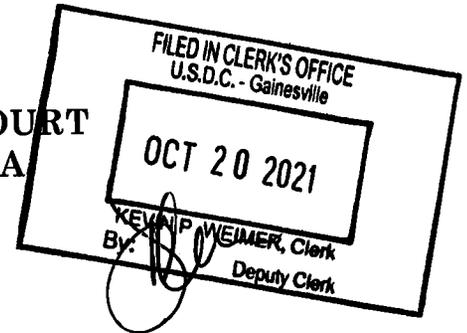


IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION



CONSUMER FINANCIAL  
PROTECTION BUREAU,

Plaintiff,

v.

UNIVERSAL DEBT & PAYMENT  
SOLUTIONS, LLC; *et al.*

Defendants.

Civil Action No. 1:15-CV-0859-RWS

**DEFAULT JUDGMENT AND FINAL ORDER FOR  
PERMANENT INJUNCTION, CONSUMER REDRESS, AND  
CIVIL MONEY PENALTIES AGAINST DEFENDANTS  
CHECK & CREDIT RECOVERY, LLC, CREDIT POWER, LLC,  
UNIVERSAL DEBT & PAYMENT SOLUTIONS, LLC,  
UNIVERSAL DEBT SOLUTIONS, LLC,  
AND WNY SOLUTIONS GROUP, LLC**

Plaintiff Consumer Financial Protection Bureau (Bureau) filed a Complaint on March 26, 2015, seeking a permanent injunction and other relief, under (a) sections 1031, 1036, and 1054 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, 5564 (CFPA); and (b) sections 806, 807, and 809 the Fair Debt Collection Practices Act, 15 U.S.C.

§§ 1692-1692p (FDCPA).

The Bureau's Complaint and summons was served on the above-referenced Defendants (collectively, Defaulted Defendants) on or about March 31, 2015. ECF No. 20. The Defaulted Defendants other than Universal Debt & Payment Solutions, LLC did not file either an answer or a motion to dismiss the Complaint within 21 days of service of the Complaint. Universal Debt & Payment Solutions, LLC filed an answer but after its counsel withdrew, it failed to retain new counsel. Accordingly, the Clerk entered default against the Defaulted Defendants pursuant to Federal Rule of Civil Procedure 55(a). ECF Docket Entry dated 09/02/2015 (Clerk's Entry of Default as to Check & Credit Recovery, LLC, Credit Power, LLC, Universal Debt Solutions, LLC, WNY Solutions Group, LLC) (text modified by Clerk on 9/8/2015); ECF No. 199 (Order ruling Universal Debt & Payment Solutions, LLC to be in default); ECF No. 200 (Clerk's Default Judgment Order) (both entered 11/24/15).

On February 20, 2020, the Court appointed a Receiver over the Assets of the Defaulted Defendants and certain other entities.

The Bureau now moves this Court for entry of a judgment by default and determination of remedies pursuant to Federal Rule of Civil Procedure 55(b)(2), against the Defaulted Defendants. The Court, having considered

the memoranda and exhibits filed in support of said motion, its order granting summary judgment to the Bureau as to certain Defendants (ECF No. 576), and all other pleadings and filings in this action, **GRANTS** the Bureau's Motion and **HEREBY ORDERS, ADJUDGES, AND DECREES** as follows:

### FINDINGS

1. This is an action by the Bureau instituted under (a) sections 1031, 1036, and 1054 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, 5564 (CFPA); and (b) sections 806, 807, and 809 the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (FDCPA). The Complaint seeks both permanent injunctive relief, consumer redress, and civil money penalties for the Defendants' violations of the CFPA and FDCPA.

2. This Court has subject-matter jurisdiction over this action because it is brought under federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

3. Venue is proper in this District because defendants do business in this District and the events or omissions giving rise to this complaint substantially took place in this District. 28 U.S.C. § 1391(b) and 12 U.S.C. §

5564(f).

4. The Bureau has the authority under the CFPA and FDCPA to seek the relief it has requested. 12 U.S.C. § 5491(a); 12 U.S.C. 5565; 12 U.S.C. §§ 5564(a), (b); 15 U.S.C. § 1692l(b)(6).

