

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of:

TOTAL ACCOUNT RECOVERY, LLC and

E-FINANCE CALL CENTER SUPPORT, LLC

Respondents.

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CONSENT ORDER

WHEREAS the Superintendent of Financial Services of the State of New York (the "Superintendent") commenced an investigation, pursuant to Section 404 of the Financial Services Law, of TOTAL ACCOUNT RECOVERY, LLC and E-FINANCE CALL CENTER SUPPORT, LLC ("TAR" and "E-Finance" or collectively "Respondents") covering the period 2011 through 2014 (the "Investigation Period");

WHEREAS the New York State Department of Financial Services (the "Department" or "DFS") investigated whether TAR attempted to collect and did collect on void and unenforceable usurious payday loan debts and whether E-Finance serviced void and unenforceable usurious payday loan debts (the "Investigation");

WHEREAS the Investigation concluded that TAR attempted to collect and did collect on thousands of unenforceable and void payday loan debts of New York consumers in violation of the federal Fair Debt Collection Practices Act, 15 USC §§ 1692(f)(1), 1692(e)(2), and the New York Debt Collection Procedures Law, New York General Business Law § 601(2);

WHEREAS the Investigation concluded that E-Finance serviced thousands of unenforceable and void payday loan accounts belonging to New York consumers in violation of New York Financial Services Law § 408;

NOW, THEREFORE, the Department and Respondents 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:

Background

1. "Total Recovery Solutions LLC" ("TRSLLC") was a Missouri limited liability corporation formed on January 14, 2011. TRSLLC formed as a Delaware limited liability company on April 26, 2013 and terminated as a Missouri company on September 24, 2013. The name of the Delaware company became Total Account Recovery, LLC (again, "TAR") on September 26, 2013.
2. TAR f/k/a TRSLLC registered with the New York Secretary of State on March 25, 2011.
3. TRSLLC and TAR's business activity consisted of the collection of consumer debt for a fee of approximately 30 percent of the amount collected on behalf of certain lenders. TAR's portfolio consisted of debts resulting from payday loans with interest rates substantially in excess of New York's civil and criminal usury caps of 16 percent and 25 percent respectively.
4. E-Finance Call Center Support, LLC ("E-Finance") is a limited liability company formed in Missouri on March 21, 2012 and changed to a Delaware corporation on April 26, 2013. E-Finance terminated as a Missouri company on February 15, 2014.

5. E-Finance operated as a call center that received a monthly flat fee from payday lenders of approximately \$1,000 for servicing payday loan accounts as well as a fee per inbound telephone call received from consumers. In servicing payday loan accounts, E-Finance contacted borrowers when they were late in making payments on their loans, directed them concerning how to make payments, collected payments, and negotiated payment arrangements with borrowers.

6. With regard to payday loan accounts that went into default, E-Finance informed consumers that the accounts would be transferred to TAR, which then assumed responsibility for collecting on the defaulted debt.

7. Between 2012 and 2014, E-Finance serviced payday loan accounts on behalf of at least 11 online payday lenders.

8. E-Finance has represented to the Department that it did not at any point during the Investigation Period act as a third-party debt collector of defaulted payday loan debt of New York consumers.

9. Respondents have represented to the Department that because neither TAR nor E-Finance acted as a lender or controlled any payday loans that it collected on, attempted to collect on, or serviced, neither Respondent reported to any credit reporting bureau information relating to the payday loan accounts of New York consumers that it collected on, attempted to collect on, or serviced during the Investigation Period. Respondents have further represented to the Department that, to their knowledge, the payday lenders on whose behalves they collected or attempted to collect loan payments of New York consumers, or serviced payday loan accounts of New York consumers, did not report to any credit reporting bureau information relating to those accounts.

10. Respondents shared some common ownership during portions of the Investigation Period.

11. During the Investigation Period, TAR collected payments made on thousands of usurious payday loan accounts of New York consumers. TAR has represented to the Department that on or about July 2014, it ceased collecting payday loan debts of New York consumers. TAR has further represented that since on or about July 2014 it has not sent any communications to New York consumers regarding their loan accounts and believes the loans have been written off. Thousands of New York consumers, however, may believe that there continue to be outstanding balances on their payday loan accounts previously collected on by TAR.

12. During the Investigation Period, E-Finance serviced thousands of payday loan accounts of New York consumers, totaling millions of dollars. E-Finance has represented to the Department that on or about July 2014, it ceased servicing payday loan debts of New York consumers. E-Finance has further represented that since on or about July 2014 it has not sent any communications to New York consumers regarding their loan accounts.

13. Respondents have represented to the Department that on or about December 31, 2015, they ceased all their operations relating to payday loan servicing and payday loan debt collection.

