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Division of Law  
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
DOCKET NO.:

In the Matter of

YELLOWSTONE CAPITAL LLC; FUNDRY  
LLC; HIGH SPEED CAPITAL LLC; WORLD  
GLOBAL CAPITAL LLC d/b/a YES FUNDING;  
HFH MERCHANT SERVICES LLC; MCA  
RECOVERY LLC; GREEN CAPITAL FUNDING  
LLC; and MAX RECOVERY GROUP LLC,

Respondents.

Administrative Action

**CONSENT ORDER**

**WHEREAS** this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether Yellowstone Capital, LLC, Fundry LLC, High Speed Capital, LLC, World Global Capital, LLC d/b/a Yes Funding, HFH Merchants Services LLC, MCA Recovery, LLC, Green Capital Funding, LLC, and Max Recovery Group, LLC, with a main business address of 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302 (collectively, “Respondents”) engaged in violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (“CFA”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 to -9.8 (“Advertising Regulations”), in connection with

their Advertisement, offer for Sale, Sale and/or performance of Merchant Cash Advances (the “Investigation”);

**WHEREAS**, on December 8, 2020, the then Attorney General of the State of New Jersey and Acting Director of the Division (“Plaintiffs”) initiated an action by filing a complaint against Respondents in the Superior Court of New Jersey, Hudson County, Chancery Division, General Equity Part, Docket No. HUD-C-180-20 (the “Action”);

**WHEREAS** in the Action, Plaintiffs alleged violations under the CFA and the Advertising Regulations in connection with Respondents’ offers, sales, servicing, and/or collections on Merchant Cash Advance agreements;

**WHEREAS** Respondents deny all of these and the other allegations Plaintiffs asserted in the Action;

**WHEREAS** in response to the complaint, Respondents filed motions to dismiss, which were denied on or about April 19, 2021, and then, on April 23, 2021, Respondents filed Answers with Affirmative Defenses in response to the Complaint (the “Answers”), which, *inter alia*, generally denied Plaintiffs’ allegation of wrongdoing and misconduct;

**WHEREAS**, on August 4, 2021, the Parties entered a Stipulation of Dismissal Without Prejudice and tolling agreement to engage in good faith settlement discussions outside of the context of a pending judicial proceeding, while also preserving their respective rights and defenses;

**WHEREAS** the Division and Respondents (collectively, “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding the Investigation and Action without the need for further action, and consented to the entry of the within order (“Consent Order”) without Respondents having admitted any fact or violation of law, and for good cause shown:

**IT IS ORDERED AND AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

**2. DEFINITIONS**

Capitalized terms not otherwise defined in this Consent Order shall have the following meanings:

2.1 “Action” refers to the action titled Matthew J. Platkin, et al. v. Yellowstone Capital, LLC, et al., Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD-C-180-20, and all pleadings and proceedings related thereto.

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Complaining Customer” shall refer to Customers listed on Exhibit A.

2.4 “Event of Default” means an Event of Default as set forth in a post-November 2018 MCA, and/or as modified in the future to reflect the requirements of this Consent Order as set forth in Section 3.3 below.

2.5 “Customer” means any counter-party to which Respondents provide or have provided an MCA, and which meets any of the following criterion: (i) whose place of business is in New Jersey, (ii) whose mailing address is in New Jersey, (iii) whose guarantor resides in New Jersey, or (iv) which is a Complaining Customer.

2.6 “Division” means the New Jersey Division of Consumer Affairs.

2.7 “Due Diligence Fee” shall refer to the fee included in Rider 1 to Respondents’ post-November 2018 MCA agreements for “the cost of the due diligence of [the Customer’s] business performed by [Respondents].”

2.8 “Independent Funding Organization” or “IFO” means a third-party organization that has contracted with one or more of the Respondents to service an MCA, and which has entered into a master services agreement with one or more of the Respondents.

2.9 “Independent Sales Organization” or “ISO” means a third-party organization that receives a commission or referral fee from Respondents for referring a potential Customer for an MCA to one or more of the Respondents, or an independent contractor, that assists one or more of the Respondents in brokering MCAs by, among other things, interfacing with other ISOs.

