

BEFORE THE ATTORNEY GENERAL AND
THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF:

DUVERA BILLING SERVICES, LLC DBA EASYPAY FINANCE.

Respondent.

THIS STIPULATION AND FINAL AGENCY ORDER is entered under C.R.S. § 5-6-109 and C.R.S. § 6-1-110 (“Stipulation” or “Order”) by the Attorney General for the State of Colorado (“Attorney General”) and the Administrator of the Uniform Consumer Credit Code (“Administrator”), C.R.S. § 5-1-101, *et seq.* (“UCCC”) (collectively, “Administrator”). The order is agreed and stipulated to by Respondent Duvera Billing Services, LLC dba EasyPay Finance (“Respondent” or “EasyPay”) to resolve the issues arising from Respondent’s alleged violations of the UCCC and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* (“CCPA”) described herein.

SECTION I

Findings of Facts and Conclusions of Law

1. The Attorney General is the Attorney General for the State of Colorado. C.R.S. § 24-31-101. The Administrator is the Administrator of the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.* The Administrator works on behalf of the Attorney General. The Attorney General is responsible for the enforcement of the CCPA. C.R.S. § 6-1-103.

2. Respondent EasyPay is a California company with a principal office located at 3220 Executive Ridge, Suite 200, Vista, California 92081.

3. EasyPay is a licensed supervised lender in Colorado.

4. The Administrator alleges that EasyPay makes loans to Colorado consumers under the Loan Program (“Loan Program” or “Program”) as described in this paragraph. Under the Program, TAB Bank, a Utah state-chartered bank (“TAB Bank”) is identified as the entity that originates loans to Colorado consumers and retains title of those loans. EasyPay purchases, without recourse, participation interests in the loan the first business day after the funding date for the loan.

5. The Program was launched in Colorado on November 9, 2016. TAB Bank funded the first Colorado loan on December 21, 2016.

6. Initially, EasyPay purchased from TAB Bank participation interests for ninety percent (90%) of the amount financed plus ninety percent (90%) of any accrued interest on any loans made to Colorado consumers. For purposes of this agreement, participation interests (“Participation Interests”) is defined as the undivided pro-rata interest, by percentage, of each loan owned by EasyPay and TAB Bank. On December 19, 2019, EasyPay entered an agreement with TAB Bank to reduce EasyPay’s Participation Interests to seventy-five percent (75%). EasyPay implemented the reduction to seventy-five percent (75%) on December 18, 2020.

7. Colorado served a subpoena (“Subpoena”) on EasyPay on May 26, 2021. EasyPay responded on July 21, 2021, and made supplemental productions on October 5, 2021, January 12, 2022, January 14, 2022, and January 21, 2022. In its responses, EasyPay identified 8,108 loans originated to Colorado consumers.

8. Under the Program, there was a ninety (90) day interest rebate promotion (“IRP”). If the Colorado consumers paid the loan balance in full within ninety (90) days, and there were no missed, late, or returned payments during that timeframe, then EasyPay would rebate all interest accrued on the loan except for a processing fee of up to \$40.

9. If the Colorado consumers did not take advantage of the IRP by paying off the loan within the 90-day window, the consumers would then owe all interest that accrued on the loan at interest rates ranging from 29% to 199%. Of the 8,108 loans identified by EasyPay, 6,286 had an Annual Percentage Rate (“APR”) of 100% or greater, and 4,476 had an APR of 168% or greater. Of these loans, 36% became more than sixty (60) days delinquent or the customer defaulted because they filed for bankruptcy.

10. C.R.S. § 5-2-201 provides:

(2) With respect to a supervised loan or a consumer credit sale, except for a loan or sale pursuant to a revolving account, a supervised lender or seller may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) The total of:

- (I) Thirty-six percent per year on that part of the unpaid balances of the amount financed that is one thousand dollars or less;
- (II) Twenty-one percent per year on that part of the unpaid balances of the amount financed that is more than one thousand dollars but does not exceed three thousand dollars; and

(III) Fifteen percent per year on that part of the unpaid balances of the amount financed that is more than three thousand dollars; or

(b) Twenty-one percent per year on the unpaid balances of the amount financed.

