

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
FINANCIAL FRAUDS AND CONSUMER PROTECTION DIVISION

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In the Matter of:

SELLING SOURCE, LLC et al.

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CONSENT ORDER

WHEREAS the New York State Department of Financial Services (“the Department”) commenced an investigation, pursuant to Section 404 of the Financial Services Law, of SELLING SOURCE, LLC (“Selling Source”¹) and its use of a celebrity endorser, Mr. Montel Williams (“Mr. Williams”)² (the “Investigation”);

WHEREAS the Department investigated whether Respondents made misrepresentations in violation of Section 408 of the Financial Services Law in connection with Selling Source’s payday loan lead generation business;

WHEREAS the Investigation concluded that Respondents made inaccurate representations to New York consumers and others as to the trustworthiness of Selling Source’s network of payday lenders and the legality of loans offered and made to New York consumers;

WHEREAS this Consent Order contains the Department’s findings and the relief agreed to by the Department and Selling Source and Mr. Williams; and

¹ Hereinafter, “Selling Source” refers to Selling Source, LLC and all of its subsidiaries, including but not limited to Partner Weekly, LLC; MoneyMutual, LLC; DataX LTD, LLC; Credit Loan, LLC; and 19 Communications, LLC, aka LeadRev, Inc., not all of which have been involved in offering payday and other short-term loans to New York consumers.

² Hereinafter, “Respondents” refers collectively to Selling Source (as defined in note 1) as well as Mr. Williams.

WHEREAS Mr. Williams has represented to the Department that he does not wish to be associated with advertising or provide endorsements for loan products that do not comply with New York law;

NOW, THEREFORE, the Department and Selling Source and Mr. Williams are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department's Investigation are as follows:

Relevant Entities

1. Selling Source, LLC is a Delaware limited liability company; its principal offices are at 325 East Warm Springs Road, Las Vegas, Nevada. Among other business activities, Selling Source operates a payday and other short-term lending lead generation business through a number of wholly-owned subsidiaries, principally MoneyMutual, LLC ("MoneyMutual"), Partner Weekly, LLC ("Partner Weekly"), and Credit Loan, LLC ("Credit Loan").

2. MoneyMutual is a Nevada limited liability company and acts primarily as a holding company for the MoneyMutual brand, including www.MoneyMutual.com. Until late 2013, MoneyMutual advertised payday loans and other short-term lending products online to New York consumers through www.MoneyMutual.com and other websites that it owns. The MoneyMutual brand was launched by Partner Weekly in 2009.

3. Partner Weekly, a Nevada limited liability company, is Selling Source's primary operating subsidiary in connection with payday loans and other short-term lending products, and acts as Selling Source's agent in running www.MoneyMutual.com. Through

www.MoneyMutual.com, www.CreditLoan.com³, Partner Weekly websites, and its affiliate marketing network, Partner Weekly collects leads for payday loans and other short-term loans, including installment loans, and sells such leads to Selling Source's network of at least 60 payday or other short-term consumer lenders.

4. Through these subsidiaries and otherwise, Selling Source solicits consumers for its network of payday lenders, and then sells certain personal and financial information provided by consumers after they express interest in obtaining a payday or other short-term loan (the "leads"). Selling Source offers these leads for sale to payday lenders. Once a lead is sold to a payday lender within its network, Selling Source redirects the consumer to that lender, who may offer the consumer a payday loan. The Department has found that these loans were made at annual percentage rates well above the limits established under New York law. Selling Source has represented to the Department that it is not a lender and is not affiliated with any lender other than as a contract partner.

5. London Bay Capital, LLC is a private equity company that acquired Selling Source in late 2007. London Bay Capital, LLC is the controlling member of London Bay-TSS Holding Company, LLC; London Bay-TSS Holding Company, LLC is the controlling member of London Bay-TSS Acquisition Company, LLC⁴; and London Bay-TSS Acquisition Company, LLC is the controlling member of Selling Source. Selling Source has represented to the Department that the London Bay Entities were not involved in the day-to-day operations of Selling Source's payday lead generation business, although they did provide strategic advice on very large matters such as new markets.

³ Credit Loan is another subsidiary of Selling Source, LLC acquired in 2011 that collects leads for payday and other short-term loan products through its website www.CreditLoan.com and sells these leads to Partner Weekly.

⁴ London Bay Capital, LLC, London Bay-TSS Holding Company, LLC, and London Bay-TSS Acquisition Company, LLC shall be referred to collectively as the "London Bay Entities."

