

FILED
17 SEP 26 PM 2:14

FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Rafaela...

DC-14-14587

STATE OF TEXAS,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

LOWERMYPILLS, INC. and
EXPERIAN INFORMATION
SOLUTIONS, INC.,
Defendants.

DALLAS COUNTY, TEXAS

14th JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

Plaintiff, the State of Texas, acting by and through the Attorney General of Texas, Ken Paxton; the Texas Office of Consumer Credit Commissioner ("OCCC"), acting by and through Commissioner Leslie L. Peulijohn; and Defendant, LowerMyBills, Inc. ("Defendant" or "LowerMyBills"), announce that all claims in controversy as pled between the State of Texas and LowerMyBills (collectively, "Parties") have been settled. The Parties present for the Court's approval and filing in accordance with Tex. Bus. & Com. Code Ann. § 17.58 this Assurance of Voluntary Compliance ("AVC" or "Agreement").

STIPULATIONS

The Parties stipulate as follows:

1. On December 16, 2014, the State of Texas commenced this matter ("State Court Action") by filing a complaint alleging causes of action against Defendant for violations of the Texas Deceptive Trade Practices and Consumer Protection Act (Tex. Bus. & Comm. Code Ann §§ 17.41 *et seq.*) and the standards and licensing requirements of Chapter 394 of the Texas Finance Code related to allegations that Defendant:

- Misrepresented that it would be directly involved in providing debt management services to consumers, that debt management service providers were legally able to

provide debt management services, that certain debt management services had Defendant's sponsorship or approval, that certain debt management services were of a particular standard or quality, and that Defendant failed to disclose to consumers that consumer information was sold to debt management service providers, all in violation of the Texas Deceptive Trade Practices and Consumer Protection Act.

- Misrepresented itself to be providing debt management services, and unlawfully provided such services, all in violation of the standards and licensing requirements of Chapter 394 of the Texas Finance Code.

2. On August 30, 2013, the Chapter 7 Petition Date, Credit Alliance Group ("CAG"), one of LowerMyBills' providers to whom it referred consumers, filed for relief under Chapter 7 of the Bankruptcy Code commencing *In re Credit Alliance Group, Inc.*, No. 13-10876 (Bankr. M.D. Fla. 2013) ("Bankruptcy Case"). The Bankruptcy Case is still pending.

3. Richard B. Webber, II ("Trustee") was subsequently appointed as the Chapter 7 Trustee for the Bankruptcy Case.

4. On August 28, 2015, the Trustee commenced an adversary proceeding, Case No. 6:15-ap-104, by filing a complaint in the Bankruptcy Case alleging various causes of action against the defendants named therein, including LowerMyBills, for violations of the Texas Deceptive Trade Practices and Consumer Protection Act (Tex. Bus. & Comm. Code Ann §§ 17.41 *et seq.*) and the standards and licensing requirements of Chapter 394 of the Texas Finance Code ("Adversary Proceeding").

5. On February 4, 2016, the Trustee voluntarily dismissed LowerMyBills from the Adversary Proceeding.

6. A motion for preliminary approval of a class action settlement was filed in *Rodriguez, et al. v. Experian Services Corp., et al.*, Case No. CV 15-3553-R ("Rodriguez") and a Final Approval Order in *Rodriguez* subsequently issued.

7. Within fourteen (14) days of issuance of the Final Approval Order, this AVC shall be executed and submitted to the Court by both parties and will be deemed effective on the date it is entered by the Court ("Effective Date").

8. "Litigation Claim" or "Litigation Claims" shall mean all civil claims, causes of action, administrative actions, damages, restitution, fines, costs, and penalties that the Texas Attorney General or the Texas Consumer Credit Commissioner, could have asserted or did assert against Defendant prior to the Effective Date, based on the allegations made in the Original and Amended Petitions filed in the State Court Action regarding Defendant's debt management services matching and referral business, under the State's consumer protection laws relating to unfair and deceptive business acts and practices, or any Federal or State consumer protection law that the Texas Attorney General or the Texas Consumer Credit Commissioner is empowered to enforce.

