

**DEPARTMENT OF CONSUMER AFFAIRS  
CITY OF NEW YORK**

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DEPARTMENT OF CONSUMER AFFAIRS,	SETTLEMENT AGREEMENT & CONSENT ORDER
Complainant,	
-against-	Violation No.: 05349301
AMERICAN CREDIT ACCEPTANCE, LLC, D/B/A SPARTAN FINANCIAL PARTNERS,	License No.: 1384435.
Respondent.	
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1. American Credit Acceptance, LLC (“ACA”) has been licensed by the New York City Department of Consumer Affairs (the “Department”) as a debt collection agency pursuant to Section 20-490 of the New York City Administrative Code (“Admin. Code”) since 2011.
2. ACA seeks renewal of its debt collection agency license, No. 1384435.
3. The Department has reviewed ACA’s license renewal application, public records and records maintained by the Department, ACA’s 2013 Renewal Information and Documentation Form and information provided to the Department by ACA.
4. ACA collected or attempted to collect debts from thirty-two (32) New York City consumers. ACA attests its principal business is the point of sale purchase of automobile retail installment sale contracts from dealerships. ACA further attests it acquired the thirty-two (32) accounts reviewed in the current proceeding as part of bulk purchases of performing portfolios and that these bulk portfolio purchases are a small part of ACA’s business.
5. In addition to the findings in Paragraph 4 of this Settlement Agreement & Consent Order, the Department has made the findings annexed as Attachment A.
6. ACA does not admit to these violations stated in Attachment A, but consents to a Settlement Agreement & Consent Order with the Department to obtain a license and solely to avoid further investigation and litigation with regard to the specific

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violations alleged in Attachment A for the period from April 24, 2010 to the date of this Settlement Agreement & Consent Order.

7. Thomas Holgate, as Chief Operating Officer, represents and warrants that he is authorized to enter into this Settlement Agreement & Consent Order on behalf of ACA.

#### **SCOPE OF SETTLEMENT AGREEMENT & CONSENT ORDER**

8. This Settlement Agreement & Consent Order shall apply to ACA, its directors, officers, employees, representative agents, assignees, and successors. For the purposes of this Settlement Agreement & Consent Order, "employee" means any person employed for hire or permitted to work by ACA including, but not limited to, any person who manages or oversees the work of another and any person whose earnings are based in whole or in part on commission for work performed for ACA.
9. ACA agrees to comply fully with all relevant laws and rules related to debt collection from New York City consumers including, but not limited to: (a) the Licensing Law and Rules, Admin. Code section 20-101 *et seq.* and Title 6 of the Rules of the City of New York ("6 R.C.N.Y." or "the Rules") sections 1-01 *et seq.*; (b) the Debt Collection Agencies Licensing Law and Rules, Admin. Code sections 20-488 *et seq.* and 6 R.C.N.Y. sections 2-190 *et seq.*; and (c) the Consumer Protection Law and Rules, Admin. Code sections 20-700 *et seq.* and 6 R.C.N.Y. sections 5-76 *et seq.*

#### **LICENSING**

10. ACA shall not act as a debt collection agency as defined in Section 20-489 of the Admin. Code at any time without holding a valid license from the Department.
11. ACA shall ensure that process server individuals and agencies used in furtherance of its work as a debt collection agency licensed by the Department are licensed by the Department when required by subchapter 23 of the Admin. Code.
12. Upon the termination of ACA's license by revocation, suspension, expiration, denial, surrender, cancellation, or operation of law ACA shall immediately cease its debt collection activities with respect to New York City consumers and return its license(s) to the Department.

#### **PAYDAY LOANS; USURIOUS LOANS**

13. The Department did not find violations related to paragraphs 14-17; however ACA agrees to comply with the following as a condition of this Settlement Agreement & Consent Order.