5. The Complaint states claims upon which relief can be granted.

6. The Defaulted Defendants were each properly served with a Summons and the Complaint.

7. The Defaulted Defendants failed to answer the Complaint or to defend the action. The clerk of the Court has entered default against each of them.

8. Because of their defaults, the Defaulted Defendants are each deemed to have admitted the well-pleaded facts of the Complaint, and the allegations are taken as true. Fed. R. Civ. P. 8.

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

#### **Violations of the CFPA and the FDCPA**

10. The Defaulted Defendants are “covered persons” under the CFPA. 12 U.S.C. § 5481(6).

11. The Defaulted Defendants are “debt collectors” collecting “debts,” as those terms are defined by the FDCPA, 15 U.S.C. §§ 1692a(6) & (5).

12. The Defaulted Defendants and WNY Account Solutions, LLC

(collectively, the “LLC Defendants”) operated as a common enterprise under the criteria set forth in *FTC v. WV Universal Mgmt. LLC*, 877 F.3d 1234, 1240 (11th Cir. 2017) and *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1182 (N.D. Ga. 2008), *aff’d*, 356 F. Appx 358 (11th Cir. 2009). The LLC Defendants shared officers and office space, operated under the common control of the individual Defendants, shared employees, transferred and commingled money at will between their bank accounts, and paid each others’ expenses. Each LLC Defendant played a role in the debt collection business and none could have operated it independently.

13. Each of the Defaulted Defendants is jointly and severally liable for the acts and practices alleged in the Complaint.

14. As alleged in Count V of the Complaint, the Defaulted Defendants used false and misleading representations to collect debts, including representations that: consumers owed debts that in fact they did not owe or that the Defaulted Defendants had no authority to collect; the Defaulted Defendant’s debt collectors were “litigators”; consumers were liable for bank or check fraud; the Defaulted Defendants had filed, or intended to file legal actions against consumers; and the Defaulted Defendants would have consumers arrested. These false and misleading representations were likely to mislead consumers acting reasonably under the circumstances.

Therefore, the Defaulted Defendants' acts and practices were deceptive in violation of the CFPA, 12 U.S.C. §§ 5531(a), 5536.

15. As alleged in the Complaint's Count VI, the Defaulted Defendants' practices described above were also unfair, in violation of the CFPA, 12 U.S.C. §§ 5531(a), 5536. The Defaulted Defendants' practices caused substantial injury to consumers which was not reasonably avoidable by consumers, and such substantial injury was not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1).

16. As alleged in Counts I, II, and III of the Complaint, in making the above representations, the Defaulted Defendants also: (a) falsely represented or implied that nonpayment of a debt would result in the arrest or imprisonment of a person, in violation of section 807(4) of the FDCPA, 15 U.S.C. § 1592e(4); and b) threatened to take actions that Defendant did not intend to take, such as filing a lawsuit in violation of section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5). In addition, the Defaulted Defendants failed to send a written notice validating the amount of the debt and the creditor and supplying certain other information required by the FDCPA, in violation of section 809 of the FDCPA, 15 U.S.C. § 1692g.

17. Section 1036(a)(1)(A) of the CFPA provides that it is "unlawful for any covered person to offer or provide to a consumer any financial product

or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A). The FDCPA is a Federal consumer financial law. 12 U.S.C. § 5481(12)(H), (14). The Defaulted Defendants’ violations of the FDCPA constitute violations of section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

18. Given the Complaint’s well-pleaded allegations, the Court’s finding and conclusions in its order granting summary judgment to the Bureau (ECF No. 576), and the Defaulted Defendants’ failure to answer or defend in this action, the Court enters a default judgment against the Defaulted Defendants for their violations of sections 1031, 1036, and 1054 of the CFPA, 12 U.S.C. §§ 5531, 5536, 5564; and sections 806, 807, and 809 of the FDCPA, 15 U.S.C. §§ 1692-1692p.

### **Remedies**

19. The CFPA empowers this Court to order grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including refund of moneys, restitution, payment of damages or other monetary relief, injunctive relief, and civil money penalties. 12 U.S.C. § 5565.

20. Absent a permanent injunction, there is a reasonable

likelihood that the Defaulted Defendants will continue to engage in the unlawful conduct alleged in the Complaint or similar misconduct. The Defaulted Defendants' unlawful conduct as alleged in the Complaint justifies permanent injunctive relief.