9. This AVC is entered in full resolution of the Litigation Claims. Upon ten (10) days after the payments referenced in Sections 14 and 17, the State Court Action shall be dismissed with prejudice. By the same date, the Litigation Claims by the State of Texas against Defendant, CPL Holdings, LLC (Defendant's parent company), and any of their respective past, present and future parent companies, subsidiaries, affiliates, divisions, partners, real or alleged alter egos, managers, shareholders, directors, officers, employees, agents, representatives, attorneys, accountants, predecessors, insurers, successors, heirs and assigns are released.

10. Nothing contained in this AVC shall constitute an admission of wrongdoing or liability of any Party hereto, it being recognized and agreed that this is an agreed upon resolution of Litigation Claims, settled for economic and related business reasons. The State of Texas further enters this AVC in the public interest to address the concerns raised in the State of Texas' Original and Amended Petitions through the terms and conditions of this AVC.

11. LowerMyBills agrees to maintain records demonstrating compliance with the terms of this AVC and its assurances contained below.

ASSURANCES AND PROHIBITED PRACTICES

12. In response to the allegations, but without admitting the truth of them, Defendant specifically agrees and voluntarily assures Plaintiff that each and all of its directors, officers, agents, affiliates, employees, successors, and assignees, and all persons in active concert or participation with Defendant who have received actual notice of this AVC, by personal service or otherwise, shall ensure that:

- i. Before providing to any third-party debt management service provider information pertaining to a Texas consumer, Defendant shall notify the consumer and obtain the consumer's express consent, with a statement visible from the LowerMyBills webpage, from which the consumer clicks to see the results of the referral service provided by LowerMyBills.
- ii. Before providing to any third-party debt management service provider information pertaining to a Texas consumer, Defendant will verify, on at least a bi-annual basis, that such third-party debt management service provider is lawfully registered with the Texas Office of Consumer Credit Commissioner to provide debt management services by conducting a search for the third-party debt management service provider on the Texas Office of Consumer Credit Commissioner's designated website.
- iii. Before providing to any third-party debt management service provider that is headquartered in Texas information pertaining to any consumer, Defendant will verify, on at least a bi-annual basis, that such third-party debt management service provider is lawfully registered with the Texas Office of Consumer Credit Commissioner to provide debt management services by conducting a search for

the third-party debt management service provider on the Texas Office of Consumer Credit Commissioner's designated website.

- iv. Defendant will not represent to a Texas consumer that a third-party debt management service provider is Defendant's "partner" unless Defendant is engaged in a legal partnership with the third-party debt management service provider to provide debt management services.
- v. Defendant will not represent to a Texas consumer that a third-party debt management service provider is "approved" by Defendant unless Defendant verifies, on at least a bi-annual basis, that such third-party debt management service provider is lawfully registered with the Texas Office of Consumer Credit Commissioner to provide debt management services by conducting a search for the third-party debt management service provider on the Texas Office of Consumer Credit Commissioner's designated website.
- vi. Defendant will not solicit from any third-party debt management service provider information about whether a specific and identifiable Texas consumer about whom Defendant provided information to the third-party debt management service provider actually contracted with said provider, unless Defendant obtains the express consent of the Texas consumer before doing so.
- vii. Any marketing material that Defendant provides to debt management service providers for use in soliciting Texas consumers will expressly state that "LowerMyBills is a third-party referral service and does not endorse any particular service provider."
- viii. Unless Defendant seeks and secures all applicable licenses and registrations to act as a Debt Management Services provider to Texas consumers, any marketing material Defendant disseminates to Texas consumers regarding debt management service providers, for use in soliciting Texas consumers, will expressly state that "LowerMyBills is a third-party referral service, not a debt management service provider, and does not endorse any particular service provider."

MONETARY RELIEF

13. Defendant agrees to pay up to \$2,000,000.00, as described in Section 17 and by the deadline specified therein, which shall be distributed to participating Eligible Consumers.

14. Defendant agrees to pay \$200,000.00 to the State of Texas as reasonable and necessary attorneys' fees and investigation costs ("Attorney Fee Payment") on the same day that Defendant provides the Claim Fund to the Claims Administrator, as described in Section 17.