2.10 “Internal Review and Notice Process” means the events that must occur before: (1) submitting an MCA to a collections vendor; (2) sending a UCC Notice; (3) exercising rights under a power of attorney clause; or (4) initiating a legal proceeding through the filing of a complaint. Prior to these enumerated events, the MCA will be evaluated by one or more agents of one of the Respondents with responsibility to review such a submission (the “Reviewer”). As part of that process, first, the IFO claiming an Event of Default must provide to the Reviewer a written statement that an Event of Default has occurred, including documentary proof of same. The Reviewer will evaluate the IFO’s submission and determine if the IFO has provided sufficient proof of an Event of Default. If the Reviewer concludes that there is not sufficient proof of an Event of Default, the IFO will be informed that the submission has been denied and cannot proceed unless and until a new submission is determined to provide the requisite showing. If the Reviewer determines that the IFO has provided adequate proof of an Event of Default, the Reviewer can approve the IFO’s default request and the IFO may proceed on Respondents’ behalf with

submitting the MCA to a collections vendor, sending a UCC Notice, and/or exercising rights under a power of attorney clause. The Reviewer's decision to approve a default request shall be memorialized in writing. Notice of the Reviewer's decision, including explanation of the specific Event of Default and the resulting steps the IFO may take on Respondents' behalf if the Customer fails to remedy the default, shall be sent to the Customer within two (2) business days via electronic mail to the email address provided by the Customer or, in the absence of a viable email address, via text message. A complaint may not be filed to initiate a legal proceeding against the Customer until three (3) business days after such notice has been sent. Documentation of the foregoing will be maintained in the MCA's file.

2.11 "MCA" means any merchant cash advance agreement entered into by Respondents with any Customer.

2.12 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.13 "Reformed Reconciliation Provision" and "Reformed Reconciliation Procedure" includes provisions or practices involving: 1) a clear statement there is no requirement that Customers request reconciliations within five days of the start of the month; 2) an expansion of the look-back period from one month to the entire life of the transactions; and 3) an elimination of the possibility of a reconciliation resulting in amounts owed to the IFO.

2.14 "State" shall refer to the State of New Jersey.

2.15 "UCC Notice" shall refer to the notice contemplated in Uniform Commercial Code (UCC) Article 9 Section 406.

### **3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES**<sup>1</sup>

3.1 Respondents and Respondents' principals, officers, employees, successors, assigns, owners, directors, shareholders, members, affiliates, and others acting under the direction or control of or on behalf of Respondents or Respondents' principals, officers, successors, assigns, owners, directors, shareholders, members, affiliates in connection with an MCA who receive actual notice of this Consent Order pursuant to Section 8 herein, shall adhere to the following business practices and reforms.

3.2 Respondents are permanently enjoined from engaging in any acts or practices in violation of the CFA and any applicable Advertising Regulations, including acts that violate the CFA because they are found to be arbitrary, capricious, retaliatory, or coercive.

3.3 To the extent those identified in Section 3.1 enter into an MCA after the Effective Date, the following shall apply:

- a. The MCA shall not include terms providing that Customers only have a specified number of business days following the end of the month to request reconciliation and to provide all supporting documents;
- b. The MCA shall not include terms providing that there is no grace period while a reconciliation request is pending:
  - i. The MCA shall specify that debits will be paused from such time as the Customer provides the necessary documents and information to support a reconciliation request until that request is resolved;
- c. To the extent that an MCA includes terms providing for a specific number of missed payments to be an Event of Default, Respondents shall agree to provide notice of missed payments to the Customer via electronic mail or, in the absence of a viable email address, via text message, which notice shall be made within 24 hours of the missed payment and include a reference to their right to seek a reconciliation;

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<sup>1</sup> The Division acknowledges that Respondents MCA Recovery LLC and Max Recovery Group LLC (the "Collection Respondents") did not issue or service MCAs and have no current intention to do so in the future. Accordingly, the provisions of this Consent Order apply to these entities only to the extent that they impact Collection Respondents' performance of collection activities on behalf of the other Respondents.