11. The Administrator alleges that EasyPay made loans under the Program that exceed the limits set forth in C.R.S. § 5-2-201, hereinafter (“Similar Claims”).

12. The CCPA protects Colorado consumers from unfair and deceptive trade practices. C.R.S. § 6-1-105(rrr). The Administrator alleges that EasyPay’s lending practices are unfair and deceptive trade practices that violate the CCPA.

13. EasyPay represents that, as of October 14, 2022, it stopped facilitating new loans in Colorado in collaboration with TAB Bank.

14. EasyPay maintains it does not make loans to Colorado consumers and instead solely facilitates, purchases the Participation Interests and services loans made by TAB Bank. For this reason, EasyPay denies that C.R.S. § 5-2-201 applies to loans made to Colorado consumers by TAB Bank under the Program.

SECTION II
Order

Pursuant to C.R.S. § 5-6-109, the Administrator hereby orders as follows:

Injunctive Terms

15. Respondent has performed a self-audit of all transactions with Colorado consumers that originated during the Applicable Period,¹ and identified all transactions with Colorado consumers potentially owed refunds of interest charged in excess of the rate cap in C.R.S. § 5-2-201. Additionally, Respondent has performed a self-audit identifying all Colorado consumers who had a loan that, as of February 28, 2023, was greater than sixty (60) days past due or who filed bankruptcy while TAB loan was in repayment. Respondent verifies that these self-audits are accurate and complete.

16. For each Colorado consumer identified in paragraph 15, Respondent will provide to the Administrator within thirty (30) business days of the Effective Date the following lists in a native Microsoft Excel format

¹ The Applicable Period means June 1, 2017, to October 14, 2022.

that Respondent will verify are true, accurate, and complete:

- a. a list of accounts identifying (i) the name, last known address, and last known contact information (e-mail address and phone number if available) for each consumer, and (ii) the amount of the interest paid by the consumer above 36% APR as of February 28, 2023.
- b. a list identifying the subset of accounts as to which consumers: (i) paid \$100 or more in interest above 36% APR, (ii) did not pay off their loan in full during the ninety (90) day IRP window, and (iii) have paid off their loan in full (this subset of accounts shall be referred to as the “Restitution Accounts”). **Exhibit A** hereto lists the Restitution Accounts and the amount of restitution each account shall receive.
- c. a list of Defaulted Accounts, defined here as a loan that is at least sixty (60) days past due as of February 28, 2023, and loans for those consumers who filed bankruptcy while TAB loan was in repayment, identifying (a) the name, last known address, and last known contact information for each consumer, and (b) the principal amount of debt outstanding owed on each account as of February 28, 2023, which list is attached hereto as **Exhibit B**.

17. Respondent agrees that it, together with its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, shall cease and desist from engaging in any lending, the facilitation of lending, the participation in a lending program, or any conduct described herein that violates the UCCC or the CCPA, and Respondent shall not engage in any lending, facilitation of lending, participation in a lending program, or commit any such conduct in violation of the UCCC or the CCPA in the future.

18. Respondent will maintain a supervised lender license (C.R.S. § 5-2-301) with Colorado for as long as it services existing loans with Colorado consumers but will reduce the APR on loans that are currently in repayment and no more than sixty (60) days past due as of the Effective Date to 36% (as calculated under the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f, and its implementing regulation, Regulation Z, 12 C.F.R. § 1026.22) as of the Effective Date, and comply with the Safe-Harbor Terms as set forth on **Exhibit C** hereto.

19. Respondent agrees not to collect, attempt to collect or assign any right to collect payment from loans listed on Exhibit B . Respondent shall not

sell, assign, or otherwise transfer the loans listed on Exhibit B or any interest therein.

20. Respondent shall, within forty-five (45) business days of the Effective Date of this Order, request that the tradelines for those loans listed on Exhibit B be deleted from the consumer's credit reporting file with any credit reporting agency where Respondent previously reported the debt.