21. The Bureau established through competent evidence that the financial harm to consumers from Defendants' violations was at least \$5,261,484.00 which is the amount paid to the LLC Defendants by consumers, net of chargebacks and refunds. As a result of prior settlements in this litigation, \$77,536.29 has been paid to the Bureau by former Defendants for purposes of consumer redress. Therefore, the Bureau is entitled to a judgment for monetary relief in the amount of \$5,183,947.71 against the remaining Defendants, which shall be used to compensate Affected Consumers (as defined below). The remaining Defendants are the Defaulted Defendants and the Non-Defaulted Defendants WNY Account Solutions, LLC, Marcus Brown, and Sarita Brown.

22. The Defaulted Defendants and the Non-Defaulted Defendants are jointly and severally liable for the monetary relief awarded by the Court.

23. This action and the relief awarded by this Order are in addition

to, and not in lieu of, other remedies as may be provided at law, including both civil and criminal remedies.

## **ORDER**

### **DEFINITIONS**

The following definitions apply to this Order:

24. "Affected Consumer" means a person who made payments through credit and debit card transactions, which were not later refunded or otherwise credited, to the LLC Defendants, S Payment Processing & Solutions, LLC, or MC Processing, LLC between March 1, 2011 and March 30, 2015.

25. "Asset" means any legal or equitable interest in, right to, or claim to any real, personal, or intellectual property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, commodities, futures, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), funds, cash, and trusts, including trusts held for the benefit of a person's minor children or spouse, wherever located, whether in the United States or abroad.

26. "Assist[ing] Others" includes, but is not limited to:
- a. consulting in any form whatsoever;
  - b. providing paralegal or administrative support services;
  - c. performing customer service functions, including but not limited to, receiving or responding to consumer complaints;
  - d. 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;
  - e. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
  - f. providing names of, or assisting in the generation of, potential customers;
  - g. performing marketing, billing, or payment services of any kind; and

- h. acting or serving as an owner, officer, director, manager, or principal of any entity.

27. "Consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual. 12 U.S.C. § 5481(4).

28. "Consumer Financial Product or Service" is synonymous in meaning and equal in scope to the definition of the term, as of the Effective Date, in section 1002(5) of the CFPA, 12 U.S.C. § 5481(5), and, subject to applicable restrictions contained in the CFPA, includes, but is not limited to:

- a. 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;
- b. 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; or

- c. 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.

29. “Debt” means any obligation or alleged obligation of a Consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. 15 U.S.C. § 1692a(5).

30. “Debt Collector” means (i) any Person who uses an instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of Debts or who regularly collects or attempts to collect, directly or indirectly, Debts owed or due or asserted to be owed or due another; (ii) any creditor who, in the process of collecting its own Debts, uses any name other than its own that would indicate that a third Person is collecting or attempting to collect the creditor’s Debts; and

(iii) any Person who collects Debt related to any consumer financial product or service.

31. “Defaulted Defendants” means Check & Credit Recovery, LLC, Credit Power, LLC, Universal Debt & Payment Solutions, LLC, Universal Debt Solutions, LLC, and WNY Solutions Group, LLC, individually, collectively, or in any combination, and their successors and assigns.

32. “Effective Date” means the date on which this Order is issued.

33. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau.

34. “LLC Defendants” means Check & Credit Recovery, LLC, Credit Power, LLC, Universal Debt & Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Solutions Group, LLC, and WNY Account Solutions, LLC, individually, collectively, or in any combination, and their successors and assigns.

35. “Non-Defaulted Defendants” means Marcus Brown, Sarita Brown, and WNY Account Solutions, LLC, individually, collectively, or in any combination.

36. "Person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

37. "Receiver" means Mark J. Bernet or any successor approved by the Court.

38. "Receivership Assets" are those Assets included in the Receivership Estate as defined in the Receivership Order.

39. "Receivership Entities" means the Defaulted Defendants, WNY Account Solutions, LLC, Real Estate of Distinction, LLC, and Rx Office Solutions, LLC, individually, collectively, or in any combination, and any other entity that meets the definition of a Receivership Entity as defined in the Receivership Order.

