

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of:

Webcollex LLC d/b/a CKS Financial

Respondent.

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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 WEBCOLLEX LLC d/b/a CKS FINANCIAL (“CKS” or “Respondent”);

WHEREAS the New York State Department of Financial Services (the “Department” or “DFS”) investigated whether CKS attempted to collect and did collect on void and unenforceable payday and other usurious loan debts (the “Investigation”);

WHEREAS the Investigation revealed that CKS attempted to collect on hundreds and did collect on fifty-two unenforceable and void payday and other usurious 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 New York Debt Collection Procedures Law, New York General Business Law § 601(2);

NOW, THEREFORE, the Department and CKS 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. CKS is a Virginia limited liability company with its principal place of business at 505 Independence Pkwy, Suite 300, Chesapeake, VA 23320.

2. CKS's principal business activity consists of the purchase and collection of consumer debts and collection on debts on behalf of other creditors. CKS's portfolio includes debts resulting from small-dollar consumer loans, including payday and other usurious loans, with interest rates substantially in excess of New York's civil and criminal usury caps of sixteen percent and twenty-five percent respectively.

3. CKS's business model is to collect debts on behalf of other creditors or to purchase consumer debts at a discount of the face value of the debt and then collect on the full amount of the debt allegedly owed by the consumer. CKS has represented that when collecting on these alleged debts, CKS did not charge additional interest on the alleged debts.

4. From January 2012 through June 2014 ("Collection Period"), CKS attempted to collect on 537 payday and other usurious loan debts of New York consumers and did collect on 52 of those accounts.

5. CKS has represented to the Department that after the Department published a circular letter on February 22, 2013 reminding debt collectors of the void and unenforceable nature of usurious loans, it immediately stopped collection on all payday and other usurious loans in New York, except for a system breakdown from February through April 2014, which resulted in the collection of three usurious loans.

Collecting and Attempting to Collect on Void and Unenforceable Loans

6. The Fair Debt Collection Practices Act, 15 USC §1692, prohibits the collection of any debt that is not permitted by law. It also prohibits false and misleading representations in

connection with the collection of a debt, including falsely misrepresenting the legal status of a debt.

7. 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.

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

9. Generally, New York-chartered banks and non-bank lenders are prohibited from making loans with interest rates exceeding 25 percent per annum (e.g., except for a loan in the amount of \$2,500,00 or more).

10. With some 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.

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

12. On February 22, 2013, DFS 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.

13. As set forth in Paragraph 4, from 2012 to 2014, CKS attempted to collect on 537 payday and other usurious loan debts that were void and unenforceable, and successfully collected on 52 of those debts.

Violations

14. By reason of the foregoing, CKS's collection activities violated 15 USC §§ 1692(f)(1), 1692(e)(2) and N.Y. Gen. Bus. Law § 601(2).

AGREEMENT

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

Restitution

15. CKS shall immediately fully and finally release and discharge, or if such accounts are not owned by CKS shall immediately cease collection on, all active payday and other usurious loan accounts of New York State consumers owned by CKS during the Collection Period, totaling \$52,941.75 in outstanding debts.

16. CKS shall refund all payments for payday and other usurious loan debts CKS collected from New York State consumers during the Collection Period ("Refund Eligible Consumers"), totaling at least \$66,129 in refunds to fifty-two Refund Eligible Consumers.

17. CKS shall take all commercially reasonable steps to locate the current addresses of all Refund Eligible Consumers.

18. Within fourteen days of the Effective Date, CKS shall provide DFS with a list of all New York consumers whose debts have been discharged, or where CKS does not own the debt are no longer being collected upon by CKS, and the amounts discharged or subject to no further collection efforts by CKS pursuant to Paragraph 15 and a list of Refund Eligible Consumers including their current addresses and refunds owed to these consumers.

19. Within sixty days of the Effective Date, CKS will mail refund checks to all Refund Eligible Consumers for the amount that CKS collected on each account.

20. Within fourteen days of the date that CKS receives a refund check returned as undeliverable, CKS shall take all reasonable steps to locate an updated current address for the Refund Eligible Consumer, including but not limited to using a third-party "skip tracing" service, and CKS shall mail a new refund check to the consumer at the updated address.

21. All refund checks that CKS mails pursuant to this Consent Order shall be valid for at least six months after the date of issue of the check and shall be mailed to Refund Eligible Consumers within five days of the date of issue.

22. In the event that a Refund Eligible Consumer does not cash his or her check before the expiration date of the check or the check was returned after the second mailing in Paragraph 20, CKS shall void the check and send the payment amount for the relevant Refund Eligible Consumer to the Office of Unclaimed Funds, Office of the New York State Comptroller, 110 State Street, Albany, New York 12236.

23. At 90 days and 180 days after the Effective Date, CKS shall provide the Department with a report listing (i) the Refund Eligible Consumers to whom it has mailed refund checks; (ii) the Refund Eligible Consumers whose refund checks were returned to CKS as undeliverable; and (iii) the amount that Refund Eligible Consumers have cashed or deposited ("Summary Report").

24. If CKS receives payment on a payday or other usurious loan debt from a New York consumer after the Effective Date, CKS shall return the payment to the consumer and include the notice letter in Addendum A.

Injunctive Relief

25. For all accounts of payday or other usurious loan debts owed or allegedly owed by New York consumers and held by CKS during the Collection Period:

- a. CKS shall neither sell nor assign such accounts currently owned by CKS;
- b. CKS shall within fifty days of the Effective Date write to any relevant credit reporting bureaus and request that they remove all negative information CKS provided to the bureaus concerning such accounts to the extent such information remains on the consumers' credit reports;

26. CKS shall not engage in any acts in violation of federal and New York State debt collection laws, including, but not limited to, the collection of payday or other usurious loan debts from New York consumers.