21. Within forty-five (45) business days of the Effective Date of this Order, Respondent shall e-mail at the last known e-mail address each of the consumers listed on Exhibit B except for those consumers whose accounts have already been discharged in bankruptcy or are the subject of an open bankruptcy case, a written notice, in a form approved by the Administrator. If any e-mail is returned as undeliverable, or Respondent does not have an e-mail address for the Defaulted Consumer, it shall send the notice via first-class U.S. Mail. The notice will inform the Defaulted Consumer of the following:

- a. Respondent facilitated a loan to the consumer;
- b. Respondent has entered into an agreement with the Administrator (who works on behalf of the Colorado Attorney General) concerning this loan;
- c. Respondent has agreed not to collect or attempt to collect any additional payments on this loan;
- d. Respondent has agreed not to assign or transfer its right to collect payment on this loan;
- e. Respondent requested deletion of the tradeline for the loan if it had previously reported it to any credit reporting agency; the credit reporting agencies are not obligated to honor the request and EasyPay does not control the timing of any deletion;
- f. Respondent cannot provide any advice on the potential tax consequences of the prohibition on additional collection;
- g. Instructions to contact the Colorado Attorney General's Office and the Administrator for questions relating to the Order.

22. Within sixty (60) business days of the Effective Date, Respondent shall submit to the Administrator:

- a. A list of the loans that Respondent requested be deleted from credit reporting files; and

- b. Copies of each notice e-mail or mailed to the consumers pursuant to paragraph 21.

Restitution and Attorneys' Fees

23. Respondent shall pay pro rata refunds to the consumers for the Restitution Accounts identified by EasyPay in paragraph 16(b) and Exhibit A. This amount along with any interest is payable, in trust, to the Attorney General, to be used in the Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes. The Administrator and the Attorney General elect, in lieu of making the payment directly to the Attorney General in the first instance, to direct Respondent to refund to Colorado consumers, on behalf of the Administrator and the Attorney General, any refunds owed to Colorado consumers as outlined above. To the extent that Respondent is unable to locate any Colorado consumers entitled to a refund or to otherwise pay a refund to a Colorado consumer such unpaid refunds shall be paid to the Administrator in accordance with paragraph 27 below.

24. Respondent shall attempt to make any refunds due hereunder within sixty (60) business days after the Effective Date. All refunds shall be first attempted using the last known automatic payment method linked to the account. If this is not successful, Respondent shall attempt payment using any second form of payment linked to the account. If these methods result in the funds being undeliverable, Respondent must issue the refunds by check. Respondent shall exercise reasonable efforts and due diligence to attempt the refund; provided, however, that refunds that remain unpaid one-hundred and eighty ("180") calendar days following the date the check was issued, shall be paid to the Administrator in accordance with paragraph 27 below.

25. Concurrently with any refunds, Respondent shall send each consumer a letter, the form and contents of which has been pre-approved by the Administrator. The letter shall inform consumers that, following an investigation by the Administrator (who works on behalf of the Attorney General) that Respondent has agreed to issue a refund to the consumer for the stated amount as the result of excess interest allegedly charged on a loan the consumer received from TAB Bank and facilitated by EasyPay Finance. The letter will identify an electronic method of payment and/or an enclosed check and the amount of the refund, and state that if the consumer does not accept payment by a date to be identified that is one-hundred and eighty (180) calendar days after the refund check was issued, the check will expire and the money will be paid over to the Attorney General, in trust. A template of the transmittal letter is attached as **Exhibit D**.

26. Within the greater of thirty (30) business days after refund checks issued pursuant to paragraph 25 have expired or one-hundred and ninety (190) business days after the Effective Date, Respondent shall:

- a. Provide the Administrator with evidence reasonably acceptable to the Administrator, that Respondent timely sent refunds to consumers, such as copies of checks or confirmations of electronically transmitted funds;
- b. Update Exhibit A referenced in paragraph 16(b) to identifying which consumers accepted payments; and
- c. Cease all electronic payment attempts.

27. Within thirty (30) business days after the items in paragraph 26 are due, Respondent shall pay to the Administrator the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise.

28. Respondent shall pay to the Office of the Attorney General one hundred thousand dollars (\$100,000) in lieu of reimbursement to the Office of the Attorney General for its costs in investigating this matter. This amount shall be held, along with any interest thereon, in trust by the Colorado Attorney General to be used in the Attorney General's sole discretion for attorneys' fees and costs, restitution, for future consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, public welfare purposes. This amount shall be due upon the Effective Date.