- d. The MCA shall not include “no liability” clauses requiring a Customer to waive any claims “under any legal theory”;
- e. The MCA shall be subject to the Internal Review and Notice Process;
- f. The MCA shall only reach a guarantor’s personal assets in the event of an Event of Default where there is a good faith basis to infer fraud, intentional misrepresentation, and/or willful circumvention of the MCA;
- g. The MCA shall not include terms requiring Customers to “waive any and all objections to jurisdiction or venue”:
  - i. The MCA shall prominently disclose terms specifying governing law, jurisdiction, and venue;
- h. The MCA shall not include terms disclaiming any obligation “to itemize or prove” that 25% of the accelerated unpaid balance is a reasonable charge for attorneys’ fees;
- i. The MCA shall disclose clearly: (1) that refinancing of an amount due under an existing MCA involves the execution of a new MCA and is thus different from a request for reconciliation under the existing MCA; and (2) that a refinancing may incur higher payback amounts, higher payback multiples, or additional fees:
  - i. Upon offering a Customer the opportunity to refinance an existing MCA, the Customer shall be provided with a clear description of the amount of cash to be received in a proposed new MCA (i.e., net of fees and unpaid balance from the prior MCA), the new payback amount, the new fees, and all other relevant contractual terms of the new MCA prior to execution of the new MCA;
- j. The MCA shall not include terms providing that the Due Diligence Fee is “up to ten percent (10%) of the Purchase Price”;
- k. The MCA shall clearly and conspicuously disclose the actual dollar amount of all applicable fees (including, but not limited to, the Due Diligence Fee);
- l. Respondents shall not send UCC Notices with respect to a Customer’s default absent compliance with the Internal Review and Notice Process;
- m. UCC Notices shall not be sent and complaints shall not be filed while a reconciliation request is pending;
- n. The MCA shall not include terms placing the burden on the Customer to request execution, acknowledgement, or delivery of satisfactions, releases and termination statements after the full contractual balance has been remitted;

- o. The MCA shall not include terms providing that the UCC Financing Statement (“UCC-1”) will “automatically terminate without any further act of either party” upon the Customer’s payment in full:
  - i. UCC Financing Statement Amendments (“UCC-3”) shall be filed within thirty (30) days of full remittance of the contractual balance, regardless of whether the Customer has requested proof of termination, and an additional fee shall not be charged beyond the up-front closing costs and fees for doing so;
- p. The MCA shall not include terms requiring Customers to treat the transaction as a sale of future receipts for accounting purposes, and shall not include terms requiring the Customer to “waive[] any rights of privacy, confidentiality or taxpayer privilege” should the Customer later claim the transaction is a loan;
- q. The MCA shall not include terms regarding electronic check processing that prohibit the Customer from taking any “action[s] that could have any adverse effect upon [the Customer]’s obligations or impede [Respondents’] rights under this Agreement, without [Respondents’] prior written consent”;
- r. The MCA shall not include terms negating the responsibility to provide notice to Customers of an Event of Default as required by the Internal Review and Notice Process;
- s. The MCA shall include the Reformed Reconciliation Provision;
- t. Respondents shall provide enhanced disclosures that include clear information regarding each up-front deduction from the purchase price. Such enhanced disclosure requires that:
  - i. Respondents continue to disclose up-front closing costs and fees to the Customer as follows: (i) in a Customer introduction email, which discloses, among other things that the amount the Customer nets from the Purchased Amount under the MCA would be reduced by Closing Costs and any prior balance; (ii) in a Summary Worksheet that the Customer signs via clickwrap that summarizes terms such as the identity of the Respondent and Customer(s), the structure of the financing, the Purchase Price, the Purchased Amount, the Specified Percentage, and the Initial Installment; (iii) on the first page of the MCA, which includes the Purchase Price, Purchased Amount, Specified Percentage, and Initial Daily or Weekly Installment; and (iv) in a pre-funding email, which summarizes the key provisions of the MCA, including the Purchased Amount, Purchase Price, any fees that would reduce the net amount of the Purchase Price (e.g., due diligence fee, origination fee, ACH program fee, or UCC fee), and the total net proceeds that the Customer will receive; and

- u. Customers' preferred contact information for service of any legal notices shall be obtained at the time a Customer enters into an MCA.