40. "Receivership Estate" means the Receivership Estate as defined in the Receivership Order.

41. "Receivership Order" means the Court's order entered February 19, 2020, ECF No. 684, which, inter alia, appointed the Receiver and created a receivership estate over the Assets of the Receivership Entities.

42. "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 any Defaulted Defendant based on substantially the same facts as described in the Bureau's Complaint.

## **CONDUCT RELIEF**

### **I.**

#### **Permanent Ban on Debt Collection**

**IT IS ORDERED that:**

43. Each of the Defaulted Defendants, whether acting directly or indirectly, is permanently restrained and enjoined from or Assisting Others in:
- a. acting as a Debt Collector;
  - b. holding any ownership interest in (i) a Debt Collector or (ii) a payment processor to a Debt Collector;
  - c. receiving any remuneration or other consideration from (i) a Debt Collector or (ii) a payment processor to a Debt Collector if the remuneration or consideration relates to the collection of Debts;
  - d. providing services or assistance to, or working in any capacity for, a Debt Collector, including but not limited to acting as a Service Provider, employee, or independent contractor to a Debt Collector; and

- e. advertising, marketing, promoting, offering for sale, processing payments for, selling, or buying any Debt or consumer information relating to a Debt.

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

## II.

### **Prohibition on Misrepresentations Concerning Consumer Financial Products or Services**

#### **IT IS FURTHER ORDERED that:**

44. Defaulted Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with the Defaulted Defendants who have actual notice of this Order, whether acting directly or indirectly, in connection with any Consumer Financial Product or Service, are permanently restrained and enjoined from misrepresenting, omitting, or Assisting Others in misrepresenting or omitting, expressly or by implication, any material fact, including but not limited to:

- a. a business name or identity;
- b. that any Person is an attorney or is barred or licensed to practice law in a particular jurisdiction;

- c. that any Person who is not associated or affiliated with an attorney or law firm is affiliated or associated with an attorney or law firm;
- d. that a Consumer will receive legal representation;
- e. how much a Consumer will save from purchasing, using, or enrolling in a Consumer Financial Product or Service;
- f. how long it will take to settle any Debts;
- g. the likelihood of any particular outcome or result from a Consumer Financial Product or Service; or
- h. the nature or terms of any refund, cancellation, exchange, or repurchase policy, including but not limited to the likelihood of a Consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the Consumer.

### III.

#### **Prohibition on Unfair Practices Involving Consumer Financial Products or Services**

#### **IT IS FURTHER ORDERED that:**

45. Defaulted Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or

participation with the Defaulted Defendants who have actual notice of this Order, whether acting directly or indirectly, in connection with any Consumer Financial Product or Service, are permanently restrained and enjoined from or Assisting Others in:

- a. Placing telephone calls to consumers without meaningful disclosure of the caller's identity; and
- b. Concealing their identity by causing "000-000-0000" or any other false or misleading information to appear on a consumer's caller identification.

#### IV.

#### **Prohibition on Business Ventures with Other Defendants**

**IT IS FURTHER ORDERED that:**

46. Defaulted Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from investing in, providing services to, working for, serving as an officer of, or being otherwise engaged in any business venture or project involving any other Defendant.

**V.**

**Consumer Information**

**IT IS FURTHER ORDERED that:**

47. Defaulted Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with the Defaulted Defendants, who receive actual notice of this Order, whether acting directly or indirectly, may not 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 Defendant obtained before the Effective Date in connection with the collection of Debt; provided, however, customer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

**VI.**

**Prohibition on Debiting Consumer's Financial Accounts**

48. Defaulted Defendants and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with the Defaulted Defendants who have actual notice of this

Order, whether acting directly or indirectly, in connection with any Consumer Financial Product or Service, are hereby permanently restrained and enjoined from causing debits to be made from any consumer's bank or other financial account, and from billing any consumer for any charge, without the consumer's express, informed consent.

**VII.**

**Prohibition on Certain Merchant Processing Activities**

**IT IS FURTHER ORDERED that:**

49. Defaulted Defendants and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with the Defaulted Defendants who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from allowing third parties to use any merchant processing account that a Defaulted Defendant owns or controls to collect consumer payments.

