services, secured or unsecured open-end credit lending services, secured or unsecured installment lending services, secured or unsecured single payment lending services, and/or any other consumer lending services or money transmission services, directly or indirectly, as an employee, officer, consultant, or in any other capacity, for any individual, firm, or entity which provides deferred presentment, deferred deposit, and/or any other payday advance services, check-cashing services, pawn or title pawn services, secured or unsecured open-end credit lending services, secured or unsecured installment lending services, secured or unsecured single payment lending services, and/or any other consumer lending services or money transmission services; [or] sell products or services that are competitive with or similar to the products or services of the Company . . . .

30. The non-competition agreement effectively precludes any employment with any employer that offers any "consumer lending service" including secured and unsecured open-end lending, even if such lending services are not the employer's primary or sole business. Further, the agreement precludes employment even if the former Check Into Cash employee is only "indirectly" involved in the precluded services. The non-competition agreement does not limit the precluded employers to actual competitors of Check into Cash.

31. The non-competition agreement's description of precluded employers is vague, ambiguous, overly broad, and without a legitimate business purpose. As written, the non-competition agreement prevents a former Check Into Cash employee from working within the prohibited area as a teller at a credit union or a similar commercial banking institution, a sales person at a mortgage loan company, or a cashier at a retail store offering credit cards, lines of credit, or installment plans.

32. The geographic limitations in the non-competition agreement apply "within a fifteen (15) mile radius of any office and/or [store] location of [Check Into Cash], its parent,

affiliate, or subsidiary.” This restriction is not limited to the radius around the employee’s actual work location or even to Check Into Cash locations within the State of Illinois.

33. For instance, an employee at either of Check Into Cash’s two Peoria, Illinois locations is barred from seeking other employment with any individual, firm, or entity who falls within the non-competition agreement’s broad definition, not only in Peoria but also in the surrounding towns of Peoria Heights, Mossville, Rome, Metamora, Washington, Morton, Pekin, Bartonville, Hanna City, Kickapoo, or Dunlap, or anywhere within the prohibited radius around Check Into Cash’s 31 other store locations in Illinois. In fact, since Check Into Cash has a presence in all of Illinois’ major metro areas, the non-competition agreement would effectively preclude employment with any broadly defined competitor in all Illinois cities and towns containing more than 50,000 residents—including not only Chicago and Rockford but also Springfield, Waukegan, Champaign, Decatur, and DeKalb.

34. In addition, the restrictions in the non-competition agreement apply regardless of the length of time that the employee has been employed by Check Into Cash, whether one day, one year, or ten years.

35. The Employment Agreement also allows Check Into Cash to seek injunctive relief in court for any purported violation of the non-competition agreement (or any other provision of the contract) without having to prove that Check Into Cash has suffered any harm. As part of the Agreement:

Employee agrees that the remedy at law for any violation of this Agreement will not be adequate and that the damage to the Company as a result of such violation will be irreparable. For that reason, Employee further agrees that, in addition to any other legal or equitable remedies it may have, the Company shall be entitled to obtain temporary and permanent injunctive relief from any court of competent jurisdiction, restraining any further violations by Employee. In so doing, it will not be necessary for the Company to prove damages.

36. By its terms, the Employment Agreement requires an employee to contractually agree that Check Into Cash is entitled to injunctive relief, without proving damages, any time the company believes that there has been a violation of the Agreement, effectively allowing the company to prevent a former employee from future employment, even if that future employment is not harmful to the company.

37. Check Into Cash has availed itself of the non-competition agreements' unnecessarily expansive protections by advising prospective or new employers of former Store employees of the existence of the agreement, after learning of an employee's intent to seek new employment or to begin employment elsewhere.

38. The geographic scope of the non-competition agreement—combined with Check Into Cash's numerous locations, the agreement's broad definition of competitors, and the agreement's lack of attention to duration of employment and harm suffered by Check Into Cash—make the non-competition agreement excessively burdensome to Store employees.

*C. Check Into Cash Adequately Protects Confidential Information And Prohibits Customer Solicitation Through Separate Contractual Provisions*

39. Any confidential customer or business information that Store employees may encounter is adequately and appropriately protected by the confidentiality and non-solicitation provisions in their Employment Agreements, as well as the company's other policies and procedures.