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14. ACA shall not refer to a third party for collection, collect, or attempt to collect debts from New York City consumers if those debts arise from usurious loans, including payday loans.
15. "Usurious loan" is a loan with an initial principal of less than \$250,000, for which the annual percentage rate of interest exceeds the rate specified by Section 14-a of the New York Banking Law, that is void under Section 5-511 of the New York General Obligations Law.
16. If ACA collects or attempts to collect on any consumer debt other than automobile retail installment sale contracts from dealerships, prior to such collection, Respondent shall implement policies and procedures corresponding to paragraph 12 that include, but are not limited to, a screening process for debts which are likely to be usurious payday loans, such as those for which the original creditor's name contains the terms "Payday," "Cash," "Check," "Instant," "Advance," "Fast," "Now," or "Quick."
17. With regard to any New York City consumer's debt that arises from a usurious loan, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondent furnishes information, a request for deletion of any negative information from the consumer's credit report.

#### **DISPUTED DEBT; CREDIT REPORTING**

18. In addition to the requirements in Section 20-493.2 of the Admin Code and Sections 2-190 and 5-77(f) of 6 R.C.N.Y., ACA shall engage in the following practices:
  - a. Whenever a New York City consumer questions, disputes, or challenges the information on which ACA is relying to collect or attempt to collect a debt, ACA shall either:
    - i. Close the account, permanently terminate collection efforts with respect to the specific debt, and request deletion of that item of information from the consumer's credit reporting file; or
    - ii. Report that item of information as disputed to any consumer reporting agency to which the information was previously reported and conduct a reasonable and truthful investigation into the accuracy or completeness of such information. If ACA does not complete its reasonable investigation within thirty (30) days from receipt of the dispute, ACA shall request deletion of that item from the consumer's credit reporting file and cease collection activities until the reasonable investigation is complete. If after the investigation ACA cannot substantiate that the

consumer owes the debt, ACA shall not sell the debt or provide it to any other entity for the purpose of collection.

- b. With regard to any New York City consumer's debt that has been paid in full or settled pursuant to an oral or written agreement, ACA shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which ACA furnishes information a report that the consumer either paid the account in full or the account was settled.

#### **COLLECTION OF DEBTS OWED TO DEBT BUYERS**

19. ACA shall not collect or attempt to collect a debt owed or asserted to be owed to any buyer of delinquent debt from a New York City consumer unless each agreement transferring ownership of the debt included terms in which the seller warranted and represented that the information about the debt and the documentation supporting the debt were accurate and complete. This shall not limit any other requirements under the Law or Rules regarding documentation that must be obtained, maintained or transferred with a debt.

#### **POLICIES, PROCEDURES AND TRAINING**

20. Within thirty (30) days of execution of this Settlement Agreement & Consent Order, ACA shall:
  - a. implement and disseminate policies and procedures, to officers and any agent or employee having responsibility with respect to the collection of consumer debts from New York City consumers, to ensure compliance with the terms of this Settlement Agreement & Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 9;
  - b. provide training, to officers and any agent or employee having responsibility with respect to the collection of New York City consumer debts, on the requirements of this Settlement Agreement & Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 9;
  - c. provide periodic refresher training, to officers and any agent or employee having responsibility with respect to the collection of New York City consumer debts, no less frequently than once each year and more frequently if any New York City Laws and Rules are amended;
  - d. provide training, to all new officers and any agent or employee, no later than five (5) business days from the time the employee assumes responsibility with respect to the collection of New York City debts;

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- e. take and document appropriate disciplinary action against any employee who fails to comply with this Settlement Agreement & Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 9.
18. ACA shall include the due date of each payment in all written confirmations of debt payment schedules sent to New York City consumers and any other document sent to New York City consumers outlining the terms of a debt payment schedule.