3.4 For any MCA as of the Effective Date for which there has not been an Event of Default:

- a. Respondents shall give the benefit of the Reformed Reconciliation Procedures to a Customer with an existing MCA. Moreover, Respondents shall not debit payments, file complaints or otherwise initiate legal proceedings, or send UCC Notices from such time as the Customer provides the necessary documents and information to support a reconciliation request until that request is resolved;
- b. Respondents shall not charge a separate fee for UCC-3s and shall file UCC-3s within thirty (30) days of full remittance of the Purchased Amount or the execution of this Consent Order, whichever is later;
- c. Respondents may send a UCC Notice with regard to a Customer's default upon adherence to the Internal Review and Notice Process;
- d. Respondents shall abide by the Internal Review and Notice Process prior to: (1) submitting an MCA to a collections vendor; (2) sending a UCC Notice; (3) exercising rights under a power of attorney clause; or (4) initiating a legal proceeding through the filing of a complaint; and
- e. For Customers that have MCAs for which there has not been an Event of Default, Respondents shall notify such Customers and Complaining Customers via electronic mail to the most recent email address provided by the Customer or, in the absence of a viable email address, via text message that: 1) there is no requirement that Customers request reconciliations within five (5) days of the start of the month; 2) reconciliation requests will take into account the entire life of the MCA transaction, rather than be limited to a one month look back period; and that 3) reconciliation requests will not result in amounts owed to Respondents. The notice shall inform Customers that payments will not be debited, complaints will not be filed, and UCC Notices will not be issued during the pendency of any reconciliation request where the necessary supporting documents and information have been provided.

3.5 Respondents shall cease filing Confessions of Judgment ("COJs") against any Customer.

3.6 In the event a Customer defaults on an MCA, reasonable attorneys' fees shall be itemized and state ethics rules for fee-splitting with non-lawyers and charging for internal counsel shall be adhered to.

3.7 Judgments and Liens. For any Customer with an unpaid balance that is forgiven pursuant to the terms of this Consent Order, within sixty (60) days of the Effective Date, or for Customers subject to the file-by-file review required by this Consent Order, within thirty (30) days

of the date those Customers are identified, Respondents shall:

- a. In every case in which a Respondent is or was a plaintiff and in which a Customer is or was a defendant, Respondents shall (i) dismiss any pending cases, with prejudice, or (ii) for any concluded case in which a judgment against a Customer was entered, file a satisfaction of any judgment; and
- b. File a UCC-3 termination notice reflecting the amount of any forgiveness pursuant to this Agreement, and attempt in good faith to simultaneously provide a copy of that notice to the Customer via electronic mail to the most recent email address provided by the Customer or, in the absence of a viable email address, via text message.

Respondents shall provide a report to the Division every 90 days identifying all Customers, and corresponding amounts of forgiveness, for which Respondents have satisfied their obligations pursuant to this Section. The first report shall be provided 90 days after the Effective Date of this Consent Order. Upon request by the Division to Respondents following an inquiry to the Division by or relating to a Customer, Respondents shall provide copies of any filed motion to dismiss, filed satisfaction of judgment, and/or filed UCC-3 termination statement concerning Customers identified in the reports identified in this paragraph.

3.8 Credit Reporting. Respondents shall not report, instruct others to report, or cause IFOs to report, any negative or derogatory information or debts owed or purported to be owed by any Customer, to a credit reporting agency. Upon request from a Customer, Respondents shall, within 30 days of receiving the request, provide information reflecting the amount of forgiveness pursuant to this Agreement, such that a credit reporting agency could delete negative or derogatory information or debt from the Customer's credit reporting file.

3.9 In the origination of any future MCA agreements and in connection with ongoing servicing of MCA agreements for which there has not been an Event of Default, including consideration of requests for reconciliation and debt collection, Respondents shall take commercially reasonable efforts to ensure that IFOs and ISOs deal fairly with Customers by doing the following:

- a. Provide each IFO and ISO with which they continue to do business, a copy of this Consent Order;
- b. Require that each such IFO and ISO sign and date an acknowledgment of receipt of this Consent Order;
- c. Clearly and conspicuously disclose to each such IFO and ISO in writing that engaging in the acts or practices prohibited by this Consent Order will result in immediate termination of any business relationship, and forfeiture of all monies owed to such Person or entity;
- d. Require that each such IFO and ISO provide this Consent Order to each of its employees and agents that may do business with Respondents;