40. The restrictive covenant in Check Into Cash's Employment Agreement contains a non-solicitation provision ("non-solicitation provision") that protects Check Into Cash's customer relationships and customer list and is not challenged here.

41. The non-solicitation provision prohibits Store employees from "interfer[ing] with, disrupt[ing], or attempt[ing] to disrupt relationships, contractual or otherwise, between the

Company and its employees, contractors, and customers” while employed and for a period of one year after leaving employment.

42. Check Into Cash’s Employment Agreement additionally contains a section entitled “Confidential or Proprietary Business Information” (“confidentiality provision”) that protects any sensitive or confidential customer or business information that Store employees may encounter in the course of performing their routine customer service and data entry duties and is also not challenged here.

43. Among other things, the confidentiality provision bars employees from using, disclosing, or benefiting from “any confidential or proprietary business information concerning the business of the Company.” The confidentiality provision defines such “confidential and proprietary business information” to include, among other things: customer lists; prospective customer lists; individual names of customers or prospective customers; sales volumes of individual customers; financial records; pricing procedures; commission rate information; and liquidation and recovery rate information.

44. At least two other company documents—Check Into Cash’s Employee Manual and its Information Safety and Security Policy—also contain provisions setting out the company’s policies for maintenance of confidential customer information and affirming employees’ ongoing obligation “not to disclose any confidential information, purposefully or inadvertently” during the course of their employment and “even after the employee leaves the organization.”

*D. Check Into Cash Requires Certain Low-Wage Employees To Enter Into A Non-Competition Agreement Contrary To A State Statutory Exemption*

45. On January 1, 2017, the Illinois Freedom to Work Act became effective. The Act prohibits employers from entering into non-competition agreements with employees who make \$13.00 or less per hour.

46. Check Into Cash has knowledge of the Illinois Freedom to Work Act.

47. Check Into Cash has represented to the Attorney General that some of its Store employees who have agreed to the non-competition agreement discussed at paragraphs 25 through 38 have been and continue to be paid less than \$13.00 per hour.

48. Check Into Cash continues to require Store employees who were hired after January 1, 2017 and who earn less than \$13.00 per hour to agree to the non-competition agreement.

49. Without a legally-binding declaratory judgment, current and former Check Into Cash employees covered by the Freedom to Work Act will remain under the impression that they are contractually obligated to comply with the terms of the non-competition agreement when seeking new employment.

**COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
PURSUANT TO THE FREEDOM TO WORK ACT**

50. The People restate paragraphs 1 through 49 as though fully set forth herein.

51. This case presents a ripe actual controversy as to the rights and legal relations of Check Into Cash and Check Into Cash Store employees subject to the non-competition agreement.

52. The Illinois Freedom to Work Act states, “No employer shall enter into a covenant not to compete with any low-wage employee of the employer.” 820 ILCS 90/10(a).

53. The Illinois Freedom to Work Act defines a “covenant not to compete” as an agreement entered into after January 1, 2017 between an employer and a “low-wage employee” that bars the employee from performing “(A) any work for another employer for a specified period of time; (B) any work in a specified geographical area; or (C) work for another employer that is similar to such low-wage employee’s work for the employer included as a party to the agreement.” *Id.* at 90/5.

54. The Illinois Freedom to Work Act defines a “low-wage employee” as an employee “whose earnings do not exceed the greater of (1) the hourly rate equal to the minimum wage required by the applicable federal, State, or local minimum wage law or (2) \$13.00 per hour.” *Id.*

55. Currently, an hourly rate of \$13.00 exceeds the minimum wages required by federal, state, and local law.

- a. Pursuant to federal law, the current minimum hourly wage for employees is \$7.25 per hour. 29 U.S.C. § 206(a)(1)(C).
- b. Pursuant to Illinois law, the current minimum hourly wage for employees who are 18 years of age or older is \$8.25. 820 ILCS 105/4(a)(1).
- c. Pursuant to City of Chicago ordinance, the current minimum hourly wage for employees is \$11.00. Chicago Municipal Code § 1-24-020(c).