### **COMPLIANCE MONITORING AND REPORTING**

21. ACA shall appoint Ben Burke Howell who is a senior executive, to serve as the Compliance Officer responsible for ensuring adherence to the terms of this Settlement Agreement & Consent Order. Such Compliance Officer has the following title: General Counsel.
- a. The telephone number of such Compliance Officer is: (864) 504-3757.
  - b. The address of such Compliance Officer is: 961 E. Main Street, Spartanburg SC 29302
  - c. The email address of such Compliance Officer is: [benburke.howell@acacceptance.com](mailto:benburke.howell@acacceptance.com).
22. If the identity of such Compliance Officer changes at any time, ACA shall provide to the Department the name, title, telephone number, address, and email address of the replacing Compliance Officer within twenty (20) business days of such change.
23. Within ten (10) business days of receipt of written notice from the Department, ACA shall produce the following, electronically or in the format indicated by the Department, which are true and accurate and sworn to under the penalty of perjury:
- a. Documents related to any provision of this Settlement Agreement & Consent Order, including but not limited to:
    - i. Copies of any complaints ACA received regarding ACA's attempts to collect debt purportedly owed by New York City consumers.
    - ii. Transcripts of the recordings required by Section 2-193(b)(2) of the Rules.
    - iii. Documents sufficient to identify the manner in which ACA maintains its records.

24. ACA shall respond to all subpoenas and document requests issued to it by the Department.
25. Nothing in this section shall be construed to obviate ACA's responsibilities pursuant to Admin. Code section 20-493(b); 6 R.C.N.Y. sections 1-14, 1-16; and 2-193.
26. ACA shall notify the Department of all pending governmental actions, governmental proceedings or investigations by government agencies against it within ten (10) business days of being notified of such action, proceeding, or investigation. For purposes of this paragraph, "investigation" shall mean any written communication from a government agency relating to ACA's allegedly improper debt collection practices, to which ACA must respond, except for individual consumer complaints. For purposes of this paragraph, however, a governmental "action", "proceeding" or "investigation" shall not include routine government agency examinations or license renewals or any related communications, unless such results in a settlement agreement or a finding of a violation of any laws or rules related to debt collection.
27. ACA shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within twenty (20) days of receipt of copies of those complaints, but in all instances, ACA shall respond in writing to the Department regarding those consumer complaints within twenty (20) days of receipt of any complaints.
28. For the purposes of this Settlement Agreement & Consent Order, ACA shall, unless otherwise directed by the Department, send by first class mail, and contemporaneously by email, all notifications required by this Settlement Agreement & Consent Order to the Department to the following addresses:

First Class Mail to:

LEGAL DIVISION  
Attn: Emily Anderson  
NYC Department of Consumer Affairs  
42 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

Re: 2014 Settlement Agreement & Consent Order

Email to: [legaldebtcoll@dca.nyc.gov](mailto:legaldebtcoll@dca.nyc.gov)

29. For purposes of the compliance reporting and monitoring required by this Settlement Agreement & Consent Order, the Department is authorized to communicate directly with ACA.

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**CONSEQUENCES OF BREACH OF SETTLEMENT AGREEMENT & CONSENT ORDER**

30. A finding, after notice and hearing, that, subsequent to the date of this Settlement Agreement & Consent Order, ACA has committed a material breach of the terms of this Settlement Agreement & Consent Order shall constitute prima facie evidence of ACA's lack of fitness to hold a license from the Department.
31. Upon a finding, after notice and hearing, that ACA, subsequent to the date of this Settlement Agreement & Consent Order, has breached this Settlement Agreement & Consent Order ACA shall pay one thousand dollars (\$1,000).
32. ACA's failure to produce any of the documents required by this Settlement Agreement & Consent Order, the Admin. Code, or the Rules shall constitute prima facie evidence that ACA has failed to maintain those records and is not in compliance with the underlying terms of the Settlement Agreement & Consent Order, Law, or Rule for which documents are required to be maintained.