6. Mr. Williams is a well-known public media personality and celebrity endorser residing in New York, New York. Since September 2009, Mr. Williams has endorsed Selling Source, its short-term loan lead generation services, and particularly its MoneyMutual brand. Mr. Williams and Selling Source have represented to the Department that Mr. Williams has no role in the day-to-day business operations of Selling Source or MoneyMutual other than as a promoter and endorser of their products and services.

Background

7. Selling Source began advertising its MoneyMutual payday lending network to consumers in New York and across the nation in September 2009 via television, radio, print, and online advertisements (including website, email, and banner advertisements), as well as direct-to-consumer mailings. In addition, since 2011, Selling Source has advertised payday and other short-term loans, including installment loans, to consumers in New York and across the nation via the website www.CreditLoan.com.

8. From September 2009 through November 2013, Selling Source collected and then sold to its network of at least sixty payday lenders more than 800,000 New York consumer leads.

9. Each lender in Selling Source's network paid Selling Source a fee for every lead that it purchased. In turn, Selling Source paid its endorser, Mr. Williams, a fixed fee for every lead that it sold through the MoneyMutual brand. Through this arrangement, Selling Source and Mr. Williams facilitated Selling Source's network of at least sixty lenders to make payday loans available to New York consumers.

10. Mr. Williams's likeness and express endorsement feature prominently in MoneyMutual television, radio, print, and online marketing, which emphasize Mr. Williams's desire to "to help [people] live better physically, spiritually, financially, and emotionally," and

present “MoneyMutual’s online lending network [a]s the only source you can trust for finding a short term loan quickly and easily.”

11. Selling Source and its MoneyMutual brand relied on Mr. Williams’s endorsement activity to promote its services successfully; since 2009 Selling Source has generated millions of leads nationally.

12. New York General Obligations Law Section 5-501 and New York Banking Law Section 14-a prohibit consumer loans under \$250,000 made by nonbank lenders with an interest rate exceeding sixteen percent per annum. And New York Banking Law Section 340 also prohibits unlicensed, nonbank lenders from soliciting and making consumer loans of less than \$25,000 with interest rates exceeding sixteen percent per annum.

13. As Selling Source now acknowledges on its MoneyMutual website, “the typical representative APR range” for the loans advertised on its website is “somewhere between 261% and 1304% for a 14 day loan.” To the extent they fell within this “typical representative APR range,” the rates on the loans offered by lenders purchasing leads from Selling Source — including the 800,000 New York consumer leads that Selling Source sold — were *sixteen to eighty-two times* the legal limit in New York.

14. Selling Source did not sufficiently warn New York consumers that the lenders to which it would connect them might offer them loans that violate the usury laws of New York. And the Department has not found evidence of a single loan offered to a New York consumer by any lender within Selling Source’s network of over sixty lenders that complied with the usury limits established by New York law.

15. Selling Source was capable of filtering the consumer information it received by the state of each consumer. Nevertheless, Selling Source continued to accept leads from New York consumers and sell such leads to its network of payday lenders.

16. On November 25, 2013, the Department issued documentary and testimonial subpoenas to Selling Source and Mr. Williams, and informed them it was investigating whether Selling Source had been offering or selling products or services or using Mr. Williams's endorsement in violation of New York law.

17. On November 27, 2013, Selling Source ceased selling the financial information of New York consumers to its network of payday lenders, including through its websites www.MoneyMutual.com and www.CreditLoan.com.

Representations with respect to Financial Products or Services

18. Selling Source advertised its MoneyMutual lead generation service to New York consumers as a service "to help people who are in dire financial conditions," and urged that "MoneyMutual's online lending network is the only source you can trust for finding a short term cash loan quickly and easily." Mr. Williams was featured as a celebrity endorser in these advertisements.

19. Selling Source also advertised to New York consumers that MoneyMutual would connect them to lenders providing "emergency" financing that would allow them to "avoid late fees" and other charges when faced with situations of unexpected or extraordinary need.

20. Aware of Mr. Williams's reputation for trustworthy, sound judgment and advice, Selling Source media and sales representatives at times assured New York consumers that the lenders to whom it was selling leads were legitimate because "Montel Williams has endorsed MoneyMutual and would not do so if it were not a legitimate company."

21. During this time, however, Respondents received or became aware of numerous complaints from aggrieved New York consumers struggling under the rates, fees, and repayment schedules demanded by MoneyMutual's network of lenders.