56. Under the Illinois Freedom to Work Act, “[a] covenant not to compete entered into between an employer and a low-wage employee is illegal and void.” 820 ILCS 90/10(b).

57. Since January 1, 2017, Check Into Cash has hired Store employees and required them to agree to the non-competition agreement as a condition of employment.

58. Certain of these Store employees have been paid and continue to earn an hourly wage rate less than \$13.00.

59. The non-competition agreement that this subset of Store employees agreed to constitutes a covenant not to compete that violates the Illinois Freedom to Work Act.

- a. The non-competition agreement prohibits low-wage Store employees from working for certain other employers for one year after they stop working for Check Into Cash.
- b. The non-competition agreement also prohibits low-wage Store employees from working for certain other employers that are located within a 15-mile radius of any office or store location of Check Into Cash, its parent, affiliate, or subsidiary.
- c. In addition, the non-competition agreement prohibits low-wage Store employees from performing certain work for “any individual, firm, or entity which provides deferred

presentment, deferred deposit, and/or any other payday advance services, check-cashing services, pawn or title pawn services, secured or unsecured open-end credit lending services, secured or unsecured installment lending services, secured or unsecured single payment lending services, and/or any other consumer lending services or money transmission services”—the same types of services that Check Into Cash provides to Illinois consumers.

60. Declaratory relief is appropriate in order to establish that, as applied to Store employees earning less than \$13 per hour, Check Into Cash’s non-competition agreements are illegal and void pursuant to the Illinois Freedom to Work Act, 820 ILCS 90/10(b).

61. Injunctive relief consistent with the declaratory relief is appropriate because the People have a lawful right to prevent the imposition of illegal and void covenants not to compete. Further, the harm to Illinois residents and businesses is ongoing and irreparable, particularly where low-wage Store employees subjected to the covenants not to compete have not been informed of the agreements’ unenforceability, and there is no adequate remedy at law.

62. Accordingly, Check Into Cash has violated the Illinois Freedom to Work Act by requiring low-wage employees to sign covenants not to compete.

WHEREFORE, the People respectfully request that this Court enter an Order:

- a. Declaring that Check Into Cash has violated Section 10 of the Freedom to Work Act, 820 ILCS 90/10, by entering into covenants not to compete with its low-wage employees;
- b. Providing for injunctive relief consistent with the declaration, including an order precluding Check Into Cash from requiring or using covenants not to compete for any low-wage employees as defined in the Freedom to Work Act, 820 ILCS 90/5;
- c. Requiring that Check Into Cash inform low-wage employees who have agreed to unenforceable and void covenants not to compete that those covenants not to compete are unenforceable, void, and rescinded, and that such agreements will not be enforced by Check Into Cash or any affiliated company or successor; and
- d. Awarding such other and further relief as the Court deems just and proper.

**COUNT II – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
PURSUANT TO ILLINOIS COMMON LAW**

63. The People restate paragraphs 1 through 62 as though fully set forth herein.

64. For many years Check Into Cash has required all Store employees to agree to a non-competition agreement that is unreasonable, unconscionable, and unenforceable under Illinois common law as to all Store employees at Illinois stores operated by Check Into Cash.

65. As used for Store employees, these non-competition agreements are substantively unconscionable and constitute an impermissible restraint on trade.

66. Check Into Cash did not provide Store employees with adequate consideration for execution of the non-competition agreements. Store employees were not offered monetary payment or guaranteed employment for a specified period of time in return for execution of the non-competition agreements; instead, they were offered simply the prospect of at-will employment.

67. Check Into Cash Store employees do not have near-permanent customer relationships.

68. Store employees have little-to-no access to trade secret information developed by Check Into Cash.

69. To be upheld under Illinois common law, a non-competition agreement must be supported by consideration, narrowly tailored to a legitimate business interest, and not unduly burdensome to the affected employee.

70. Because the non-competition agreements at issue are unsupported by consideration, not narrowly tailored to Check Into Cash's business interests, and impose an undue burden on Store employees, they are unreasonable, unconscionable, and unenforceable as a matter of law.

