

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

-----X	
DEPARTMENT OF CONSUMER AFFAIRS,	CONSENT ORDER
Complainant,	
-against-	Violation No.: 05333241
	License No.: 1368090
JEFFERSON CAPITAL SYSTEMS, LLC,	
Respondent.	
-----X	

1. Respondent Jefferson Capital Systems, LLC (“Jefferson Capital” or “Respondent”) 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 2010.
2. Respondent seeks renewal of its debt collection agency license, No. 1368090.
3. The Department has reviewed Respondent’s license renewal application, public records and records maintained by the Department, Respondent’s 2013 Renewal Information and Documentation Form, and information provided to the Department by Respondent.
4. The Department’s findings are annexed as Attachment A.
5. Respondent does not admit to these violations, but consents to a Consent Order with the Department to obtain a license and to avoid further investigation and litigation with regard to the specific violations identified in Attachment A for the period from April 24, 2010 to the date of this Consent Order. Respondent revises the letters at issue in paragraphs 3 and 4 of Attachment A to comply with the requirements of Section 2-192(a) of Title 6 of the Rules of the City of New York (“6 R.C.N.Y.” or “the Rules”).
6. Joe Fejes, as Chief Compliance Officer, represents and warrants that he is authorized to enter into this Consent Order on behalf of Respondent.

7. This Consent Order shall apply to Respondent, its directors, officers, employees, representative agents, assignees, and successors. For the purposes of this Consent Order, “employee” or “representative agent” means any person employed for hire or permitted to work by Respondent under Respondent’s license number 1368090, 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 Respondent.
8. Respondent shall 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 Sections 20-101 *et seq.* and Sections 1-01 *et seq.* of the Rules.; (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 Sections 5-76 *et seq.* of the Rules.

LICENSING

9. Respondent 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.
10. Respondent shall provide complete and truthful responses in its license renewal application materials and all other documents submitted by Respondent to the Department.
11. Respondent shall require 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 Respondent’s license by revocation, suspension, expiration, denial, surrender, cancellation, or operation of law Respondent shall immediately cease its debt collection activities with respect to New York City consumers and return its license to the Department.

PAYDAY LOANS; USURIOUS LOANS

13. Respondent shall not purchase, collect, or attempt to collect debts from New York City consumers if those debts arise from usurious loans, including payday loans, regardless of where the loan originated. A “usurious loan” does not include loans or obligations with an interest rate specifically authorized by New York law or federal law.
14. “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.

15. Respondent shall implement policies and procedures corresponding to paragraph 13 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."
16. Within sixty (60) days of the execution of this Consent Order, with regard to any New York City consumer's debt that arises from a usurious loan (including the 196 payday loan accounts referenced in paragraph 2 of Attachment A), 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.
17. Within twenty (20) days of the execution of this Consent Order, with regard to any New York City consumer's debt that arises from a usurious loan, Respondent will identify all pending garnishments, levies, liens, restraining notices, or attachments relating to any judgment entered or a default resulting from a lawsuit commenced by Respondent, in any court against a New York City consumer based on nonpayment. Respondent shall ensure that all pending garnishments, levies, liens, restraining notices, or attachments relating to such judgments and defaults be released, and Respondent shall seek to vacate any such judgments and defaults. This affirmative obligation shall continue up until all pending garnishments, levies, liens, restraining notices, or attachments relating to such judgments and defaults have been released and all such judgments and defaults have been vacated.

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 the Rules., Respondent shall engage in the following practices:
 - a. Whenever a New York City consumer questions, disputes, or challenges the information on which Respondent is relying to collect or attempt to collect a debt, Respondent 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 Respondent does not complete its reasonable investigation within thirty (30) days from receipt of the dispute, Respondent 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 the Respondent cannot substantiate that the consumer owes the debt, Respondent 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, 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.

RESPONDENT'S COLLECTION OF PURCHASED DEBT

19. Respondent shall not collect or attempt to collect, directly or indirectly, from any New York City consumer, a debt owed or asserted to be owed to Respondent, unless the agreement transferring ownership of the debt to Respondent on or after the date of this Order includes terms pursuant to which the seller of the purported debt warrants and represents that the information about the debt is accurate. 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 Consent Order, Respondent shall:
 - a. implement and disseminate policies and procedures, to officers and any representative 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 Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 8;
 - b. provide training, to officers and any representative agent or employee having responsibility with respect to the collection of consumer debts, on the requirements of this Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 8;
 - c. provide periodic refresher training, to officers and any representative agent or employee having responsibility with respect to the collection of

Consent Order

Jefferson Capital Systems, LLC

Page 4 of 13

consumer debts, no less frequently than once each year and more frequently if any New York City Laws and Rules are amended;

- d. provide periodic refresher training, to all new officers and any representative agent or employee, no later than five (5) days from the time the employee assumes responsibility with respect to the collection of debts;
- e. take and document appropriate disciplinary action against any employee who fails to comply with this Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 8.