29. At Respondent's expense and at the Administrator's option, Respondent shall permit the Administrator to inspect its books and records of loans to Colorado consumers under the Program once, at any time within normal business hours, and to conduct a follow-up inspection upon reasonable notice to Respondent's counsel. The inspection and follow up must occur within one (1) calendar year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondent's self-audit and its compliance with this Order.

30. All payments due the Administrator or the Attorney General hereunder shall be deemed paid upon the receipt of the payment. Respondent may pay by check or ACH transfer or check. Respondent shall endeavor to make its payment in one payment. A check shall be made payable to the "Colorado Department of Law." The check should be mailed to: "Administrator, UCCC, attn: Kevin Burns and Miriam Burnett, 1300 Broadway, 6th/7th Floor, Denver, Colorado 80203." Wire transfer instructions will be provided upon request for an ACH transfer.

31. If EasyPay enters into an agreement with any other state Attorneys General where EasyPay is currently doing business that resolves Similar Claims involving the bank partner model that existed in Colorado until October 14, 2022, then EasyPay will provide a copy of the agreement to the Administrator for review. The agreement must explicitly state that EasyPay is required to pay restitution to that state's consumers in an amount that is equal to or greater than the total amount paid to Colorado consumers. With respect to such agreements, if: (1) EasyPay had facilitated at least 10,000 loans in the state or states as to which the agreement is reached and (2) the state interest rate cap (as defined by the state's usury laws) at issue is 21% per annum or greater and (3) terms of the agreement provide for greater restitution on a per loan basis for those consumers who had paid their loan in full (i.e., restitution amount divided by the number of loans receiving restitution) than provided for in paragraph 23, then EasyPay will amend paragraph 23 of this Stipulation to match the per loan restitution amount, and pay any additional restitution to Colorado consumers on a pro rata basis as provided for in this Stipulation. This provision, and EasyPay's obligations hereunder, will expire two (2) years after the Effective Date. If an agreement satisfies the criteria set forth above, EasyPay will be capped to one and half (1.5) times the total restitution amount referenced in paragraph 23 of this Stipulation.

SECTION III Stipulation and Release

32. Respondent agrees and stipulates to this Order and all requirements contained herein.

33. It is the intent and purpose of this Order to resolve fully the particular issues, allegations, or charges raised by the Administrator's investigation of Respondent's activities as set forth above, and only those issues. Further, the omission from this Stipulation of other acts, conduct, or practices which might constitute violations of the Act shall not be deemed or construed to be approval by the Administrator of such acts, conduct, or practices.

34. Respondent acknowledges that it has a right to request an evidentiary hearing in this matter, present evidence, examine witnesses, and appeal from any adverse action and waives those rights.

35. Respondent agrees that this Order contains the entire agreement with the Administrator and is binding upon all the officers, directors, employees, shareholders, managers, members, principals, affiliates, agents, trade names, heirs, and successors of the Respondent.

36. This Order shall be disclosed in any application to the Administrator and in response to any question from the Administrator regarding state disciplinary or administrative action.

37. Colorado law governs this Order. Any claims or causes of action arising out of or based upon this Order shall be commenced before the Colorado Office of Administrative Courts or in Denver District Court for the State of Colorado, as appropriate. Respondent hereby consents to the jurisdiction, venue and process of the Colorado Office of Administrative Courts and the Denver District Court for such an action brought by the Administrator. In the event of any action or proceeding alleging or asserting a violation of or failure to comply with this Order, this Order shall be admissible in full, and shall be evidence that prior to this Order, Respondents engaged in the acts and practices described herein.

38. This Order shall be effective on the later of the date it is signed by the Administrator and the date it is signed by EasyPay (“Effective Date”).

EXECUTED AND SO ORDERED by the Administrator this ___20th_ day of ___April_____, 2023.



Martha Fulford
Administrator
Uniform Consumer Credit Code

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AGREED AND STIPULATED TO BY:

EASYPAY FINANCE

By: Mary Jones
Mary Jones
CEO
mary.jones@easypayfinance.com

DATE: April 20, 2023

APPROVED AS TO FORM:

By: Kevin J. Burns
KEVIN J. BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
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DATE: April 20, 2023

ADMINISTRATOR, UCCC