22. Selling Source did not sufficiently warn consumers that the interest rates, charges, and repayment schedules offered by its “network of trusted lenders” often prevented consumers from being able to repay those loans on a timely basis, and caused them to roll over their loans or take out additional loans to pay off prior loans. Indeed, a former Selling Source CEO noted at least “55% of the people that come into MoneyMutual are ‘repeat clients,’” that its lender clients reported a “60 to 70%” repeat borrower rate, and that special targeting of repeat, “Gold” customers could generate additional revenue for Selling Source if those customers took out additional loans to pay off prior loans.

23. In other words, the Department’s Investigation found that Selling Source advertised and referred New York consumers to lenders making loans purportedly suitable for emergency, one-time, affordable and efficient use when those loans in fact contained terms that often led consumers to roll over their debt and obtain additional high-interest loans to pay off their prior loans.

Violations

24. The Department finds that Selling Source violated New York Financial Services Law Section 408 by engaging in the foregoing acts and practices.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Selling Source, Mr. Williams, and their subsidiaries, affiliates, successors, assigns, agents, representatives, and employees, that:

I. Civil Penalty

1. Selling Source shall pay a civil penalty of TWO MILLION, ONE HUNDRED THOUSAND DOLLARS (**\$2,100,000**) to the Department as follows:
2. No later than December 31, 2015, Selling Source shall send \$700,000 by wire transfer in accordance with the Department's instructions.
3. No later than December 31, 2016, Selling Source shall send a second payment of \$700,000 in accordance with the Department's instructions.
4. No later than December 31, 2017, Selling Source shall send a third payment of \$700,000 in accordance with the Department's instructions.
5. The Department's agreement to impose a civil penalty in the amount and on the payment schedule set forth herein is predicated on Selling Source's financial condition, as represented and affirmed by Selling Source and as supported by its submission of its financial statements for 2014 and preceding years, which have been audited by Grant Thornton LLP.
6. To the extent that Selling Source's "revenue," "gross profit," *or* "payroll and other employee benefits" as reported in its Consolidated Statement of Operations for 2015, 2016, or 2017 increase by fifty percent or greater from the amounts reported in its Consolidated Statement of Operations for 2014, all remaining amounts due under this Consent Order shall accelerate and become due within the second business quarter succeeding finalization of such statement. Selling Source shall not alter the accounting methods by which it has calculated the aforementioned categories in order to affect the obligations set forth herein, and shall submit its

complete audited financial statements to the Department until all payments required under this Consent Order have been made in accordance herewith.

7. Neither Selling Source nor any of its subsidiaries or affiliates shall, collectively or individually, seek or accept from any non-Respondent reimbursement or indemnification with regard to any or all of the amounts payable pursuant to this Consent Order, including, but not limited to, payment made pursuant to any insurance policy.

8. Selling Source agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil penalty paid pursuant to this Consent Order.

II. Remedial Reforms

9. Selling Source agrees that none of the endorsements it has procured for MoneyMutual shall apply henceforth to New York consumers. Mr. Williams agrees that his endorsement of MoneyMutual no longer extends to New York consumers. Further, as Mr. Williams has represented to the Department that he believes that products and services he endorses should be compliant with New York law, he agrees that he will not make any other endorsement of payday or other short-term loan products or services — including installment loans — that extends to New York consumers, for any company or entity whether or not affiliated with Selling Source, unless such loan products and services comply with New York law and the advertising therefor is consistent with the protections set forth in this Consent Order.

10. As may be applicable to each of them, Selling Source and Mr. Williams agree not to purchase, distribute, promote or otherwise cause to exist any New York State-specific advertisements, endorsements or other promotional materials for any lead generation or other financial service or product whose terms would violate any New York law, including the New York Banking, General Obligations, and Financial Services Laws. Selling Source shall also

make every commercially reasonable effort to ensure that nationwide and regional advertising media for the same categories of products or services — including but not limited to all media from or regarding MoneyMutual and Credit Loan — be excluded from New York, including by removing New York postal codes, IP addresses, and phone numbers from consumer mailing, email, and call lists, and online and mobile targeted advertising. In addition, Mr. Williams agrees to cooperate with the Department by taking all commercially reasonable steps to ensure that Selling Source and its affiliates comply with these and all other terms of this Consent Order.

