

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Bureau of Consumer Financial Protection,
and South Carolina Department of
Consumer Affairs,

Plaintiffs,

v.

Katharine Snyder, Performance Arbitrage
Company, Inc., and Life Funding Options,
Inc.,

Defendants.

Civil Action No. 6:19-cv-02794-DCC

**[PROPOSED]
STIPULATED FINAL JUDGMENT
AND ORDER**

Plaintiffs, the Bureau of Consumer Financial Protection (Bureau) and the South Carolina Department of Consumer Affairs (Department), commenced this civil action on October 1, 2019, to obtain injunctive and monetary relief and civil penalties from Katharine Snyder, Performance Arbitrage Company, Inc., and Life Funding Options, Inc. (Defendants). The Complaint alleges violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, in connection with Defendants' brokering of contracts offering high-interest credit to consumers, including (1) misrepresenting to consumers that the contracts Defendants facilitated are valid and enforceable when, in fact, the contracts are void from inception because federal law prohibits agreements under which another person acquires the right to receive a veteran's pension payments, 38 U.S.C. § 5301(a)(3)(C), and because South Carolina law, which governs the contracts, prohibits sales of unpaid earnings and prohibits assignments of pensions as security on payment of a debt, S.C. Code Ann. § 37-3-403; (2) misrepresenting to consumers that the offered product is a sale of payments and not a high-

interest credit offer; and (3) failing to inform consumers of the applicable interest rate on the credit offer. The Complaint also alleges violations of the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-1-101 et seq. (SCCPC), including (1) engaging in the business of supervised loans without a license; (2) failing to file notification with the South Carolina Department of Consumer Affairs; (3) illegal assignment of earnings; and (4) unconscionable debt collection.

Plaintiffs and Defendants agree to 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 between these parties arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. This Court has supplemental jurisdiction over the Department's state-law claims because they are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367(a).
3. Defendants neither admit nor deny the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action.
4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they 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 Consumers”** includes any consumer who entered into a contract related to their pension or disability income stream during the Relevant Period:
 - i. that was brokered, offered, arranged, purchased, or collected on by any Defendant, or
 - ii. where, should the consumer stop making payments on the contract, one of the Defendants might assume the obligation to make payments to the other party to the contract.
 - b. **“Assisting Others”** includes, but is not limited to:
 - i. consulting in any form whatsoever;
 - ii. providing paralegal or administrative support services;
 - iii. performing customer service functions, including but not limited to, receiving or responding to consumer complaints;
 - iv. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone-sales script, direct-mail solicitation, or the text of any Internet website, email, or other electronic communication or advertisement;
 - v. providing names of, or assisting in the generation of, potential customers;
 - vi. performing marketing, billing, or payment services of any kind;

- vii. acting or serving as an owner, officer, director, manager, principal, partner, or limited partner of any entity; and
 - viii. investing or loaning money.
- c. **“Consumer Financial Product or Service”** is synonymous in meaning and equal in scope to the definition of the term in the CFPA, 12 U.S.C. § 5481(5), and, subject to applicable restrictions contained in the CFPA, includes but is not limited to:
- i. extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit;
 - ii. engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;
 - iii. providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network;
 - iv. providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services, including providing credit counseling to any consumer or providing services to assist a consumer with debt management or debt

- settlement, modifying the terms of any extension of credit, or avoiding foreclosure;
- v. collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service; and
 - vi. collecting debt related to any consumer financial product or service.
- d. “**Defendants**” means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.
- i. “**Corporate Defendants**” means Performance Arbitrage Company, Inc. and its successors and assigns, and Life Funding Options, Inc., and its successors and assigns.
 - ii. “**Individual Defendant**” means Katharine Snyder and any other name by which she might be known.
- e. “**Effective Date**” means the date on which the Order is entered on the docket.
- f. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement 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 Defendants based on substantially the same facts as described in the Complaint.

- h. “**Relevant Period**” means the period from March 1, 2014, through December 31, 2019.

ORDER

CONDUCT RELIEF

I

**Permanent Ban on Provision of
Consumer Financial Products and Services**

IT IS ORDERED that:

7. Defendants, whether acting directly or indirectly, are permanently restrained from or Assisting Others in:

- a. extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit;
- b. engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;
- c. providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network;
- d. providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services, including providing credit counseling to any consumer or providing services to assist a

consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

- e. collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a Consumer Financial Product or Service;
- f. collecting debt related to any Consumer Financial Product or Service; and
- g. engaging in any financial-services business in the State of South Carolina, including the business of securities, commodities, banking, insurance, consumer lending, or real estate.