The Attorney Fee Payment shall be in the form of a certified check or money order and made

payable to the Office of the Texas Attorney General. The Attorney Fee Payment shall be delivered to the Office of the Texas Attorney General, Accounting Division, 300 West 15th Street, Austin, Texas, 78701 with a copy delivered to the Consumer Protection Division Dallas Office at 1412 Main St., Suite 810 Dallas, Texas 75202. The Attorney Fee Payment and any accompanying correspondence must be identified for proper accounting purposes by this case Cause Number, "DC-14-14587," and also by "OAG #133437400."

15. Defendant shall bear all of the costs incurred in complying with the terms of this Agreement including the cost of administering the Claim Fund and distribution under the terms of the Agreement, including any fees assessed by the Claims Administrator or any other third party. The costs associated with claim administration contemplated by this Agreement may not be paid from the Claim Fund.

RESTITUTION COMPENSATION

16. In its motion for preliminary approval, LowerMyBills has selected a claims administrator ("Claims Administrator") subject to the requirements of Exhibit A and with the approval of Plaintiff, which could not be unreasonably withheld. For the avoidance of doubt, the parties agreed that claim administrators KCC, Epiq Systems, and Gilardi & Co. were pre-approved. The Parties also agreed that the claims administration process shall be designed to be consumer friendly while still compliant with all court and legal requirements to encourage consumers' participation in the process and provide for the terms and protections contained in Exhibit A and in this Agreement.

17. Within fourteen (14) days of the Effective Date, Defendant shall pay the Claims Administrator \$2,000,000.00 ("Claim Fund") and shall send notification of the same to:

Managing Attorney, Consumer Protection Division, (Dallas Office), at 1412 Main St., Suite 810 Dallas, Texas 75202.

18. Within fourteen (14) days of the approval by the district court in *Rodriguez* of the Claims Administrator, Plaintiff, through the Claims Administrator, provided as previously agreed a list of Eligible Consumers as defined in Section 19. Also within fourteen (14) days of the approval by the district court in *Rodriguez* of the Claims Administrator, for each Eligible Consumer described in Section 19(a)-(c) below, Plaintiff provided as previously agreed to the Claims Administrator the associated CAG Loss as described in Sections 21 and 20 below, along with the Eligible Consumer's contact information ("Initial Report").

Definition of the Group of Eligible Consumers

19. Eligible Consumers are limited to the consumer-customers of CAG during the time frame of September 1, 2007 through April 17, 2013, who were referred to CAG by LowerMyBills, and who have done one or more of the following: (a) filed a claim in the Credit Alliance Chapter 7 Bankruptcy proceeding concerning funds the consumer provided to CAG which were not returned or otherwise used by CAG to reduce the consumer's debt, (b) made a complaint inquiry with the Better Business Bureau concerning funds the consumer provided to CAG which were not returned or otherwise used by CAG to reduce the consumer's debt, (c) made a complaint inquiry with the Office of the Texas Attorney General concerning funds the consumer provided to CAG which were not returned or otherwise used by CAG to reduce the consumer's debt, or (d) are otherwise a member of the settlement class in *Rodriguez*, who after being referred to CAG by LowerMyBills, provided funds to CAG, which were not returned or otherwise used by CAG to reduce the consumer's debt.

Identified Eligible Consumers for Restitution Group

20. The group of consumers identified to receive restitution from the Claim Fund includes and is limited to those Eligible Consumers with a verified CAG Loss who submit a claim according to the Claims Administration Process ("Restitution Group").