- a. The non-competition agreement applies irrespective of the length of time the Store Employee was employed at a Check Into Cash store. Accordingly, even someone employed at an Illinois store for a single day would be subject to the non-competition agreement.
- b. Check Into Cash's non-competition agreement prevents former employees from working for any precluded employer within a 15-mile radius of any office or store location of Check Into Cash or any parent, affiliate, or subsidiary. Check Into Cash has 33 locations in Illinois, spread across 30 separate towns and cities. Check Into Cash, Inc. and its affiliates have over 1,000 store locations nationwide, including 158 store locations in states that border Illinois. The geographic scope of the non-competition agreement is thus unreasonable, unconscionable, and unenforceable.
- c. The non-competition agreement precludes an excessively broad range of employment activities, preventing an employee from working as employee, officer, consultant, or in any other capacity, for any individual, firm, or entity, that provides any of the wide range of services provided by Check Into Cash, including both secured and unsecured lines of credit. The non-competition agreement also prevent employees from providing any products or services that are "competitive with or similar to" the products or services of Check Into Cash, over and above this extensive list. Because of the breadth of this definition, the restriction extends far beyond Check Into Cash's direct competitors to businesses which may provide just one of the many services provided by Check Into Cash on only an incidental basis, such as credit unions or auto dealerships or even stores that extend lines of credit such as department stores or "rent-to-own" furniture stores.
- d. The scope of the non-competition agreement is also vague and ambiguous as to the businesses to which it purports to apply. Because the non-competition agreement does not identify the precluded employers by name and because it defines the types of prohibited services so broadly, it is impossible for a Store employee to predict which subsequent employment would and would not be prohibited by the non-competition agreement.
- e. The non-competition agreement's restrictions are not narrowly drawn to protect a legitimate business interest, especially considering that the Employment Agreement contains separate provisions protecting confidential customer and proprietary business information, in addition to those provisions in the Employee Handbook and the Information Safety and Security Policies.

71. Declaratory relief is appropriate to establish that Check Into Cash's non-competition agreement is invalid under Illinois law as to Store employees in Check Into Cash's Illinois locations.

72. Injunctive relief consistent with the declaratory relief is appropriate because the People have a lawful right to prevent the imposition of illegal and unenforceable non-competition agreements. Further, the harm to Illinois residents and businesses is ongoing and irreparable, particularly where Store employees subjected to the non-competition agreement have not been informed of the agreement's unenforceability, and there is no adequate remedy at law.

73. For the reasons stated herein, Check Into Cash's non-competition agreements are unreasonable, unconscionable, unenforceable, and an improper restraint on trade under Illinois law as to all Illinois Store employees.

WHEREFORE, the People respectfully request that this Court enter an Order:

- a. Declaring that Check Into Cash's non-competition agreements are unenforceable, void, and rescinded as a matter of law as to all current and former Store employees of Check Into Cash in Illinois;
- b. Providing for injunctive relief consistent with the declaration, including an order precluding Check Into Cash from requiring or using non-competition agreements for Store employees of any Check Into Cash location in Illinois;
- c. Issuing an order requiring Check Into Cash to notify all Store employees of any Check Into Cash location in Illinois who have agreed to non-competition agreements that those agreements are unenforceable, void, and will not be enforced by Check Into Cash or any affiliated company or successor; and
- d. Awarding such other and further relief as the Court deems just and proper.

**COUNT III – EQUITABLE RELIEF PURSUANT TO THE  
ILLINOIS CONSUMER FRAUD ACT**

74. The People restate paragraphs 1 through 73 as though fully set forth herein.

75. Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815

ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception[,] fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

76. When determining whether a practice is "unfair" within the meaning of the Consumer Fraud and Deceptive Business Practices Act, Illinois courts look at "(1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers." *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002). "All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Id.* at 418 (quoting *Cheshire Mortgage Serv., Inc. v. Montes*, 223 Conn. 80, 106 (1992)) (internal quotation marks omitted).