Nothing in this Order shall be read as an exception to this Paragraph.

II

Permanent Ban on Collecting from Affected Consumers

IT IS ORDERED that:

- 8. Defendants and their 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, are permanently restrained from or Assisting Others in attempting to enforce or collect on any contract related to any Affected Consumer, including but not limited to sending demand letters or making any request for payment to any Affected Consumer and initiating or maintaining any collection action against any Affected Consumer.

Nothing in this Order shall be read as an exception to this Paragraph.

III

Prohibition on Misrepresentations

IT IS ORDERED that:

9. Defendants and their 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, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any Consumer Financial Product or Service, may not misrepresent, or Assist Others in misrepresenting, expressly or by implication, any fact material to consumers, such as: the total costs; any material restrictions, limitations, or conditions of such Consumer Financial Product or Service.

IV

Prohibition on Use of Consumer Information

IT IS FURTHER ORDERED that:

10. Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, may not:

- a. disclose, use, or benefit from consumer information, including names, addresses, telephone numbers, email addresses, social security numbers, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other financial account), that Defendants obtained before the Effective Date; or

- b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any Affected Consumer.

However, consumer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

MONETARY PROVISIONS

V

Order to Pay a Civil Money Penalty to the Bureau on Federal Claims

IT IS FURTHER ORDERED that:

11. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3), Individual Defendant must pay a civil money penalty of \$500 to the Bureau.

12. Within 60 days of the Effective Date, Individual 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.

13. 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).

14. Individual 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, Individual 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.

Individual Defendant agrees that the civil penalty imposed by this Order represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, thus, as to Individual Defendant, it is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

VI

Order to Pay a Civil Money Penalty to the Department on South Carolina State Claims

IT IS FURTHER ORDERED that:

15. Under S.C. Code Ann. § 37-6-113(B), by reason of the violations of law alleged in the Complaint, Individual Defendant must pay a civil penalty of \$500 to the Department.

16. Within 60 days of the Effective Date, Individual Defendant must pay the civil money penalty by check or money order made payable to the Department.

17. Individual 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 Department ultimately uses those funds, Individual Defendant may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil 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 penalty paid under this Order.

Individual Defendant agrees that the civil penalty imposed by this Order represents a civil penalty owed to the Government of South Carolina, is not compensation for actual pecuniary loss, and, thus, as to Individual Defendant, it is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

VII

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

18. In the event of any default on Individual 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.

19. Individual 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 Individual Defendant.

20. The facts alleged in the Complaint will be taken as true and 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 or the Department, including in a proceeding to enforce their rights to any payment or monetary judgment under this Order.

21. Under 31 U.S.C. § 7701, Individual Defendant, unless she already has done so, must furnish to the Bureau and the Department her taxpayer-identification number, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

22. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Defendants must notify the Enforcement Director and the Department in writing of the final judgment, order, or settlement. That notification must indicate the amount of redress, if any, that Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Defendants may not argue that they are entitled to, nor may any Defendant benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid by Individual Defendant in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against any Defendant based on the civil money penalty paid by Individual Defendant in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, the Defendant must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and the Department and pay the amount of the offset or reduction to the United States Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

23. Upon written request of a representative of the Bureau or the Department, any consumer reporting agency must furnish consumer reports to the Bureau concerning Individual Defendant under § 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 b(a)(1), which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

COMPLIANCE PROVISIONS

VIII

Reporting Requirements

IT IS FURTHER ORDERED that:

24. Defendants must notify the Bureau and the Department 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 act or practice subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against any Defendant; or a change in any Defendant's name or address. Defendants must provide this notice at least 30 days before the development or as soon as practicable after learning about the development, whichever is sooner.

25. Within 7 days of the Effective Date, each Defendant must:
- a. designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau and the Department may use to communicate with each Defendant;
 - b. identify all businesses for which any Defendant is the majority owner, or that any Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales;
 - d. identify Individual Defendant's telephone numbers and all email, Internet, physical, and postal addresses, including all residences; and

- e. describe in detail Individual Defendant's involvement in any business for which she performs services in any capacity or which she wholly or partially owns, including Individual Defendant's title, role, responsibilities, participation, authority, control, and ownership.