**PAYMENTS AND OTHER TERMS AND CONDITIONS**

33. ACA shall pay \$26,500.00 to the Department, due upon execution of this Settlement Agreement & Consent Order. Payment shall be made by bank check, certified check, or money order in the full amount made payable to the New York City Department of Consumer Affairs, and delivered to the New York City Department of Consumer Affairs, Legal Division, Attn: 2013 Debt Collection Renewal, 42 Broadway, 9th Floor, New York, New York 10004.
34. This Settlement Agreement & Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

**WAIVER OF APPEALS**

35. ACA waives ACA's right to a hearing on, appeal of and/or any challenge of, in any forum, the facts alleged by the above-referenced Violation Number under Sections 20-104 and 20-105 of the Admin. Code or under Article 78 of the New York State Civil Practice Law and Rules.

**MISCELLANEOUS**

36. The acceptance of this Settlement Agreement & Consent Order by the Department shall not be deemed approval by the Department of any of ACA's business practices, and ACA shall make no representation to the contrary.

- 37. The acceptance of this Settlement Agreement & Consent Order resolves the findings made in this Settlement Agreement & Consent Order in Attachment A. This Settlement Agreement & Consent Order does not limit the Department's ability to bring charges for violations occurring subsequent to the date of this Settlement Agreement & Consent Order.
- 38. The acceptance of this Settlement Agreement & Consent Order does not limit the Department's ability, nor ACA's obligation to respond to New York City consumer complaints that arose prior to the date of this Settlement Agreement & Consent Order as set forth in the "Agreement Dated" field below.
- 39. Nothing in this Settlement Agreement & Consent Order shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Admin. Code.

Agreed to for the American Credit Acceptance, LLC by:

Accepted for Julie Menin, Commissioner of Consumer Affairs for the City of New York, by:

THOMAS M. HOLGATE  
Print Name

C.O.O.  
Title

*Thomas M. Holgate*  
Signature

11-7-14  
Date

[REDACTED]  
Print Name

Staff Attorney  
Title

[REDACTED]  
Signature

11/10/14  
Date

Agreement Dated: 11/10/14

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).**

# ATTACHMENT A

## The Department's Findings

The Department has reviewed ACA's license renewal applications, public records, records maintained by the Department, ACA's 2013 Renewal Information and Documentation Form and information provided to the Department by ACA. Based on this review, the Department makes the following findings.

- (1) Background – ACA collected or attempted to collect on 32 delinquent accounts from New York City consumers in 2011 and 2012.
- (2) ACA Violated Requirements for Disclosure of Security Breaches:
  - a. Question 10(A) of the 2013 Renewal Form asks: “In the past seven years, have you had a breach of security in which: (i) any person obtained unauthorized possession of personal identifying information owned or maintained by you; and (ii) the security, confidentiality, or integrity of that information was compromised?”
  - b. Question 10(B) of the 2013 Renewal Form asks: “If the answer to (A) is yes, did you disclose the incident(s) to DCA?”
  - c. Question 10(C) of the 2013 Renewal Form states: “If you answered yes to any part of this question (question 10), you must attach the following to this application for each incident: (i). a written statement or chart providing details of the incident, including: a description of the information compromised; the date of the incident; the name(s) and title(s) of the person(s) who obtained unauthorized possession; and an explanation of whether and how you reported each incident to DCA; and (ii). a copy of any notice(s) you sent to DCA to notify DCA of the incident(s).”
  - d. Admin. Code § 20-117(a)(2) provides, in relevant part: “The term ‘breach of security’ shall mean unauthorized possession of personal identifying information that compromises the security, confidentiality or integrity of such information.”
  - e. Admin. Code § 20-117(b) provides, in relevant part: “Any person required to be licensed pursuant to chapter two of this title . . . that maintains but does not own data that includes personal identifying information *shall immediately disclose* to the department . . . any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach if such personal identifying information is reasonably believed to have been acquired by an unauthorized person.” (emphasis added).