- e. Promptly investigate any complaints that Respondents receive through any source to determine whether any such IFO and ISO has engaged in acts or practices prohibited by this Consent Order;
- f. Immediately terminate and cease payment to any such IFO and ISO who Respondents reasonably conclude has engaged in acts or practices prohibited by this Consent Order; and
- g. To the extent Respondents terminate any business relationship with any IFO and ISO for engaging in acts or practices prohibited by this Consent Order, Respondents shall maintain records detailing the circumstances of such termination and shall take reasonable steps to ensure that Respondents will not do business with that Person or entity or its principals.

#### **4. SETTLEMENT AMOUNT**

4.1 The Parties have agreed to a settlement of this Action in the amount of approximately Twenty-Seven Million Three Hundred and Seventy-Five Thousand Dollars (US) (\$27,375,000), which is comprised of: (i) the forgiveness of all outstanding balances for Customers who entered MCAs, which are currently estimated to be approximately Twenty-One Million Seven Hundred and Fifty Thousand and 00/100 Dollars (\$21,750,000), pursuant to N.J.S.A. 56:8-8; and (ii) Five Million Six Hundred and Twenty-Five Thousand and 00/100 (US) Dollars (\$5,625,000) paid to the Division to be allocated within the Division's discretion for purposes that may include, restitution, attorneys' fees, costs of investigation and litigation and costs of administering restitution, and penalties not to exceed \$250,000, pursuant to N.J.S.A. 56:8-13, -8, -11, and -19.

4.2 Respondents shall pay the above-referenced Five Million Six Hundred and Twenty-Five Thousand and 00/100 (US) Dollars (\$5,625,000) ("Settlement Payment") contemporaneously with the execution of this Consent Order.

4.3 The Settlement Payment shall be made by wire transfer payable to the "New Jersey Division of Consumer Affairs" pursuant to instructions provided by the Division.

4.4 Upon making the Settlement Payment, Respondents shall immediately be fully divested of any interest in, or ownership of, the monies paid. All interest in the monies, and any

subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

4.5 All outstanding balances for Customers who entered MCAs at any time shall be forgiven. Following the completion of the File-by-File Review set forth in Section 5 below, the Respondents shall provide the Division with a final accounting of the total balance being forgiven pursuant to this Section.

## **5. FILE-BY-FILE REVIEW**

5.1 Respondents shall, within thirty (30) days of the Effective Date of this Consent Order, commence a file-by-file search and review (the “File-by-File Review”) using, to the extent possible and reliable, electronic search methods and, to the extent necessary, a manual review to identify all Customers covered by this Consent Order. Respondents shall be responsible for all costs associated with the File-by-File Review. Prior to the Effective Date, Respondents shall provide to the Division an estimate of the duration for the entire File-by-File Review process, which shall not exceed six (6) months from the Effective Date.

5.2 Respondents shall provide progress reports to the Division every 90 days, wherein Respondents shall disclose the full guarantor name, the full business name, the corresponding addresses, any other available contact information, the date of the executed MCA(s), and the merchant ID for all Customers, including those identified during the File-by-File Review for the preceding 90-day period. In addition, the Division may request, and Respondents shall provide, additional data for any Customers identified through the File-by-File Review necessary to effectuate the relief contemplated in this Consent Order. The first progress report shall be provided 90 days after the Effective Date of this Consent Order.

## **6. GENERAL PROVISIONS**

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

6.8 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Division or any

other governmental unit of New Jersey of any act or practice of Respondents; and/or (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA or the Advertising Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.9 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Respondents represent and warrant that they have not issued or originated MCAs since May 2021.

7.2 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

7.3 Respondents further represent and warrant that should they or their principals, officers, employees, successors, assigns, owners, directors, shareholders, members, affiliates, and others acting under the direction or control of or on behalf of Respondents or Respondents' principals, officers, successors, assigns, owners, directors, shareholders, members, affiliates in connection with an MCA who receive actual notice of this Consent Order pursuant to Section 8

herein, resume entering into new MCAs within 10 years of the Effective Date of this Consent Order, they will be bound to the required and prohibited business practices enumerated in Section 3.