50. Defaulted Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with the Defaulted Defendants who have actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from re-opening or using the following merchant payment processing accounts associated with the unlawful debt collection scheme:

account numbers 8788370013263 and 8788370013280 with Frontline Processing Corporation, account numbers 5644000000476853, 564400000618298, 564400000641183, and 564400000735647 with Francis David Corporation d/b/a/ Electronic Merchant Systems, account numbers 8788730001893 and 8788730002232 with Pathfinder Payment Solutions, Inc., and account numbers 4445017408336 and 445017416651 with Vantiv, Inc. d/b/a PaidSuite.

## **MONETARY PROVISIONS**

### **VIII.**

#### **Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

51. A judgment for monetary relief is entered in favor of the Bureau and against the Defaulted Defendants, jointly and severally with the Non-Defaulted Defendants, in the amount of \$5,183,947.71 for their violations of sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B); and sections 806, 807, and 809 of the FDCA, 15 U.S.C. §§1692d, 1692e, and 1692g.

52. The Defaulted Defendants must pay a total of \$5,183,947.71 by wire transfer to the Bureau or to the Bureau's agent, in compliance with the Bureau's wiring instructions.

53. The monetary judgment set forth in Paragraph 51 is enforceable against any Asset owned by, on behalf of, for the benefit of, or in trust by or for any of the Defaulted Defendants. Any Receivership Assets or Assets subject to the Preliminary Injunction that the Receiver liquidates, with the permission of the Court, and pays to the Bureau for purposes of consumer redress will be deemed to satisfy the money judgment set forth in Paragraph 51 in part or in whole depending on the value of the Receivership Assets so paid.

54. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for Affected Consumers, including, but not limited to, refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

55. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury. The Defaulted Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

56. Payment of redress to any Affected Consumer under this Order may not be conditioned on the Affected Consumer waiving any right.

**IX.**

**Order To Pay Civil Money Penalty**

**IT IS FURTHER ORDERED** that:

57. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in this Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), the Defaulted Defendants must pay civil money penalties to the Bureau as follows:

- a. Check & Credit Recovery, LLC must pay \$500,000;
- b. Credit Power, LLC must pay \$500,000;
- c. Universal Debt & Payment Solutions, LLC must pay \$200,000;
- d. Universal Debt Solution, LLC must pay \$200,000; and
- e. WNY Solutions Group, LLC must pay \$100,000.

58. The Defaulted Defendants must pay the civil penalty amounts set forth in Paragraph 57 by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

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

60. The Defaulted Defendants must treat the civil money penalties paid under this Order as penalties paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, the Defaulted Defendants 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.

61. To preserve the deterrent effect of the civil money penalties in any Related Consumer Action, the Defaulted Defendants may not argue that any Defaulted Defendant is entitled to, nor may any Defaulted Defendant benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalties paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset to any Defaulted Defendant,

the Defaulted Defendant must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalties imposed in this action.

**X.**

**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

62. In the event of default on any Defaulted 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 termination of the Receivership to the date of payment, and will immediately become due and payable.

63. The Defaulted Defendants must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to the Defaulted Defendants.

64. 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 in a proceeding to enforce its rights to any payment or

monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

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

66. Under 31 U.S.C. § 7701, each Defaulted Defendant, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

67. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action against any Defaulted Defendant, the Defaulted Defendant must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that the Defaulted Defendant paid or is 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, Defendant may not argue that Defendant is entitled to, nor may Defendant

benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid 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 Defendant based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Defendant must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. 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.

**XI.**

**Assets Subject to Preliminary Injunction**

**IT IS FURTHER ORDERED** that:

68. To the extent they have not done so already, the Defaulted Defendants are ordered to forfeit to the Receiver all rights and claims they have to any Assets frozen by the Court's Preliminary Injunction Order. To the extent those Assets are released by order of the Court and paid by the Receiver to the Bureau, or liquidated by the Receiver with the Court's

permission with the proceeds paid to the Bureau, to provide redress for Affected Consumers, the funds received by the Bureau will be considered payments made by the Defaulted Defendants in partial satisfaction of the judgment ordered in Paragraph 51.

69. Upon completion of the requirement in Paragraph 68 and all payments required under Sections VIII and IX of this Order, the Preliminary Injunction will be modified to exclude the Defaulted Defendants and their Assets from its coverage.