77. Onerous and excessive non-competition agreements violate longstanding Illinois public policy. Illinois law has recognized that such clauses must be premised on a legitimate business interest and narrowly tailored in terms of time, activity, and place. Illinois law also recognizes that the unreasonable restraint of trade or commerce by contract is an offense against state law and public policy.

78. In addition to this longstanding policy, the Illinois General Assembly, through the Freedom to Work Act, has determined that non-competition agreements are never permissible or enforceable for low-wage workers earning less than \$13 an hour. 820 ILCS 90/10(b), 90/5.

79. Check Into Cash's non-competition agreement contains unfair and onerous terms, including, but not limited to: an improper and excessive geographic scope, broad preclusion of significant numbers of prospective employers who do not directly compete with Check Into Cash, application to employees with even short periods of employment, a lack of consideration, and a related contractual enforcement mechanism that purports to provide Check Into Cash with a remedy without proving harm.

80. Moreover, many of Check Into Cash's Store employees who have agreed to the non-competition agreement have been and continue to be paid less than \$13.00 per hour, in violation of the Freedom to Work Act, 820 ILCS 90/1, *et seq.*

81. Check Into Cash's actions are ongoing and continue to cause harm. Check Into Cash continues to require Store employees to agree to illegal, void, and unenforceable non-competition agreements. Furthermore, Check into Cash has never advised current or former Store employees that such non-competition agreements are void or otherwise unenforceable.

82. Check Into Cash's conduct is immoral, unethical, oppressive, and unscrupulous and harms the consuming public and competitor businesses.

83. To the extent that Check Into Cash continues to enter into non-competition agreements with low-wage Store employees with the intent that employees rely upon these agreements but with the knowledge that it cannot legally enforce these agreements in court, Check Into Cash's conduct is also deceptive.

84. Non-competition agreements, such as the one used by Check Into Cash, can significantly disrupt the labor market, particularly with respect to the low-wage workforce. Such clauses have a chilling effect on employees' ability to seek continued employment in a field in which they have gained familiarity and basic job skills. Furthermore, such clauses also chill Illinois businesses from freely hiring qualified employees by potentially subjecting these businesses to litigation and by limiting the pool of workers available for hire.

85. The use of non-competition agreements for Store employees limits the ability of these employees to find new employment or to move to a new state and find employment where Check Into Cash locations exist; hinders upward mobility of employees looking for higher wages or advancement through new employment using skills obtained in their current employment; and suppresses wages for employees who have limited negotiating power with both current and potential employers when they are constrained by a non-competition agreement. This suppression of wages and hindrance on mobility impacts trade or commerce throughout Illinois.

86. Accordingly, Check Into Cash has engaged in unfair conduct in violation of the Consumer Fraud and Deceptive Business Practices Act by requiring Store employees to agree to unenforceable non-competition agreements without consideration, without a legitimate business reason, and without narrowly tailoring the agreements to protect any purported confidential or trade secret information, and by imposing non-competition agreements on Store employees earning less than \$13.00 per hour.

WHEREFORE, the People respectfully request that this Court enter an Order:

- a. Finding that Check Into Cash has violated Section 2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, by engaging in the unfair practices alleged herein;
- b. Declaring that Check Into Cash's non-competition agreements are unenforceable, void, and rescinded as a matter of law as to all current and former Store employees in Illinois;

- c. Providing for injunctive relief consistent with the declaration, including an order precluding Check Into Cash from requiring or using non-competition agreements for Store employees;
- d. Requiring that Check Into Cash inform Store employees who have agreed to unenforceable and void non-competition agreements that their non-competition agreements are unenforceable, void, and rescinded, and that such provisions will not be enforced by Check Into Cash or any affiliated company or successor;
- e. Assessing the maximum applicable civil penalty against Check Into Cash, including a penalty of \$50,000 per violation if the Court determines that Check Into Cash has engaged in acts or practices declared unlawful by the Act with the intent to defraud;
- f. Requiring Check Into Cash to pay all costs for the prosecution and investigation of this action, as provided by section 10 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/10; and
- g. Awarding such other and further relief as the Court deems just and proper.

Dated: October 25, 2017

LISA MADIGAN  
Attorney General of the State of Illinois

BY: 

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