

DEPARTMENT OF CONSUMER AFFAIRS  
CITY OF NEW YORK

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DEPARTMENT OF CONSUMER AFFAIRS, Complainant,  -against-  NCEP, LLC, Respondent.	CONSENT ORDER  Violation No.: 5349585  License No.: 1384258.
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1. On October 6, 2014, the Department issued a subpoena *duces tecum* to NCEP, LLC (“Respondent”) in the matter of an investigation into possible violations of the Consumer Protection Law and Rules, specifically, Sections 5-77(d) (14) and 5-77(e)(1) of Title 6 of the Rules of the City of New York (“6 R.C.N.Y.” or “the Rules”).
2. Respondent enters into this Consent Order with the Department of Consumer Affairs (“the Department”) to settle the above captioned matter and to avoid further investigation and litigation with regard to the investigation identified in Paragraph 1 for the period from December 1, 2012 to August 4, 2015.
3. Paul Libretta as General Counsel, represents and warrants that he is authorized to enter into this Consent Order on behalf of Respondent.
4. This Consent Order shall apply to Respondent, its directors, officers, employees, representative agents, assignees, and successors. For the purposes of this Consent Order, “employee” means any person employed for hire or permitted to work by Respondent 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.
5. Respondent 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 § 20-101 *et seq.* and 6 R.C.N.Y. 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**

6. 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.
7. Respondent 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.
8. 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(s) to the Department.

## **PAYDAY LOANS; USURIOUS LOANS**

9. 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.
10. "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. A "usurious loan" does not include loans or obligations with an interest rate specifically authorized by New York law or federal law.
11. Respondent shall implement policies and procedures corresponding to paragraph 9 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."
12. 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**

13. 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., if at any time a New York City consumer advises Respondent orally or in writing that he or she does not owe the debt, or requests verification or validation of the debt, Respondent shall promptly investigate the dispute or request, report the debt as disputed to any consumer

reporting agency to which it was previously reported, conduct and complete a reasonable investigation into the accuracy or completeness of the information for the debt, and cease all collection efforts unless or until Respondent provides the New York City consumer with the following in writing:

- i. Copies of the documents and information required by 6 RCNY § 2-190 and Admin. Code § 20-493.2(a);
  - ii. All of the information required by Admin Code § 20-493.1(a);
  - iii. The full name of the original merchant or service provider if different than the originating creditor;
  - iv. Last four digits of the original account number, or other sufficient information to verify the identity of the original account;
  - v. Date on which the debt was charged-off by the original creditor;
  - vi. The charge-off account statement, or equivalent document, issued by the original creditor to the consumer;
  - vii. For any debt that is beyond the applicable statute of limitations, the required statement set forth in 6 RCNY § 2-191(a) in the format required by 6 RCNY § 2-191(b);
  - viii. Records reflecting the amount and date of any prior settlement agreement reached with Midland in connection with the debt;
  - ix. Records reflecting the amount and date of any prior settlement agreement that was reached on or after March 3, 2015 with any prior debt collector for the debt; and
  - x. A statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer.
- a. If Respondent does not substantiate that the consumer owes the debt following a reasonable investigation, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, request deletion of that item of information from the consumer's credit reporting file and provide the consumer with a letter notifying the consumer that the credit reporting agencies were so requested. If Respondent does not complete its reasonable investigation within sixty (60) 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 as a result of its decision to permanently terminate collection efforts or if following a reasonable investigation, Respondent does not 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 or attempted 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 that the account be marked paid in full or settled in full.

### **COLLECTION OF PURCHASED DEBT**

14. 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. Respondent is not required to obtain this representation and warranty for debts that are part of a court-approved Chapter 13 bankruptcy repayment plan at the time of transfer. This paragraph 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**

15. Within thirty (30) days of execution of this Consent Order, Respondent 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 Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 5;
  - b. provide training, to officers and any 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 5;
  - c. provide periodic refresher training, to officers and any agent or employee having responsibility with respect to the collection of 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 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 5.

### **COMPLIANCE MONITORING AND REPORTING**

16. Respondent shall appoint Scott Loynd, 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: Director of Litigation and Compliance.

- a. The telephone number of such Compliance Officer is: [REDACTED]
  - b. The address of such Compliance Officer is: [REDACTED]
  - c. The email address of such Compliance Officer is: [REDACTED]
17. If the identity of such Compliance Officer changes at any time, Respondent shall provide to the Department the name, title, telephone number, address, and email address of the replacing Compliance Officer within fourteen (14) days of such change.
  18. 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.
  19. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
  20. 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.
  21. 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.
  22. 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.
  23. 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, 9<sup>th</sup> Floor  
New York, NY 10004

Re: 2015 Consent Order

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

24. 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**

25. 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.
26. Upon a finding, after notice and hearing that Respondent has breached this Consent Order, Respondent shall pay one thousand dollars (\$1,000) as well as the Department's costs for investigation and litigation.
27. Upon a finding, after notice and hearing, that Respondent has committed violations of 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.
28. 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.

#### **RELIEF TO CONSUMERS; PAYMENTS AND OTHER TERMS AND CONDITIONS**

29. Respondent reviewed its records and identified payday loan accounts of which the borrower was a New York City consumer at the time Respondent attempted to collect on the account ("NYC Payday Loan Accounts"). Respondent identified nine NYC Payday Loan Accounts from which Respondent, through four consumer debt collection agencies, collected \$3,405.73 (the "Refund Eligible Consumers").

30. Upon execution of this Consent Order, Respondent shall pay \$3,405.73 to be held by the Department in a consumer restitution fund and distributed by the Department to the Refund Eligible Consumers.
31. Any excess restitution shall revert to the Department one year from the date of execution of this Consent Order.
32. In addition to the consumer restitution fund, Respondent shall pay \$40,000 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: Emily L. Anderson, 42 Broadway, 9th Floor, New York, New York 10004.
33. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

#### **WAIVER OF APPEALS**

34. 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**

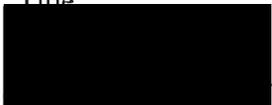
35. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.
36. This Consent Order constitutes a complete settlement and release of all claims against Respondent and the four consumer debt collection agencies identified by Respondent that collected or attempted to collect on the NYC Payday Loan Accounts on behalf of Respondent, arising from or related to the NYC Payday Loan Accounts. This Consent Order does not limit the Department's ability to bring charges for other violations.
37. This Consent Order is not to be construed as an admission of liability on the part of Respondent. Respondent has not admitted that it has engaged in conduct that violated any law or regulation.
38. 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 for the in the "Agreement Dated" field below.

39. 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 of New York, by:

Paul Libretta  
Print Name  
General Counsel  
Title  
  
Signature  
10/26/15  
Date

  
Print Name  
Staff Attorney  
Title  
  
Signature  
11/2/15  
Date

Agreement Dated: 11/2/15

**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, 1st 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).**