7.4 Respondents represent and warrant that they will notify the Division in writing and via electronic mail within thirty (30) days if they begin or resume issuing MCAs from New Jersey or to Customers in New Jersey. Upon receiving such notice, the Division may request and Respondents shall provide a copy of the MCA form(s) then in use.

## **8. ORDER ACKNOWLEDGMENTS**

8.1 In addition to the requirements under Section 3, Respondents shall obtain acknowledgments of receipt of this Consent Order as follows:

a. Each Respondent named in the Action, within fourteen (14) days of the Effective Date of this Consent Order, must submit to the Division an acknowledgment of receipt of this Consent Order sworn under penalty of perjury.

b. For a period of 10 years after entry of this Order, each Respondent must deliver a copy of this Order to: (1) all principals, owners, officers, successors, assigns, directors, shareholders, affiliates, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Consent Order and all agents and representatives that participate in conduct related to the subject matter of the Consent Order; and (3) any business entity resulting from any change in structure. For a period of 10 years after entry of this Order, Respondents' principals, owners, officers, successors, assigns, directors, shareholders, and LLC managers and members must deliver a copy of this Order to: (1) any entity under their direction or control that participates in conduct related to the subject matter of the Consent Order; and (2) all employees of such entity having managerial responsibilities for conduct

related to the subject matter of the Consent Order and all agents and representatives that participate in conduct related to the subject matter of the Consent Order. Delivery must occur within 7 days of entry of this Consent Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

c. From each individual or entity to which Respondents delivered a copy of this Consent Order, Respondents shall attempt to obtain, within 90 days, a signed and dated acknowledgment of receipt of this Consent Order. To the extent that any such individual or entity does not return the acknowledgment of receipt within this period, Respondents shall not engage in further business activities with them until such time as a signed acknowledgment is received.

## **9. RELEASE**

9.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order, and conditioned on Respondents making the Settlement Payment in accordance with Section 4, the Division and the Attorney General hereby agree to release Respondents from any and all civil claims to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents that are related to and/or arise from the matters specifically addressed in this Consent Order, including but not limited to those set forth in the Action (“Released Claims”).

9.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided, however, that nothing prevents Respondents from raising the defense of set-off against a Customer who has received restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

## **10. PENALTIES FOR FAILURE TO COMPLY**

10.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

a. Prior to the Division instituting a court proceeding based solely on an alleged violation of this Consent Order, the Parties agree that the Division will provide Respondents with written notice if the Division believes that Respondents are in violation of any of their obligations under this Consent Order (“Notice of Noncompliance”), including a specific description of the conduct deemed to violate the Consent Order and the provisions of the Consent Order deemed to have been violated, and provide Respondents thirty (30) days after the date of receipt of the Notice of Compliance prior to commencing any further proceeding; provided, however, that the Division may take any action where the Division concludes that because of the specific practice, a threat to the health or safety of the public requires immediate action.

b. Within thirty (30) days of receipt of the Notice of Noncompliance, Respondents shall have the opportunity to demonstrate that: (a) Respondents are in compliance with the obligations of this Consent Order cited by the Division as being violated; (b) any alleged violation has been addressed, including by remedial actions having been taken to remedy any conduct inconsistent with this Consent Order; or (c) Respondents have begun to take action to address the alleged violation, are pursuing such action with due diligence, and have provided a reasonable timetable for addressing any such alleged violation.

c. Nothing shall prevent the Division, at its sole discretion, from agreeing to provide Respondents with additional time beyond the thirty (30) days to respond to the Notice of Noncompliance.

d. The Parties agree that any future violations of Section 3 of this Consent Order, the

CFA, or the Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13, and that Respondents will be liable for enhanced civil penalties.