Civil Penalty

27. CKS shall pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) to the Department. The penalty shall be paid in two payments of Twelve Thousand Five Hundred Dollars (\$12,500) the first due by ten (10) days after the Effective Date and the second due one hundred and twenty (120) days after the Effective Date. The payment shall be in the form of a wire transfer in accordance with the Department's instructions or a certified or bank check made out to the "Superintendent of Financial Services" and mailed to: New York State Department of Financial Services, One State Street, New York, New York, 10004-1511, Attn: Joy Feigenbaum, Executive Deputy Superintendent, Financial Frauds & Consumer Protection.

Notice

28. All mailings from CKS to New York consumers relating to this Consent Order, including but not limited to mailings containing refund checks sent pursuant to this Consent

Order, shall be sent in an envelope with a clear and conspicuous¹ statement on the front of the envelope stating in bold, upper case letters which reads: “**IMPORTANT INFORMATION ENCLOSED BASED ON A SETTLEMENT WITH NEW YORK STATE**”.

29. For all New York consumers from whom CKS collected on payday or other usurious loan accounts owned by CKS during the Collection Period, and all other New York consumers to whom CKS is required pursuant to the Consent Order to provide a fund check, discharge an alleged debt, or remove negative credit information, CKS shall, at its own cost, mail to the consumer the completed notice letter in Addendum A no later than sixty days after the Effective Date, including, when appropriate, a refund check.

Other Relief

30. CKS submits to the authority of the Superintendent to effectuate this Consent Order. CKS will comply with the New York Financial Services, Banking and General Obligations Laws and every other applicable New York law.

Breach of the Consent Order

31. If CKS defaults on its monetary obligations under this Consent Order (“Breach of Monetary Obligations”), the Superintendent may terminate this Consent Order, in her or his sole discretion, upon ten days’ written notice. In the event of such termination, CKS expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Superintendent or the Department from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against CKS, or from using in any way statements, documents or other materials produced or provided

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.

by CKS 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.

32. In the event that the Department believes CKS to be materially in breach of this Consent Order (“Breach”) in a manner not covered by Paragraph 31, the Department will provide written notice to CKS and CKS must, within ten 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.

33. CKS understands and agrees that failure to appear before the Department to make the required demonstration within the specified period as set forth in Paragraph 32 of this Consent Order is presumptive evidence of a Breach thereof. Upon a finding of Breach, the Superintendent has all the 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

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

35. CKS shall not 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.

36. CKS 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.

37. CKS shall submit to the Department an affidavit of compliance with the terms of this Consent Order one year after the Effective Date.

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

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

40. CKS represents and warrants, 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.

41. 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: Max Dubin, Special Counsel

If to CKS:

Webcollex, LLC
505 Independence Parkway, Suite 300
Chesapeake, Virginia 23320
Attention: John Sanders, Executive Vice President and Chief Operating Officer

42. 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.

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

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

45. This Consent Order constitutes the entire agreement between the Department and CKS 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.

46. 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.

47. 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 Acting Superintendent of Financial Services or her designee (the "Effective Date").

48. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as to and against CKS solely with respect to the practices set forth

herein through the Effective Date. No further action will be taken by the Department against CKS for the conduct set forth in this Consent Order provided Respondent complies with the terms of the Consent Order.

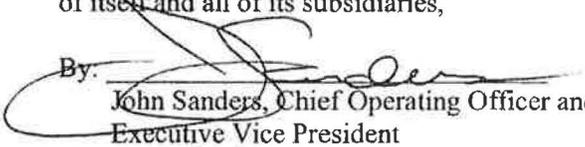
WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

DEPARTMENT OF FINANCIAL SERVICES

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

May 16 2016

WEBCOLLEX, LLC d/b/a CKS Financial on behalf
of itself and all of its subsidiaries,

By: 
John Sanders, Chief Operating Officer and
Executive Vice President

May 13, 2016

THE FOREGOING IS HEREBY APPROVED.
IT IS SO ORDERED.

Dated: New York, NY
May 17, 2016



MARIA T. VULLO
Acting Superintendent of Financial Services

ADDENDUM A

[CKS Letterhead]

[Date]

[Consumer's Address]

Dear [Consumer],

You are receiving this notice pursuant to a settlement reached between CKS Financial, LLC ("CKS") and the New York State Department of Financial Services. The settlement concerns CKS's debt collection activity in New York State. Our records indicate you had an account(s) with CKS related to alleged payday or other usurious loan debt: [Account #]. We write you to notify you that, pursuant to the settlement with DFS:

- [If applicable] **CKS is providing you a refund check of \$[amount] for the amount collected on the alleged payday or other usurious loan debt associated with Account(s) [###] as agreed to in the settlement with the New York State Department of Financial Services. This refund check is enclosed in this mailing. Please note that you have 6 months from [the check's date of issue] to cash or deposit this check or you may lose your right to claim this refund.**
- [If applicable] **CKS has forgiven your outstanding balance of [amount] and closed the collection account(s) in your name;**
- [If applicable] CKS will neither sell nor assign such account(s) in the future to other debt collectors;
- CKS will not attempt to collect on such account(s) either directly or indirectly in the future;
- If CKS had reported any negative information to any credit reporting bureaus related to such account(s), CKS has written to the bureau(s) and requested that the bureau(s) delete any such information remaining on your credit report;

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.

If you have any further problems regarding the collection account(s) described above, including any improper attempts to collect on this account, or if you have questions concerning

this settlement or any refund provided, you can contact the New York State Department of Financial Services at 1-800-342-3736 and at CKSSettlement@dfs.ny.gov.

Sincerely,