- f. ACA answered “Yes” to Question 10(A), and “No” to Question 10(B). ACA therefore admits in its 2013 Renewal Form answers that on one or more occasions ACA “had a breach of security in which [a] person obtained unauthorized possession of personal identifying information owned or maintained by [ACA,] [and, due to that breach,] the security, confidentiality, or integrity of that information was compromised.” ACA further admits in its 2013 Renewal Form answers that it failed to “disclose the incident[s] to [the Department].” In response to Question 10(C), ACA submitted two reports – dated January 5, 2011 and January 28, 2013 – describing instances in which ACA experienced breaches in security involving a stolen laptop and an ACA’s employee’s misuse of a consumer’s credit card.
- g. Upon further review, ACA determined that on August 31, 2011 and March 18, 2013 it “had a breach of security in which [a] person obtained unauthorized possession of personal identifying information owned or maintained by [ACA,] [and, due to that breach,] the security, confidentiality, or integrity of that information was compromised”, but did not notify the Department promptly.
- h. ACA violated Admin. Code § 20-117(b) by failing to immediately notify the Department of a breach of security following each of the four instances described above.

(3) ACA Violated Requirements for Debt Collection Phone Calls:

- a. Question 18(A) of the 2013 Renewal Form asks: “In the past two years, did you collect or attempt to collect debts from New York City consumers by placing telephone calls to consumers?”
- b. Question 18(B)(iii) of the 2013 Renewal Form asks: “[I]n each telephone communication with a New York City consumer, do you provide the consumer with . . . the originating creditor of the debt?”
- c. Admin. Code § 20-493.1(a) requires, in relevant part, that a debt collection agency provide “[i]n any permitted communication with the consumer . . . (i.) a call-back number to a phone that is answered by a natural person, (ii.) the name of the agency, (iii.) the originating creditor of the debt, (iv.) the name of the person to call back, and (v.) the amount of the debt at the time of the communication.”
- d. ACA answered “Yes” to Question 18(A). ACA answered “No” to Question 18(B)(iii), and stated that “ACA is revising its current collections policy & procedure to ensure it discloses the originating creditor.” ACA therefore admits in its 2013 Renewal Form that it made telephone calls to New York City consumers to collect debts in the past two years, but failed to provide the originating creditor in each telephone communication with a New York City consumer.

- e. ACA violated Admin. Code § 20-493.1(a)(iii) by failing to provide the originating creditor of the debt in ACA's telephone communications with New York City consumers.

(4) ACA Violated Requirements for Written Communications:

- a. Question 20(A) of the 2013 Renewal Form asks: "In the past two years, did you collect or attempt to collect debts from New York City consumers by sending letters to consumers?"
- b. Question 20(B)(iii) of the 2013 Renewal Form asks: "[I]n each written communication to a New York City consumer, do you provide the consumer with: . . . the originating creditor of the debt?"
- c. Question 20(B)(vi) of the 2013 Renewal Form asks: "[I]n each written communication to a New York City consumer, do you provide the consumer with: . . . your DCA license number?"
- d. Admin. Code § 20-493.1(a) requires, in relevant part, that a debt collection agency provide "[i]n any permitted communication with the consumer . . . (i.) a call-back number to a phone that is answered by a natural person, (ii.) the name of the agency, (iii.) the originating creditor of the debt, (iv.) the name of the person to call back, and (v.) the amount of the debt at the time of the communication."
- e. 6 RCNY § 1-05 requires, in relevant part: "[a]ny . . . letterhead . . . or other printed matter of a licensee must contain the license number assigned to the licensee by the [Department]."
- f. ACA answered "Yes" to Question 20(A). ACA answered "No" to Question 20(B)(iii) and further stated that "ACA is revising its current collections policy & procedure to ensure it discloses the originating creditor." ACA answered "No" to Question 20(B)(vi). ACA therefore admits in its 2013 Renewal Form answers that ACA sent letters to New York City consumers to collect debts in the past two years, but ACA's letters to New York City consumers failed to provide the originating creditor of the debt and ACA's DCA license number. Further, as its response to Question 23 of the 2013 Renewal Form, ACA submitted two letters that it sent to New York City consumers – dated November 4, 2011, and August 13, 2012 – as written confirmations of debt payment schedules. In both of these letters, ACA failed to identify the originating creditor of the debt and ACA's DCA license number.
- g. ACA violated Admin. Code § 20-493.1(a)(iii) by failing to identify the originating creditor of the debt in written communications ACA sent to New York City consumers.
- h. ACA violated 6 RCNY § 1-05 by failing to include ACA's DCA license numbers in written communications ACA sent to New York City consumers.

(5) ACA Violated A Requirement for Sending Written Confirmations of Debt Payment Schedules:

- a. Question 23(A) of the 2013 Renewal Form asks: “In the past two years, did you agree to allow any New York City consumers to pay a debt according to a debt payment schedule?”
- b. Question 23(B) of the 2013 Renewal Form asks: “[D]id you provide a written confirmation of the debt payment schedule to each New York City consumer that you authorized to make payments according to a debt payment schedule?”
- c. Admin. Code § 20-493.1(b) requires a debt collection agency to “[c]onfirm in writing to the consumer, within five business days, any debt payment schedule . . . reached regarding the debt.”
- d. 6 RCNY § 2-192(a) provides, in relevant part: “The written confirmation of the debt payment schedule . . . with a consumer that a debt collection agency is required to furnish pursuant to § 20-493.1(b) *shall identify the originating creditor of the debt . . . , and the conditions for satisfying the outstanding balance.*” (emphasis added).
- e. ACA answered “Yes” to Questions 23(A) and (B). ACA therefore admits that ACA “provide[d] a written confirmation of the debt payment schedule to each New York City consumer that [ACA] authorized to make payments according to a debt payment schedule.”
- f. As its response to Question 23(C), ACA submitted two letters to the Department – dated November 4, 2011 and August 13, 2012 – that ACA sent to New York City consumers as written confirmations of debt payment schedules. Both of the letters failed to identify the “originating creditor of the debt and the “conditions for satisfying the outstanding balance.”
- g. ACA violated 6 RCNY § 2-192(a) by failing to identify the “originating creditor of the debt” in the written confirmations of debt payment schedules it sent to New York City consumers.
- h. ACA violated 6 RCNY § 2-192(a) by failing to identify the “conditions for satisfying the outstanding balance” in the written confirmations of debt payment schedules it sent to New York City consumers.

(6) ACA Violated Recordkeeping Requirements for Audio Recordings of Conversations with New York City Consumers:

- a. Question 31(H)(i) of the 2013 Renewal Form asks: “State whether you maintain each of the following records with respect to your collection of debts from New York City consumers: . . . [a]udio recordings of complete conversations with consumers (i.e. outgoing collection calls, and incoming calls from consumers).”
- b. Question 31(H)(ii) of the 2013 Renewal Form asks: “If the answer to (H)(i) is yes, for how many years do you maintain these recordings?”

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- c. 6 RCNY § 2-193(b)(2) and (d) require, in relevant part, that a debt collection agency maintain “[r]ecordings of complete conversations with all consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency” for “*one year* after the date of the last conversation recorded on each completed recording tape.” (emphasis added).
- d. ACA answered “Yes” to Question 31(H)(i), and “two months” to Question 31(H)(ii). ACA further stated in response to Question 31(H)(ii) that “ACA [is] revising its current collections policy & procedure to ensure it maintains audio recording of consumer conversations for 1 year.” ACA therefore admits in its 2013 Renewal Form answers that ACA maintains “audio recordings of complete conversations with [New York City] consumers” for only two months.
- e. ACA violated 6 RCNY § 2-193(b)(2) and (d) by failing to maintain audio recordings of its telephone conversations with New York City consumers for the required one-year period.