### **11. COMPLIANCE WITH ALL LAWS**

11.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondents of their obligation to comply with all State and federal laws, regulations, or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondents pursuant to any State or federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondents may otherwise have pursuant to any State or federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

### **12. NOTICES UNDER THIS CONSENT ORDER**

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by a nationally recognized courier service that provides tracking services and identification of the Person signing for the documents, and simultaneously via electronic mail. The notices and/or documents shall be sent to the following:

For the Division:

Chanel Van Dyke, Deputy Attorney General/Asst. Section Chief  
Consumer Fraud Prosecution Section  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

Chanel.VanDyke@law.njoag.gov

For the Respondents:

Eric T. Kanefsky, Esq.  
Calcagni Kanefsky LLP  
One Newark Center  
1085 Raymond Blvd, 14<sup>th</sup> Floor  
Newark, New Jersey 07102  
Eric@ck-litigation.com

David Picon, Esq.  
Proskauer Rose, LLP  
11 Times Square  
New York, NY 10036  
dpicon@proskauer.com

**IT IS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022 SO ORDERED.**

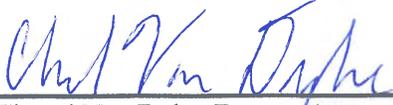
MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_  
CARI FAIS, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS  
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Chanel Van Dyke, Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

Dated: December 27, 2022

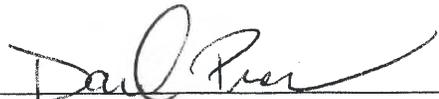
AS COUNSEL FOR RESPONDENTS AND AS TO FORM ONLY:

CALCAGNI KANEFISKY LLP

By:   
Eric Kanefsky, Esq.  
Calcagni Kanefsky LLP  
One Newark Center  
1085 Raymond Blvd. 14<sup>th</sup> Floor  
Newark, New Jersey 07102

Dated: December 27, 2022

PROSKAUER ROSE, LLP

By:   
David Picon, Esq.  
Proskauer Rose LLP  
Times Square  
New York, NY 10036

Dated: December 27, 2022

W/ PERMISSION



DIANA GIORDANO

FOR RESPONDENTS:

RESPONDENT YELLOWSTONE CAPITAL LLC, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302

By:   
\_\_\_\_\_   
Yitzhak (Isaac) Stern

Dated: December 27, 2022

RESPONDENT FUNDRY LLC, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302

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Yitzhak (Isaac) Stern

Dated: December 27, 2022

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Yitzhak (Isaac) Stern

Dated: December 27, 2022

RESPONDENT WORLD GLOBAL CAPITAL LLC d/b/a YES FUNDING, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302

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Yitzhak (Isaac) Stern

Dated: December 27, 2022

RESPONDENT HFH MERCHANT SERVICES LLC, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302

By:   
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Yitzhak (Isaac) Stern

Dated: December 27, 2022

RESPONDENT MCA RECOVERY LLC, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City, New Jersey 07302

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Yitzhak (Isaac) Stern

Dated: December 27, 2022

RESPONDENT GREEN CAPITAL FUNDING LLC, 1 Evertrust Plaza, 14<sup>th</sup> Floor, Jersey City,  
New Jersey 07302



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Dated: December 27, 2022

RESPONDENT MAX RECOVERY GROUP LLC, 55 Broadway, 3<sup>rd</sup> Floor, New York, New  
York 10006



By: \_\_\_\_\_  
Vadim Serebro

Dated: December 27, 2022

## Exhibit A

1. K. Anderson
2. G. Antoine
3. J. Babcock
4. D. Banks
5. L. Bearden
6. J. Beecy
7. G. Bell
8. C. Boynton
9. J. Brecko
10. N. Bronson
11. K. Bryant
12. J. Burns
13. A. Cavannah
14. W. Chen
15. P. Cothran
16. J. Crystal
17. M. Desrosier
18. K. DiPietro
19. C. Dugan
20. A. Escobar
21. E. Glick
22. L. Gonzalez
23. M. Greco
24. S. Green
25. A. Hall
26. C. Harrison
27. M. Jones
28. S. Kearns
29. D. Kirsanovas
30. M. Knipe
31. S. Leahy
32. R. Maguire
33. T. Markovic
34. G. McDevitt
35. B. Mercier
36. M. Murphy
37. National Bank of California
38. W. Poitier
39. J. Polimeda
40. K. Readdick
41. D. Shrader
42. D. Silverman
43. A. Streich
44. G. Stuart

45. M. Turner
46. D. Ufford
47. S. Ward
48. J. Wengler
49. T. Wilkerson
50. J. Zenk