## **COMPLIANCE PROVISIONS**

### **XII.**

#### **Cooperation with the Bureau and the Receiver**

**IT IS FURTHER ORDERED** that:

70. The Defaulted Defendants and their officers, directors, managers and managing members must cooperate fully to help the Bureau and the Receiver determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. The Defaulted Defendants must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau or the Receiver.

71. The Defaulted Defendants must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the

conduct described in the Complaint, the Court's order granting summary judgment to the Bureau (ECF No. 576), or the Findings herein. The Defaulted Defendants must provide truthful and complete information, evidence, and testimony. The Defaulted Defendants must cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 15 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

### **XIII.**

#### **Compliance Monitoring**

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

72. Within 14 days of receiving a written request from the Bureau, each Defaulted Defendant must submit additional requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

73. For purposes of this Section, the Bureau may communicate directly with each Defaulted Defendant, unless the Defaulted Defendant retains counsel related to these communications.

74. The Defaulted Defendants must permit Bureau representatives to interview any employee or other person affiliated with any Defaulted Defendant who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in the Complaint, the Court's order granting summary judgment to the Bureau (ECF No. 576), or the Findings herein or (c) compliance with this Order. The person interviewed may have counsel present.

75. Nothing in this Order limits the Bureau's lawful use of compulsory process, pursuant to 12 C.F.R. § 1080.6 or other compulsory process.

#### **XIV.**

#### **Continuity of Receivership**

**IT IS FURTHER ORDERED** that:

76. The Receivership Order shall continue as modified by this Section.

77. No later than one hundred and eighty (180) days from the Effective Date, the Receiver shall file and serve on the parties a report to the Court (Final Report) that details the steps taken to collect and administer the Receivership Assets. The Final Report must include an accounting of the Receivership Assets and a description of what other actions, if any, must be

taken to wind down the Receivership Estate (as defined in the Receivership Order) and to dissolve the Receivership Entities under their respective state laws of incorporation. At the time of filing the Final Report, the Receiver shall also file an application for final payment of compensation and expenses associated with his performance of its duties as Receiver. The Court will review the final payment application and any objections thereto and, absent a valid objection, will issue an order directing that the Receiver:

- a. Pay from the Receivership Estate the reasonable costs and expenses of administering the Receivership Estate, including compensation of the Receiver and the Receiver's personnel and the actual out-of-pocket costs incurred by the Receiver in carrying out his duties; and
- b. After making the payments referenced in Paragraph 77(a), pay all funds remaining in the Receivership Estate to the Bureau within ten (10) days by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, for the purpose of paying the monetary judgment and penalties set forth in this Order.

78. If the Receiver believes that the Receivership Estate cannot be liquidated or that adequate consumer transaction information for purposes

of redress cannot be obtained within one hundred and eighty (180) days of the Effective Date, or if the Receiver believes that additional actions need to be taken more than one hundred and eighty (180) days after the Effective Date, the Receiver will move the Court for an appropriate extension of the Receivership and the deadline to file the Final Report.

79. Until the date the Court issues an order based on the Receiver's Final Report, if there is any final judgment, consent order, or settlement in a Related Consumer Action, the Receiver must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that any Receivership Entity paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

80. Upon the transfer of funds to the Bureau pursuant to this Section, the Receivership will be terminated.

#### **XIV.**

#### **Entry of Judgment**

**IT IS FURTHER ORDERED** that:

81. There being no just reason for delay of entry of this judgment, under Federal Rule of Civil Procedure 54(b), the Clerk will immediately

enter this Order as a final judgment as to the Defaulted Defendants.

**XV.**

**Retention of Jurisdiction**

**IT IS FURTHER ORDERED** that:

82. All pending motions are hereby denied as moot.

83. This Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**XVI.**

**Service**

**IT IS FURTHER ORDERED** that:

84. This Order may be served upon the Defaulted Defendants by serving the Receiver via electronic mail, certified mail, or United Parcel Service, either by the United States Marshal, the Clerk of the Court, or any representative or agent of the Bureau.

SO ORDERED this 20<sup>th</sup> day of Oct, 2021.

  
\_\_\_\_\_  
THE HONORABLE RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE