

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Bureau of Consumer Financial Protection,

Plaintiff,

v.

LendUp Loans, LLC,

Defendant.

Case No. 4:20-cv-08583-JSW

~~Proposed~~ Stipulated Final
Judgment and Order

The Bureau of Consumer Financial Protection (Bureau) commenced this action on December 4, 2020, to obtain injunctive and monetary relief and civil penalties from LendUp Loans, LLC. The Complaint alleges violations of the Military Lending Act, 10 U.S.C. § 987, and its implementing regulation, 32 C.F.R. pt. 232, (collectively, the MLA), in connection with Defendant's extension of consumer credit.

The Bureau and Defendant agree to the entry of this Stipulated Final Judgment and Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint. The Court therefore makes the following findings of fact and conclusions of law and orders the following relief.

FINDINGS & CONCLUSIONS

1. This Court has jurisdiction over the parties and the subject matter of this action under 28 U.S.C. §§ 1331 and 1345.

2. Venue in the Northern District of California is proper under 28 U.S.C. § 1391(b) and (c) and 12 U.S.C. § 5564(f).

3. Defendant neither admits nor denies the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendant admits the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action

4. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.

5. Entry of this Order is in the public interest.

DEFINITIONS

6. The following definitions apply to this Order:

- a. **"Affected Consumer"** means a Covered Borrower to whom Defendant extended credit by way of a loan agreement that failed to comply with one or more provisions of the MLA or contained one or more provisions prohibited by the MLA.
- b. **"Board"** means Defendant's duly elected and acting Board of Directors.
- c. **"Covered Borrower"** has the same meaning as that in 10 U.S.C. § 987(i)(1), (2) and 32 C.F.R. § 232.3(g).
- d. **"Defendant"** means LendUp Loans, LLC, f/k/a Flurish, Inc., d/b/a LendUp, and its successors and assigns.
- e. **"Effective Date"** means the date on which this Order is entered on the docket.
- f. **"Regional Director"** means the Regional Director for the West Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or her delegate.
- g. **"Related Consumer Action"** means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendant based on substantially the same facts as described in the Complaint.

- h. “**Void Loan**” means the extension of credit to a Covered Borrower by way of a loan agreement that failed to comply with one or more provisions of the MLA or contained one or more provisions prohibited by the MLA. Void Loan does not include the extension of credit to a consumer where Defendant complied with all requirements of the MLA’s safe-harbor provision, 32 C.F.R. § 232.5(b), and determined, by using one or both of the methods set forth in 32 C.F.R. § 232.5(b)(2), that the consumer was not a Covered Borrower.

CONDUCT PROVISIONS

I

Conduct Relief

IT IS ORDERED that:

7. Defendant and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, is permanently restrained from:

- a. violating the Military Lending Act, 10 U.S.C. § 987, and its implementing regulation, 32 C.F.R. pt. 232; and
- b. collecting on, selling, or assigning any debts arising from Void Loans.

8. Defendant must, for all Affected Consumers:

- a. complete a review of all information furnished to any consumer reporting agency from October 3, 2016, through the Effective Date to determine whether it requires correction or updating consistent with 15 U.S.C. § 1681s-2(a)(2);
- b. use the results of the review required by subparagraph (a) to provide corrected or updated information to the consumer reporting agencies consistent with 15 U.S.C. § 1681s-2(a)(2), unless the account status or payment rating indicates that the account is current or paid off; and

- c. for any information that Defendant, after its review, cannot determine whether it requires correction or updating, request that the consumer reporting agency delete the furnished information, unless the account status or payment rating indicates that the account is current.

II

Compliance Plan

IT IS FURTHER ORDERED that:

9. Within 45 days of the Effective Date, Defendant must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Defendant's extension of consumer credit complies with the Military Lending Act, 10 U.S.C. § 987, and its implementing regulation, 32 C.F.R. pt. 232, and the terms of this Order (Compliance Plan). The Compliance Plan must include, at a minimum:

- a. detailed steps for addressing each action required by this Order;
- b. a plan for ensuring that correct credit-reporting information relating to Void Loans with amounts delinquent or currently owed is furnished to credit-reporting agencies and that inaccurate credit-reporting information relating to such loans is corrected;
- c. a plan for ensuring that Defendant does not collect, sell, or assign any debts arising from Void Loans; and
- d. specific timeframes and deadlines for implementation of the steps described above.

10. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Defendant to revise it. If the Regional Director directs Defendant to revise the Compliance Plan, Defendant must revise and resubmit the Compliance Plan to the Regional Director within 15 days.

11. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, Defendant must implement and

1 adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance
2 Plan.

3 III

4 Role of the Board

5 **IT IS FURTHER ORDERED** that:

6 12. The Board must review all submissions (including plans, reports, programs,
7 policies, and procedures) required by this Order before submission to the Bureau.

8 13. Although this Order requires Defendant to submit certain documents for
9 review or non-objection by the Regional Director, the Board will have the ultimate
10 responsibility for proper and sound management of Defendant and for ensuring that
11 Defendant complies with the Military Lending Act, 10 U.S.C. § 987, and its implementing
12 regulation, 32 C.F.R. pt. 232, and this Order.

13 14. In each instance that this Order requires the Board to ensure adherence to, or
14 perform certain obligations of Defendant, the Board must:

- 15 a. authorize whatever actions are necessary for Defendant to fully comply
16 with the Order;
- 17 b. require timely reporting by management to the Board on the status of
18 compliance obligations; and
- 19 c. require timely and appropriate corrective action to remedy any material
20 non-compliance with any failures to comply with Board directives
21 related to this Section.

22 MONETARY PROVISIONS

23 IV

24 Order to Pay Redress

25 **IT IS FURTHER ORDERED** that:

26 15. A judgment for monetary relief is entered in favor of the Bureau and against
27 Defendant in the amount of \$300,000.00.

1 **16.** Within 10 days of the Effective Date, Defendant must reserve or deposit into a
2 segregated deposit account an amount not less than \$50,000.00, for the purpose of providing
3 redress to Affected Consumers, to the extent such amounts have not already been paid to
4 Affected Consumers, as required by this Section. For redress that Defendant has made to
5 Affected Consumers before the Effective Date of this Order, Defendant must provide
6 appropriate documentation of such redress, as required by Paragraph 18.

7 **17.** Within 45 days of the Effective Date, Defendant must submit to the Regional
8 Director for review and non-objection a comprehensive written plan for providing redress
9 consistent with this Order (Redress Plan). The Regional Director will have the discretion to
10 make a determination of non-objection to the Redress Plan or direct Defendant to revise it.
11 If the Regional Director directs Defendant to revise the Redress Plan, Defendant must
12 revise and resubmit the Redress Plan to the Regional Director within 15 days. After receiving
13 notification that the Regional Director has made a determination of non-objection to the
14 Redress Plan, Defendant must implement and adhere to the steps, recommendations,
15 deadlines, and timeframes outlined in the Redress Plan.

16 **18.** The Redress Plan must:

- 17 a. for each Void Loan, state (1) the total amount of interest and fees paid
18 by the Affected Consumer; (2) an itemization of any redress paid to
19 Affected Consumers by Defendant before the Effective Date of this
20 Order, broken down into interest, fees, and any other item, and the form
21 (i.e., ACH, check, rebate) in which that redress was provided; and (3) the
22 redress remaining to be provided, equal to the amount in (1) minus the
23 amount in (2) (Remaining Redress);
- 24 b. provide deadlines for sending written notification to all Affected
25 Consumers (Redress Notice) and attach as an exhibit a proposed
26 Redress Notice, which must:
- 27
- 28

- i. describe the nature of the administrative action and that redress is being made in accordance with the terms of this Order;
 - ii. describe any refunds or rebates previously provided by Defendant in connection with violations described in the Order;
 - iii. describe all nonmonetary remediation, including corrections to credit reporting and cessation of collections;
 - iv. state in detail how any redress amount was calculated, including an itemization of all interest, fees, and any reductions for refunds or rebates already provided; and
 - v. state where Affected Consumers may direct any questions;
- c. set forth the process for transmitting the Redress Notice and distributing the Remaining Redress to each Affected Consumer, including the following:
- i. Defendant must issue redress by ACH to an Affected Consumer's bank account where possible;
 - ii. where redress by ACH is not possible, Defendant must issue redress by mailing a bank check and the Redress Notice;
 - iii. where an Affected Consumer has consented to receiving communications from Defendant electronically, Defendant may provide the Redress Notice electronically;
 - iv. where an Affected Consumer has not consented to receiving communications from Defendant electronically, Defendant must provide the Redress Notice by mail;
 - v. transmission of a Redress Notice must not include any materials other than the approved Redress Notice and, if applicable, the bank check;
 - vi. where Defendant must mail a bank check or the Redress Notice, Defendant must use U.S. Postal Service first-class mail, address-

1 correction service requested, making reasonable attempts to
2 obtain the Affected Consumer's current address through the
3 National Change of Address System before sending the bank
4 check or Redress Notice to the Affected Consumer's last known
5 address as maintained by Defendant's records; and

6 d. include processes for handling any bank check that remains unnegotiated
7 after 180 days or if Defendant is unable to locate an Affected Consumer
8 after taking the steps required in this Section, including attempting to
9 contact the Affected Consumer by email and phone.

10 19. If, after completing the final step outlined in the Redress Plan, the total redress
11 provided to Affected Consumers is less than \$300,000.00, Defendant must pay the
12 difference to the Bureau within 30 days by wire transfer to the Bureau or to the Bureau's
13 agent, according to the Bureau's wiring instructions.

14 20. The Bureau may use these remaining funds to pay additional restitution to
15 Affected Consumers. If the Bureau determines, in its sole discretion, that redress to
16 consumers is wholly or partially impracticable or if funds remain after redress is completed,
17 the Bureau will deposit any remaining funds in the United States Treasury as disgorgement.
18 Defendant will have no right to challenge any actions that the Bureau or its representatives
19 may take under this paragraph.

20 21. Payment of redress to any Affected Consumer under this Order may not be
21 conditioned on that Affected Consumer waiving any right.

22 V

23 Order to Pay Civil Money Penalty

24 **IT IS FURTHER ORDERED** that:

25 22. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations
26 of law alleged in the Complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3),
27 Defendant must pay a civil money penalty of \$950,000 to the Bureau.

23. Within 10 days of the Effective Date, Defendant must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

24. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

25. Defendant must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Defendant may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

VI

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

26. In the event of any default on Defendant's obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

27. Defendant relinquishes all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendant.

28. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau, including in a proceeding to

1 enforce its rights to any payment or monetary judgment under this Order, such as a
2 nondischargeability complaint in any bankruptcy case.

3 **29.** The facts alleged in the Complaint establish all elements necessary to sustain an
4 action by the Bureau under § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A),
5 and for such purposes this Order will have collateral estoppel effect against each Defendant,
6 even in such Defendant's capacity as debtor-in-possession.

7 **30.** Under 31 U.S.C. § 7701, Defendant, unless it already has done so, must furnish
8 to the Bureau its taxpayer-identification numbers, which may be used for purposes of
9 collecting and reporting on any delinquent amount arising out of this Order.

10 **31.** Within 30 days of the entry of a final judgment, order, or settlement in a
11 Related Consumer Action, Defendant must notify the Regional Director of the final
12 judgment, order, or settlement in writing. That notification must indicate the amount of
13 redress, if any, that Defendant paid or is required to pay to consumers and describe the
14 consumers or classes of consumers to whom that redress has been or will be paid. To
15 preserve the deterrent effect of the civil money penalty in any Related Consumer Action,
16 Defendant may not argue that Defendant is entitled to, nor may Defendant benefit by, any
17 offset or reduction of any monetary remedies imposed in the Related Consumer Action
18 because of the civil money penalty paid in this action or because of any payment that the
19 Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action
20 offsets or otherwise reduces the amount of compensatory monetary remedies imposed
21 against Defendant based on the civil money penalty paid in this action or based on any
22 payment that the Bureau makes from the Civil Penalty Fund, Defendant must, within 30
23 days after entry of a final order granting such offset or reduction, notify the Bureau and pay
24 the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be
25 considered an additional civil money penalty and will not change the amount of the civil
26 money penalty imposed in this action.

COMPLIANCE PROVISIONS

VII

Reporting Requirements

IT IS FURTHER ORDERED that:

32. Defendant must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Defendant; or a change in Defendant's name or address. Defendant must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

33. Within 7 days of the Effective Date, Defendant must:

- a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Defendant;
- b. identify all businesses for which Defendant is the majority owner, or that Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
- c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

34. Defendant must report any change in the information required to be submitted under Paragraph 33 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

35. Within 90 days of the Effective Date, and again one year after receiving notice of non-objection to the Compliance Plan, Defendant must submit to the Regional Director

an accurate written compliance progress report sworn to under penalty of perjury (Compliance Report) that has been approved by the Board, which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Defendant has complied with each such paragraph and subparagraph of this Order;
- b. describes in detail the manner and form in which Defendant has complied with the Redress Plan and Compliance Plan; and
- c. attaches a copy of each Order Acknowledgment obtained under Section VIII, unless previously submitted to the Bureau.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

36. Within 7 days of the Effective Date, Defendant must submit to the Regional Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

37. Within 30 days of the Effective Date, Defendant must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

38. For 5 years from the Effective Date, Defendant must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section VII, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

39. Defendant must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of

the E-Sign Act, 15 U.S.C. §§ 7001-7006, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

40. Within 90 days of the Effective Date, Defendant must provide the Bureau with a list of all persons and their titles to whom this Order was delivered through that date under Paragraphs 37 and 38 and a copy of all signed and dated statements acknowledging of receipt of this Order under Paragraph 39.

IX

Recordkeeping

IT IS FURTHER ORDERED that:

41. Defendant must create and retain, for at least 5 years from the Effective Date, the following business records:

- a. all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau;
- b. all documents and records pertaining to the Redress Program, described in Section IV above; and
- c. all consumer complaints and refund requests relating to the MLA (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

42. Defendant must make the materials identified in Paragraph 41 available to the Bureau upon the Bureau's request.

X

Notices

IT IS FURTHER ORDERED that:

43. Unless otherwise directed in writing by the Bureau, Defendant must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "*CFPB v. LendUp Loans, LLC*, Case No. 4:20-cv-08583-JSW," and send

44. The Regional Director may, in his or her discretion, modify any non-material requirements of this Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

Cooperation with the Bureau

45. Defendant must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Defendant must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

Compliance Monitoring

46. Within 14 days of receipt of a written request from the Bureau, Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

47. Defendant must permit Bureau representatives to interview any employee or other person affiliated with Defendant who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described the Complaint; or (c) compliance with this Order. The person interviewed may have counsel present.