14. In complaints filed with DFS, New York consumers alleged that TAR harassed them in seeking to collect on illegal payday loan debts, and repeatedly called them at home and at work.

15. In complaints filed with DFS, New York consumers alleged that E-Finance harassed them in seeking to obtain payments on illegal payday loan debts, and repeatedly called them, left messages, and sent emails to pressure them to pay their alleged payday loan debts.

Collecting and Attempting to Collect on Void and Unenforceable Loans

16. The Fair Debt Collection Practices Act, 15 USC § 1692, prohibits the collection of any consumer debt that is not permitted by law. It also prohibits false and misleading representations in connection with the collection of a consumer debt, including falsely misrepresenting the legal status of a debt.

17. The New York Debt Collection Procedures Law, N.Y. Gen. Bus. Law § 601(2), prohibits debt collectors from knowingly collecting, attempting to collect, or asserting a right to any collection fee, attorney's fee, court cost or expense unless such charges are justly due and legally chargeable against the debtor.

18. Pursuant to New York General Obligations Law § 5-501 and New York Banking Law § 14-a, New York State's usury limit is generally 16 percent per annum.

19. Non-bank lenders are prohibited from making loans with interest rates exceeding 25 percent per annum with exceptions not applicable here (e.g., except for a loan in the amount of \$2,500,000 or more). Neither Respondent nor any of either's affiliates have ever held or sought a license from the Department.

20. With exceptions not applicable here, any loan charging a rate in excess of 25 percent per annum constitutes criminal usury under New York Penal Law §§ 190.40 and 190.42.

21. Subject to narrow exceptions, under General Obligations Law § 5-511, usurious loans offered in New York by non-bank lenders with interest rates above the statutory maximum are void and unenforceable.

22. On February 22, 2013, the Department published a guidance letter to all debt collectors operating in New York reminding them that usurious loans, including payday loans, are void and unenforceable, and that attempts to collect on debts that are void or unenforceable

violate state and federal law. Nevertheless, TAR collected on usurious payday loans from New York consumers for more than one year after the issuance of DFS's guidance letter. During the Investigation Period, TAR attempted to collect on 20,263 usurious payday loan debts of at least 16,462 New York consumers that were void and unenforceable, and collected on 2,119 of those accounts.

Making Intentional Misrepresentations with Respect to a Financial Product or Service

23. New York Financial Services Law § 408 prohibits any intentional fraud or intentional misrepresentation of a material fact with respect to a financial product or service.

24. E-Finance misrepresented to New York consumers the legal status of usurious payday loans in its servicing activities, which included notifications that payments were due on such loans, and attempts to collect delinquent payments on void, unenforceable payday loans.

25. Since 2009, E-Finance serviced 26,116 payday loan accounts of New York consumers.

Violations

26. By reason of the foregoing, the Department finds that TAR violated 15 USC §§ 1692f(1), 1692e(2) and N.Y. Gen. Bus. Law § 601(2) and that E-Finance violated New York Financial Services Law § 408.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents, and all their subsidiaries, affiliates, successors, assigns, agents, representatives and employees, that:

Injunctive Relief

27. TAR shall immediately fully and finally release and discharge all outstanding indebtedness of all payday loan accounts of New York State consumers collected on by TAR during the Investigation Period, totaling at least \$11,813,745 in outstanding debts. In fact, the total amount released and discharged is likely to be in excess of \$11,813,745, but is not quantifiable due to record-keeping deficiencies by Respondents.

28. For all accounts of usurious payday loan debts allegedly owed by New York consumers and held by Respondents during the Investigation Period:

- a. Respondents shall neither sell nor assign such accounts;
- b. Notwithstanding Paragraph 9, in the event that either Respondent becomes aware of, or is informed by any New York consumer that negative information was reported to any credit reporting bureau relating to the payday loan accounts of any New York consumer, Respondents shall identify all New York payday loan accounts affected and within twenty (20) days of discovery or receiving notification of any such reporting, write to any relevant credit reporting bureau and request that it remove all negative information Respondents and/or its employees, agents or representatives provided to the bureau concerning any such accounts to the extent such information remains on the consumers' credit reports;
- c. Respondents shall within thirty (30) days of the Effective Date of this Consent Order ("Effective Date") move to vacate any judgments that they obtained on such accounts; and,
- d. Respondents shall within thirty (30) days of the Effective Date direct the release of any pending garnishments, levies, liens, restraining notices, or attachments relating to any judgments on such accounts.

29. Respondents shall not engage in any acts in violation of federal or New York State debt collection laws, including, but not limited to, the collection of usurious payday loan debts in New York State. Moreover, although both Respondents have represented to the Department that they have ceased all operations relating to payday loan servicing and payday loan debt collection, in the event Respondents in the future resume operations relating to payday loan servicing and/or payday loan debt collection or any other operations relating to providing, servicing, attempting to collect on, or collecting on debt that violates any provision of New York or federal law, Respondents shall not offer or conduct any such services with respect to New York consumers.

30. If Respondents receive payment on a payday loan debt from a New York consumer after the Effective Date of this Consent Order, Respondents shall return the payment to the consumer and include the completed notice letter in Appendix A.

Notice

31. Within fourteen (14) days of the Effective Date, Respondents shall provide the Department a list of all New York consumers whose debts have been discharged and the amounts discharged pursuant to Paragraph 27 above.

32. A third party administrator ("TPA") selected by the Department and retained by Respondents will complete the following: (1) execute the mailing of the completed notice letter in Appendix A to all affected New York consumers including the 16,462 identified in the list referenced in Paragraph 31 to be completed no later than November 6, 2017; (2) as to affected New York consumers for whom an initial notice letter is returned to the TPA as undeliverable, perform "skip tracing" services to attempt to locate the updated current addresses of those New York consumers; (3) execute the mailing of second completed notice letters to affected New

York consumers whose initial notice letter was returned to the TPA as undeliverable and for whom an updated address has been identified.

33. When a notice letter is returned to the TPA after the second mailing described in Paragraph 32, there will be no further obligation to continue to locate the New York consumer for whom a notice letter has been returned twice. This does not alter any other obligation Respondents have under this Agreement. The TPA will provide to Respondents a list of New York consumers for whom a notice letter has been returned twice as undeliverable. If either Respondent is at any time contacted by a New York consumer who incurred a debt that either Respondent serviced, attempted to collect on, or collected on that did not receive the relief provided for in Paragraphs 27-28, or if either Respondent becomes aware of information that may allow it to reach a consumer that the TPA could not locate, Respondents shall immediately provide such relief to the New York consumer, or attempt to reach a consumer with the completed notice in Appendix A at Respondents' own cost, as the case may be.

34. One month after the TPA mails the first round of notice letters described in Paragraph 32, the TPA will provide the Department with a Report listing (i) the names and addresses of the New York consumers to whom the TPA has mailed notice letters; and (ii) the names and addresses of New York consumers for whom notice letters were returned as undeliverable. The TPA will submit a final Report to the Department containing updated information once the mailings of second notice letters described in Paragraph 32 are completed, no later than January 5, 2018.

35. All mailings to New York consumers shall be sent in an envelope with a clear and conspicuous¹ statement on the front of the envelope stating in bold, upper case letters:

¹ For purposes of this Consent Order, "clear and conspicuous" shall mean that the statement is of such size, color, and contrast and is so presented as to be readily noticed and understood by the person to whom it is being disclosed.

**"IMPORTANT INFORMATION ENCLOSED BASED ON A SETTLEMENT WITH
NEW YORK STATE".**

Civil Penalty

36. Respondents shall pay a civil penalty of FORTY-FIVE THOUSAND DOLLARS (\$45,000) to the Department upon execution of this Consent Order.

37. The payment set forth in Paragraph 36 shall be in the form of a wire transfer in accordance with the Department's instructions.

38. Respondents shall be responsible for paying up to FIFTEEN THOUSAND DOLLARS (\$15,000) for the costs of the TPA for the mailings, "skip tracing", and reporting described in Paragraph 32 and 34. The \$15,000 from Respondents shall be held in an Escrow Account with McLaughlin & Stern, a limited liability partnership organized under the laws of New York. To the extent the total cost of such services is less than \$15,000, any remaining funds shall be returned to Respondents only after all mailings, "skip tracing," and attempted mailings have been completed by the TPA. The Escrow Account will be administered by Daniel J. Horwitz, Esq.

39. Respondents have represented to the Department that due to diminished financial condition they are unable to make payment of monies beyond those set forth in Paragraphs 36 and 38 of this Agreement.

40. Respondents shall neither seek nor accept from any non-Respondent reimbursement or indemnification with regard to any portion of the civil penalty paid pursuant to this Consent Order, including, but not limited to, payment made pursuant to any insurance policy. Respondents agree that they 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.

Other Relief

41. Respondents submit to the authority of the Superintendent to effectuate this Consent Order. Respondents will cease and desist from engaging in any acts in violation of the New York Financial Services, Banking and General Obligations Laws and will comply with those and every other applicable New York law.

Breach of the Consent Order

42. If Respondents default on their obligation to pay the penalty in Paragraph 36 of this Consent Order, the Superintendent may terminate this Consent Order, in her sole discretion, upon five (5) business days' written notice. In the event of such termination, Respondents expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude the Superintendent from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against Respondents, or from using in any way statements, documents or other materials produced or provided by Respondents 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.