11. Subject to the full compliance of Selling Source and Mr. Williams with this Consent Order, nothing in this Consent Order shall prevent Selling Source and Mr. Williams from continuing to engage in national television, radio, and internet advertising.

12. Selling Source will not collect any financial or other personally identifiable information from any New York consumer for the purpose of offering, selling, selling leads for, or otherwise referring consumers to financial products or services unless the financial products or services being offered or sold comply with New York law. Nor shall Selling Source sell any financial or other personally identifiable information of any New York consumer for the purpose of offering, selling, selling leads for, or otherwise referring consumers to financial products or services unless the financial products or services being offered or sold comply with New York law. To this end, within ninety (90) days of the Effective Date, Selling Source will, on www.MoneyMutual.com, www.CreditLoan.com, and any other website it owns or operates:

- a. Require all consumers to enter a zip code before their information may be saved, stored, or included as a lead in any transaction.
- b. Contain on the landing and/or homepage a clear and conspicuous requirement that consumers enter their zip code before any other personal or financial information is solicited or accepted from any consumer. For purposes of this

Consent Order, the term “clearly and conspicuously” or “clear and conspicuous” means that the statement, representation or term being disclosed is of such size, color, contrast, and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation, or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable (*i.e.*, no click-through required to access it), and shall be presented prior to the consumer incurring any financial obligation.

- c. Disable the website from accepting any applications from or storing information submitted by applicants who enter a New York zip code in the relevant address field(s) of any of the landing page, home page, or portions of any website in which a zip code is requested or required.
- d. Redirect any consumer who has entered a New York zip code by linking them to the following Department URL:

<http://www.dfs.ny.gov/consumer/dangerousloans.htm>.

13. Selling Source agrees that, within ninety (90) days of the Effective Date, all written advertisements, endorsements, and other promotional materials for payday or other short-term loans, including installment loans, in whatever medium presented, shall clearly and conspicuously state: **“This service is not available in New York or to New York borrowers due to interest rate limits under New York law.”**

14. Selling Source agrees that, within ninety (90) days of the Effective Date, all recorded or spoken or otherwise audible advertisements, endorsements, and other promotional materials for or concerning payday or other short-term loans, including installment loans, will include a clear and conspicuous audio overlay of the language stated in Paragraph II(13) and that such language will be recorded at a speed and volume equal to the slowest words per minute and loudest volume of any other portion of the advertisement or endorsement.

15. Mr. Williams agrees that, within ninety (90) days of the Effective Date, he will confirm and ensure that all recorded or spoken or otherwise audible advertisements, endorsements, and other promotional materials that he records for or concerning Selling Source shall include a clear and conspicuous audio overlay recording by him of the language stated in Paragraph II(13) and that such language will be recorded at a speed and volume equal to the slowest words per minute and loudest volume of any other portion of the advertisement or endorsement.

16. Within ninety (90) days of the Effective Date, Mr. Williams shall confirm and ensure that Selling Source does not use any endorsement of his unless the disclaimer language set forth in Paragraph II(13) is stated clearly and conspicuously with it.

17. Within fifteen (15) business days of the Effective Date, Selling Source shall amend all relevant contracts, including contracts with third parties, to reflect the provisions of Section II of the Consent Order. Within fifteen (15) business days of the Effective Date, Selling Source and Mr. Williams shall amend all relevant contracts as between them to reflect the provisions of Section II of the Consent Order.

18. On August 1, 2015, Selling Source shall produce to the Department representative copies of all advertisements (including, but not limited to, magazine and newspaper advertisements and advertisements available on or distributed over the Internet, videotapes, radio

and television broadcast scripts, handbooks, guidebooks, and website materials, including all click-through materials) published or aired from the Effective Date of this Consent Order through July 1, 2015. On each successive first day of August for the years 2016 and 2017, Selling Source shall produce to the Department all such advertisements published or aired between July 2 of the preceding year and July 1 of that year so as to ensure that the Department receives representative copies of all advertisements published or aired by Selling Source between the Effective Date of this Consent Order and July 1, 2017. Thereafter, Selling Source shall produce representative copies of advertisements upon the Department's request.

III. Other Relief

19. Selling Source and Mr. Williams admit to the authority of the Department to effectuate this Consent Order. Selling Source will cease and desist from engaging in any acts in violation of the Banking Law, General Obligations Law, or Financial Services Law and will comply with those and every other applicable New York law.