COMPLIANCE MONITORING AND REPORTING

- 21. Respondent shall appoint Joe Fejes, who is a senior executive, to serve as the Compliance Officer responsible for ensuring adherence to the terms of this Consent Order. Such Compliance Officer has the following title: Chief Compliance Officer.
 - a. The telephone number of such Compliance Officer is: [REDACTED]
 - b. The correspondence address of such Compliance Officer is: [REDACTED]
 - c. The email address of such Compliance Officer is: [REDACTED]
- 22. If the identity of such Compliance Officer changes at any time within the following year, Respondent shall provide to the Department the name, title, telephone number, address, and email address of the replacing Compliance Officer within five (5) days of such change.
- 23. Within thirty (60) days of the execution of this Consent Order, Respondent shall provide the Department with a sworn statement:
 - a. affirming that Respondent has not placed any new trade lines with any consumer reporting agencies relating to payday loan accounts of New York City consumers; and
 - b. affirming that Respondent requested, in writing, that each consumer reporting agency delete any trade lines provided by Respondent for payday loan accounts of New York City consumers, as required by paragraph 16.
- 24. Within sixty (60) days of the execution of this Consent Order, Respondent will provide the Department with a sworn statement:

- a. identifying by name, address and telephone number of each consumer against whom Respondent obtained a judgment in lawsuit or executed a garnishment, levy, lien, restraining notice or attachment in a lawsuit as described in paragraph 17; and
 - b. providing a brief description of the date and how Respondent sought to vacate the judgment and the date of the vacatur if granted; and/or providing the type of execution and date of release.
25. Within ten (10) days of receipt of written notice from the Department, Respondent 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 Consent Order, including but not limited to:
 - i. Copies of any complaints Respondent received regarding Respondent'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 Respondent maintains its records.
26. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
27. Nothing in this section shall be construed to obviate Respondent's responsibilities pursuant to Admin. Code Section 20-493(b); 6 R.C.N.Y. Sections 1-14, 1-16; and 2-193.
28. Respondent shall notify the Department of all pending actions, proceedings or investigations by government agencies against it within ten (10) days of being notified of such action, proceeding, or investigation.
29. Respondent 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, Respondent shall respond in writing to the Department regarding those consumer complaints within twenty (20) days of receipt of any complaints.
30. For the purposes of this Consent Order, Respondent shall, unless otherwise directed by the Department, send by first class mail, and contemporaneously by

email, all notifications required by this Consent Order to the Department to the following addresses:

First Class Mail to:

LEGAL DIVISION
NYC Department of Consumer Affairs
42 Broadway, 9th Floor
New York, NY 10004

Re: 2015 Consent Order

Email to: legaldebtcoll@dca.nyc.gov

31. For purposes of the compliance reporting and monitoring required by this Consent Order, the Department is authorized to communicate directly with the Respondent.

CONSEQUENCES OF BREACH OF CONSENT ORDER

32. A finding, after notice and hearing, that Respondent has committed a breach of the terms of this Consent Order shall constitute prima facie evidence of Respondent's lack of fitness to hold a license from the Department.
33. Upon a finding, after notice and hearing, that Respondent has committed violations of this Consent Order, the Licensing Law, the Debt Collection Agency Licensing Law, or the Consumer Protection Law, Respondent shall pay one thousand dollars (\$1,000) for each violation as well as the Department's costs for investigation and litigation.
34. Respondent's failure to produce any of the documents required by this Consent Order, the Admin. Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain those records and is not in compliance with the underlying terms of the Consent Order, Law, or Rule for which documents are required to be maintained.
35. Specific breaches of this Consent Order shall, in addition to a breach of this Consent Order, constitute independent and separate violations of any applicable Law or Rule. If the same conduct gives rise to both a breach of this Consent Order and a breach of the Licensing Law or Rules, the Debt Collection Agency Law or Rules, or the Consumer Protection Law or Rules, Respondent shall pay two penalties as set forth in Paragraph 33: one penalty for breach of the Consent Order and one penalty for the breach of the applicable Law or Rule.