43. In the event that the Department believes either Respondent to be materially in breach of this Consent Order other than Respondents' obligation to pay the penalty in Paragraph 36 ("Breach"), the Department will provide written notice to that Respondent and that Respondent must, within ten (10) days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Superintendent, 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.

44. Respondents understand and agree that failure to appear before the Department to make the required demonstration within the specified period as set forth in Paragraph 43 of this Consent Order is presumptive evidence of a Breach thereof. Upon a finding of Breach, the Superintendent has all the rights and remedies available to her or him under New York law and may use any and all evidence available to the Superintendent in connection with all ensuing hearings, notices, orders and other remedies that are available.

Other Provisions

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

46. No agreement, settlement or release between either or both Respondents and any New York consumer or class shall preclude or in any way limit either Respondents' obligations under this Consent Order.

47. Respondents shall submit to the Department an affidavit of compliance with the terms of this Consent Order one year from the Effective Date of this Consent Order.

48. 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 either Respondent — either directly or through their counsel — are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Superintendent in her sole discretion.

49. Upon the request of the Department, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

50. 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.

51. 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 State Department of Financial Services
One State Street
New York, New York 10004-1511
Attn: Paula Sternberg, Assistant Counsel

If to Respondents:

McLaughlin & Stern
260 Madison Avenue
New York, NY 10016
Attn: Daniel J. Horwitz, Esq.

52. 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.

53. Respondents 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.

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

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

56. 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 her designee (the "Effective Date").

57. Upon execution by the parties to this Consent Order, the Department will discontinue the investigation as to and against Respondents solely with respect to the practices set forth herein through the Effective Date of this Consent Order. No further action will be taken by the Department against Respondents for the conduct set forth in this Consent Order provided Respondents comply with the terms of the Consent Order.

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


DEPARTMENT OF FINANCIAL SERVICES

By: 

NANCY RUSKIN
Deputy Director
Financial Frauds and Consumer Protection
Division

September 28, 2017

Total Account Recovery, LLC

By:  _____

Jeremy Schaffer

September 11, 2017

E-Finance Call Center Support, LLC

By:  _____

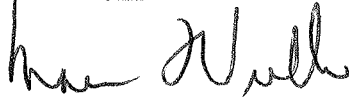
Joshua Mitchelm

September 11, 2017

THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.

Dated: New York, NY

September 11, 2017



MARIA T. VULLO
Superintendent of Financial Services

APPENDIX A
[TAR and E-Finance Letterhead]

[Date]

[Consumer's Address]

Dear [Consumer],

You are receiving this notice pursuant to a settlement reached between Total Account Recovery ("TAR"), E-Finance Call Center Support ("E-Finance"), and the New York State Department of Financial Services. The settlement concerns TAR's debt collection activity and E-Finance's loan servicing activity on accounts of New York State residents. Our records indicate that TAR had a collection account related to a payday loan debt you allegedly incurred: Account(s) [###]. E-Finance may have had an account relating to payday loan debt you allegedly incurred or may have been paying. We write to notify you that, pursuant to the settlement with the New York State Department of Financial Services:

- [If applicable] **TAR has forgiven your outstanding balance of [amount] and closed the collection account(s) in your name;**
- TAR will neither sell nor assign such account(s) in the future to other debt collectors;
- TAR will not attempt to collect on such account(s) either directly or indirectly in the future;
- TAR asserts that it did not report negative information to any credit reporting bureaus relating to its collection activity. However, if you believe TAR did in fact report any negative information to any credit reporting bureaus relating to your account or accounts, you may contact [X, *Title, at phone number, email*], identify yourself with your name and account number listed above, and request that pursuant to the terms of this settlement, TAR write to the bureau(s) and request that the bureau(s) delete any such information remaining on your credit report;
- If TAR has obtained any judgments against you regarding such account(s), TAR shall move to vacate that judgment against you by September 29, 2017; and,
- If TAR has any pending garnishments, levies, liens, restraining notices, or attachments relating to any judgments it obtained on such account(s), TAR shall move to release those holds by September 29, 2017;
- [If applicable] E-Finance has closed any account(s) in your name and will neither contact you again concerning your account(s) nor take any action relating to such account(s).

This settlement was obtained by the New York State Department of Financial Services. Nothing in the settlement prevents or limits you from pursuing any right or remedy at law you may have or requires you to release any rights. Your choice to participate in any class action or other settlement with TAR or E-Finance does not affect your rights and remedies under this settlement. For more information on TAR and E-Finance's settlement with the New York State Department of Financial Services, you may visit the Department's webpage on this settlement at [URL to be provided].

If you have any further issues regarding the collection account(s) described above, including any improper attempts to collect on this account, or if you have questions concerning this settlement, you can contact the New York State Department of Financial Services at 1-800-342-3736 and at TAREFinance-Settlement@dfs.ny.gov.

Sincerely,