IV. Breach of the Consent Order

20. In the event that the Department believes Selling Source and/or Mr. Williams to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice to Selling Source and/or Mr. Williams as the case may be and either or both must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and shall have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

21. The Parties understand and agree that failure to appear before the Department to make the required demonstration within the specified period as set forth in Paragraph IV(20) of

this Consent Order is presumptive evidence of a Breach thereof. Upon a finding of Breach, the Department has all the remedies available to it under New York law and may use any and all evidence available to it in connection with all ensuing hearings, notices, orders and other remedies that are available.

V. Other Provisions

22. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law.

23. Respondents will submit to the Department annual affidavits of compliance with the terms of this Consent Order for a period of three years commencing annually from the Effective Date of this Consent Order, except that Selling Source's affidavits shall accompany the payments specified in Paragraphs I(1)–(6).

24. If Selling Source defaults on its monetary obligations under this Consent Order, the Department may terminate this Consent Order, at its sole discretion, upon ten (10) days' written notice. In the event of such termination, Selling Source expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against Selling Source or Mr. Williams, or from using in any way statements, documents or other materials produced or provided by Selling Source or Mr. Williams prior to or after the date of this Consent Order including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations.

25. The Department has agreed to the terms of this Consent Order based on, among other things, the representations made to the Department by Respondents — either directly or through their counsel — and the Department's own factual Investigation. To the extent that

representations made by Respondents — either directly or through their counsel — are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

26. Upon the request of the Department, Selling Source and Mr. Williams shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized. Respondents shall not take any action or make any statement denying — directly or indirectly — the propriety of this Consent Order or expressing the view that this Consent Order is without factual basis. Nothing in this paragraph affects Respondents' (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Department is not a party.

27. All notices, reports, requests, and other communications to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York Department of Financial Services
One State Street, New York, New York 10004-1511
Attention: Adam P. Schleifer, Special Associate Counsel

If to Selling Source:

Glenn McKay, CEO; Brad Norton, General Counsel
325 East Warm Springs Road, Suite 200, Las Vegas, NV 89119

If to Mr. Williams:

Michael B. Miller; David Fioccola
Morrison & Foerster, LLP, 250 West 55th Street, New York, NY 10019
and
Nina L. Shaw
Del Shaw Moonves Tanaka Finkelstein & Lezcano
2120 Colorado Avenue, Suite 200, Santa Monica, CA 90404

28. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

29. Selling Source and Mr. Williams waive all rights to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date of this Consent Order and agree that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.

30. This Consent Order may not be amended except by an instrument in writing signed on behalf of all the parties to this Consent Order.

31. This Consent Order constitutes the entire agreement between the Department and Selling Source and Mr. Williams and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Consent Order. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

32. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

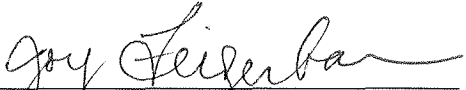
33. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services or his designee (the "Effective Date").

34. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as to and against Selling Source as defined at note 1 and Mr. Williams solely with respect to the practices and the misrepresentations set forth herein through the Effective Date of this Consent Order. No further action will be taken by the Department against them for the conduct set forth in this Consent Order provided they comply with the terms

of the Consent Order. This Consent Order does not discontinue any investigation with respect to any other individual or entity.


WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

DEPARTMENT OF FINANCIAL SERVICES

By: 
JOY FEIGENBAUM
Executive Deputy Superintendent
Financial Frauds and Consumer Protection

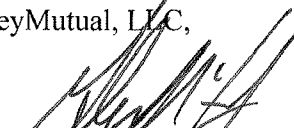
March 9, 2015

Selling Source, LLC on behalf of itself and all of its subsidiaries,

By: 
Glenn McKay, CEO


March 9, 2015

MoneyMutual, LLC,

By: 
Glenn McKay, for Selling Source, LLC, Mgr.


March 9, 2015

Partner Weekly, LLC,

By: 
Glenn McKay, CEO

March 9, 2015

Montel Williams.

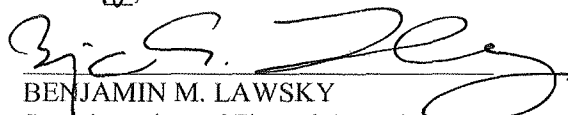
By: 
Montel Williams

March 9, 2015

THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.

Dated: New York, NY

March 10, 2015


BENJAMIN M. LAWSKY
Superintendent of Financial Services