26. Each Defendant must report any change in the information required to be submitted under Paragraph 25 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

27. Within 90 days of the Effective Date, and again one year after the Effective Date, Defendants must submit to the Enforcement Director and the Department an accurate written compliance progress report sworn under penalty of perjury (Compliance Report), which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Defendants have complied with each such paragraph and subparagraph of this Order; and
- b. attaches a copy of each Order Acknowledgment obtained under Section IX, unless previously submitted to the Bureau or the Department.

IX

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

28. Within 7 days of the Effective Date, each Defendant must submit to the Enforcement Director and the Department an acknowledgment of receipt of this Order, sworn under penalty of perjury.

29. Within 30 days of the Effective Date, each Defendant (and Individual Defendant, for any business for which she is the majority owner or which she directly or indirectly controls) must deliver a copy of this Order to each of its owners, board members, and 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.

30. For 5 years from the Effective Date, each Defendant (and Individual Defendant, for any business for which she is the majority owner or which she directly or indirectly controls) must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section VIII, any future owners, board members, and officers, as well as any 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.

31. Defendants 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 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

32. Within 90 days of the Effective Date, each 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 29 and 30 and a copy of all signed and dated statements acknowledging of receipt of this Order under Paragraph 31.

X

Recordkeeping

IT IS FURTHER ORDERED that:

33. Defendants (and Individual Defendant, for any business for which she is the majority owner or which she directly or indirectly controls) must create, for at least 5 years from the Effective Date, all documents and business records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau and the Department. Defendants must retain these documents for at least 5 years after creation and make them available to the Bureau and the Department upon request.

34. Defendants (and Individual Defendant, for any business for which she is the majority owner or which she directly or indirectly controls) must maintain for 5 years from the Effective Date or 5 years after creation, whichever is longer, the following business records:

- a. copies of all sales scripts; training materials; advertisements; websites; and other marketing materials, including any such materials used by a third party on Defendants' behalf;
- b. for each individual Affected Consumer: the consumer's name; address; phone number; email address; amount of the lump sum the consumer received; amount of any fees or additional costs the consumer incurred; the amount of any payments the consumer made; a copy of any promotional or welcome materials provided; and a copy of any contracts the consumer signed;
- c. for all contracts related to Affected Consumers, accounting records showing the gross and net revenues generated by the contracts; and

- d. all complaints and refund requests (whether received directly or indirectly, such as through a third party) by Affected Consumers, and any responses to those complaints or requests.

Defendants must make these materials available to the Bureau and the Department upon request.

XI

Notices

IT IS FURTHER ORDERED that:

35. Unless otherwise directed in writing by the Bureau or the Department, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “*CFPB, et al. v. Katharine Snyder, et al.*,” Case No. 6:19-cv-02794-DCC,” and send them by overnight courier or first-class mail to the below addresses and contemporaneously by email to Enforcement_Compliance@cfpb.gov and Legal@scconsumer.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

South Carolina Consumer Department of Consumer Affairs
ATTENTION: General Counsel
293 Greystone Blvd., Ste. 400
Columbia, S.C. 29210

36. The Enforcement 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 Enforcement Director must be in writing.

XII

Cooperation with the Bureau and the Department

IT IS FURTHER ORDERED that:

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

38. Defendants must cooperate fully with the Bureau and the Department in this matter and in any investigation and/or litigation related to or associated with the conduct described in the Complaint. Without the service of compulsory process, Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendant must appear and Corporate Defendants must cause Defendants' officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau or the Department may reasonably request upon 10 days written notice, or other reasonable notice, at such places and times as the Bureau or the Department may designate, without the service of compulsory process.

XIII

Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Defendants' compliance with this Order:

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

40. The Bureau and the Department may communicate directly with Defendants, unless Defendants retain counsel related to these communications.

41. Defendants must permit Bureau and Department representatives to interview any employee or other person affiliated with Defendants who has agreed to such an interview. The person interviewed may have counsel present.

42. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6, or the Department's lawful use of its subpoena power, under S.C. Code Ann. § 37-6-106.

43. To the extent Corporate Defendants are not operating, the requirements of Paragraphs 27, 29, 30, 31, 32, and 33 shall be suspended with respect to Corporate Defendants. If either Corporate Defendant resumes operation, such Defendant shall provide written notice to the Enforcement Director fourteen days before resuming operations and the requirements of these paragraphs shall be in full force and effect with respect to such Defendant.

XIV

Retention of Jurisdiction

IT IS FURTHER ORDERED that:

44. All pending motions are hereby denied as moot.

45. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED: _____