SETTLEMENT AMOUNT; RESTITUTION AND OTHER TERMS

36. Respondent shall pay \$50,000 to the Department, due upon execution of this 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: Shannon Bermingham, 42 Broadway, 9th Floor, New York, New York 10004.
37. Before the execution of this Consent Order, Respondent shall provide the Department with a sworn affidavit identifying:
 - a. the name, address, and phone number of each of the New York City consumers from whom Respondent collected on payday loan accounts (the "Consumers");
 - b. the name and address of the original creditor, along with the corresponding original account number for each account; and
 - c. the date and amount collected from each of the Consumers.
38. Upon execution of this Consent Order, Respondent shall pay \$6232.30 to be held by the Department in a Consumer Restitution Fund (the "Fund") and distributed by the Department to the Consumers.
39. Any excess restitution shall revert to the Department as fines one year from the date of execution of this Consent Order.
40. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

WAIVER OF APPEALS

41. Respondent waives Respondent'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

42. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary. Likewise, the acceptance of this Consent Order by Respondent shall not be deemed an

admission on the part of Respondent, and the Department shall make no representation to the contrary.

- 43. The acceptance of this Consent Order resolves the findings made in this Consent Order in Attachment A. This Consent Order does not limit the Department's ability to bring charges for violations outside this time period.
- 44. The acceptance of this Consent Order does not limit the Department's ability, nor Respondent's obligation to respond to consumer complaints that arose prior to the date of this Consent Order as set forth in the "Agreement Dated" field below.
- 45. Nothing in this 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 Respondent by:

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

Joe Fejes

Chief Compliance Officer
Title

Joe Fejes
Signature

8/10/15
Date


Staff Attorney


Signature

8/11/2015
Date

Agreement Dated: 8/11/2015

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.

ATTACHMENT A

THE DEPARTMENT'S FINDINGS

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

(1) Background – Jefferson Capital Has Collected or Attempted to Collect From 1,018 New York City Consumers in the Past Two Years.

- a. Question 17(A) of the 2013 Renewal Form asks: "In the past two years, did you collect or attempt to collect debts from any New York City consumers?" Question 17(B) of the 2013 Renewal Form asks: "[H]ow many accounts did you collect or attempt to collect from New York City consumers in 2011?" Question 17(C) of the 2013 Renewal Form asks: "[H]ow many accounts did you collect or attempt to collect from New York City consumers in 2012?"
- b. Jefferson Capital answered "Yes" to Question 17(A), answered "408" to Question 17(B), and answered "610" to Question 17(C). Jefferson Capital therefore admits that it collected or attempted to collect 408 accounts from New York City consumers in 2011 and 610 accounts from New York City consumers in 2012.

(2) Jefferson Capital Violated Prohibitions on Unfair Conduct by Collecting on Payday Loans.

- a. By sworn affidavit, dated July 22, 2015, Jefferson Capital affirms that it attempted to collect from New York City consumers 196 past due payday loan accounts. Jefferson Capital also affirms that it collected a total of \$6232.30 from New York City consumers on 31 payday loan accounts.
- b. "Payday loans' are typically small, short-term loans that the borrower agrees to repay on the borrower's next payday. Because of the short term of the loan, the annual interest rate of a payday loan will invariably exceed the maximum interest rate permitted in New York." *People ex rel. Spitzer v. County Bank of Rehoboth Beach, Del.*, 45 A.D.3d 1136 (3d Dep't 2007).
- c. "The rate of interest, as computed pursuant to this title, upon the loan or forbearance of any money, goods, or things in action . . . shall be six per centum per annum unless a different rate is prescribed in section fourteen-a of the banking law." N.Y. Gen. Oblig. Law § 5-501(1).
- d. "The maximum rate of interest provided for in section 5-501 of the general obligations law shall be sixteen per centum per annum." N.Y. Banking Law §

14-a(1). *See also O'Donovan v. Galinski*, 62 A.D.3d 769 (2d Dep't 2009) (“The maximum interest rate permissible on a loan is 16% per annum, and any interest rate in excess of that amount is usurious.”).

- e. “All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever. . . and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured or agreed to be reserved or taken, any greater sum, or greater value, for the loan or forbearance of any money, goods or other things in action, than is prescribed in section 5-501, shall be void . . .” N.Y. Gen. Oblig. Law § 5-511(1). *See also Am. Exp. Travel Related Services Co., Inc. v. Assih*, 26 Misc.3d 1016, 1027 (N.Y. Civ. Ct. 2009) (“Under New York law all usurious contracts are void and the agreement is unenforceable . . . and the lender forfeits both principal and interest due on the transaction.”).
- f. 6 RCNY § 5-77(e)(1) provides, in relevant part: “A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes: . . . the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”
- g. 6 RCNY § 5-77(d) provides, in relevant part: “A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include . . . (4) the threat to take any action that cannot legally be taken or that is not intended to be taken; [or] . . . (14) . . . the false representation of the character, amount or legal status of any debt . . .”
- h. Jefferson Capital violated 6 RCNY § 5-77(e)(1) by collecting amounts not “permitted by law” —specifically, payday loans, which are usurious and therefore legally void in New York — from New York City consumers.
- i. Jefferson Capital violated 6 RCNY § 5-77(d)(4) and (14) by collecting or attempting to collect legally void payday loans from New York City consumers, which necessarily involved false and misleading representations, including “threat[s] to take . . . action that cannot legally be taken or that is not intended to be taken” and “false representation[s] of the character, amount or legal status of [a] debt.”

(3) Jefferson Capital Violated Requirements for 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. Question 23(C) of the 2013 Renewal Form states: “[A]ttach copies of three examples of written confirmations of debt payment schedules that you actually sent to New York City consumers dated before January 1, 2013.”
 - d. 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.”
 - e. 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 date on which the debt payment schedule . . . was *made* . . . and the conditions for satisfying the outstanding balance.” (emphasis added).
 - f. Jefferson Capital answered “Yes” to Questions 23(A) and 23(B). Jefferson Capital therefore admits that it provided “written confirmation of the debt payment schedule to each New York City consumer that [Jefferson Capital] authorized to make payments according to a debt payment schedule.” As its response to Question 23(C), Jefferson Capital attached three letters to its 2013 Renewal Form labeled “payment arrangement confirmation,” as examples of written confirmations of debt payment schedules. All of the letters failed to “identify . . . the date on which the debt payment schedule was *made* . . .” Also, the letters dated March 14, 2012 and July 13, 2012 failed to identify “the conditions for satisfying the outstanding balance.”
 - g. By affidavit, dated May 31, 2013, Sue Unterberger, the compliance auditor for Jefferson Capital, swore that Jefferson Capital sent 27 written confirmations of debt payment schedules sent to New York City consumers in 2011 and 2012.
 - h. Jefferson Capital violated 6 RCNY § 2-192(a) by failing to identify the date on which the debt payment schedule was made, in its written confirmations of debt payment schedules sent to New York City consumers.
 - i. Jefferson Capital violated 6 RCNY § 2-192(a) by failing to identify the “conditions for satisfying the outstanding balance” in its written confirmations of debt payment schedules sent to New York City consumers.
- (4) Jefferson Capital Violated Requirements for Written Confirmations of Debt Settlement Agreements:
- a. Question 24(A) of the 2013 Renewal Form asks: “In the past two years, did you agree to allow any New York City consumers to settle a debt?”
 - b. Question 24(B) of the 2013 Renewal Form asks: “If the answer to (A) is yes, did you provide a written confirmation of the settlement agreement to each

- New York City consumer with whom you entered into a settlement agreement?”
- c. Question 24(C) of the 2013 Renewal Form states: “If the answer to (B) is yes, attach copies of *three* examples of written confirmations of debt settlement agreements that you actually sent to New York City consumers *dated before January 1, 2013.*” (emphasis added).
 - d. 6 RCNY § 1-01.1(a) provides: “No applicant for a license or a renewal thereof shall fail to provide complete and truthful responses to all the information requested on an application for such license or renewal thereof and any documents related thereto.”
 - e. 6 RCNY § 1-01.1(b) provides: “No applicant for a license or renewal thereof shall conceal any information, make a false statement or falsify or allow to be falsified any certificate, form, signed statement, application or report required to be filed with an application for a license that is to be issued by the Department or for a renewal thereof.”
 - f. Admin. Code § 20-493.1(b) requires a debt collection agency to “[c]onfirm in writing to the consumer, within five business days, any . . . settlement agreement reached regarding the debt.”
 - g. 6 RCNY § 2-192(a) provides: “The written confirmation of the debt . . . settlement agreement with a consumer that a debt collection agency is required to furnish pursuant to § 20-493.1(b) shall identify . . . the date on which the . . . agreement was *made . . .*”
 - h. Jefferson Capital answered “Yes” to Questions 24(A) and (B). Jefferson Capital therefore admits that Jefferson Capital “provide[d] a written confirmation of the settlement agreement to each New York City consumer with whom [Jefferson Capital] entered into a settlement agreement.”
 - i. As its response to Question 24(C), Jefferson Capital stated, “We only have two available. Other debt settlement arrangements would be under the Payment Arrangement Confirmation letter if the settlement agreement was >1 payment.” Jefferson Capital submitted only two letters and one was dated January 7, 2013. Neither of the letters identifies “the date on which the . . . agreement was *made . . .*”
 - j. By affidavit, dated May 31, 2013, Sue Unterberger, the compliance auditor for Jefferson Capital, swore that Jefferson Capital sent only one written confirmation of debt settlement agreement to a New York City consumer in 2011 and 2012.
 - k. Jefferson Capital violated 6 RCNY § 2-192(a) by failing to identify the date the debt settlement agreement was made in its written confirmation of debt settlement agreement sent to a New York City consumer.