Determination of Claim Amount

21. Each Eligible Consumer's Claim Amount shall be based upon the funds the Eligible Consumer provided to CAG, which were not returned or otherwise used by CAG to reduce the consumer's debt ("CAG Loss"). The Claim Amount associated with each Eligible Consumer shall be a prorated portion of the CAG Loss, defined using the following formula:

$$\$2,000,000 \times \frac{\text{The Individual verified CAG Loss of the identified Eligible Consumer who submits a claim form through the Claims Administrator}}{\text{The Total verified CAG Losses of all identified Eligible Consumers who return a claim form through the Claims Administrator}}$$

22. With respect to Eligible Consumers defined in Section 19(a)-(c) above, the CAG Loss is considered verified. As to Eligible Consumers identified in Section 19(a), the designated CAG Loss is based on the consumer's claim forms in the Bankruptcy Case and supporting customer account records of CAG. With respect to Eligible Consumers defined in 19(b)-(c) above, the designated CAG Loss is based on the documentation provided by the consumer and supporting proprietary account records of CAG. With respect to Eligible Consumers defined in Section 19(d) above, the CAG Loss is verified by the claims administration process as supported by the proprietary account records of CAG. Only Eligible Consumers who choose to participate by submitting a claim through the Claims Administrator will be included as identified Eligible Consumers for participation in the disbursement of restitution as a member of the Restitution Group.

Claim Administration Process

23. Defendant through the Claims Administrator shall disburse the Claim Fund pursuant to the claims administration process as approved by the district court in *Rodriguez* and consistent with this AVC and Exhibit A. Defendant shall comply with any and all applicable state, federal, local law or regulation with respect to disbursements of restitution funds and treatment of unclaimed property.

24. Any undisbursed portion of the Claim Fund after the claims administration process approved in *Rodriguez* shall be disbursed to Plaintiff for additional restitution or to be allocated in accordance with Texas Govt. Code § 402.007(b)(1) to the Supreme Court Judicial Fund or general revenue as appropriate.

MISCELLANEOUS PROVISIONS

25. This AVC contains the entire agreement between the Parties in resolution of the State Court Action. This AVC shall be considered a formal and binding agreement between the Parties which may be enforced only by the Parties hereto.

26. If any Texas or federal law or regulation is enacted such that compliance with this AVC would cause Defendant to violate that law, then this AVC shall be automatically modified only to the extent needed to eliminate the conflict. If any terms, sections, or subsections of this AVC are so modified or if a court of competent jurisdiction voids or rules any part of the AVC invalid or unlawful or void for any reason, the remaining terms, sections, or subsections of this AVC will continue in effect. Defendant agrees to notify the Texas Attorney General within thirty (30) days of Defendant's determination of such conflict and specify how the AVC is modified and by what authority.

27. Except as set forth in Section 26 any modification of this AVC must be in writing and signed by both Parties.

28. Defendant shall not participate in any activity or form a separate corporation or entity that engages in any acts or practices in whole or in part, within the State of Texas, that are prohibited by this AVC or for any other purpose that would otherwise circumvent any part of this AVC.

29. Defendant shall provide written notice of this AVC to each of Defendant's present and future parent companies, subsidiaries, and executive employees, officers, and directors existing on or after the date of entry of this AVC.

30. This AVC may be executed in multiple counterparts, which may be exchanged by electronic mail, and such exchange shall constitute execution and delivery of this AVC.

31. This AVC shall in all respects be interpreted, enforced and governed under the laws of the State of Texas without regard to the conflict of laws principles thereof. The language of this AVC shall in all cases be construed as a whole, according to its fair meaning, and shall not be construed strictly for or against one of the Parties. Except as necessary to enforce or modify this AVC, neither the existence of this AVC nor any of its provisions shall be offered or received in evidence in any litigation by the Parties, as an admission or concession of liability or wrongdoing of any nature, or any fact alleged in the State Court Action, on the part of the Parties, or as an admission or concession by such Party concerning the merits of any allegation, claim or defense.

32. Documents produced to the State of Texas by Defendant shall continue to be governed by Section 17.61 of the Texas Business and Commerce Code and other applicable Texas law.

33. Acceptance of this AVC by the State of Texas shall not be deemed approval by the State of Texas of any of the acts or practices of Defendant described in this AVC. Further, neither Defendant nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the State of Texas has approved, sanctioned, or authorized Defendant's acts or practices. Nothing in this AVC shall be deemed to permit or authorize any violation of any Texas or federal law or deemed to constitute permission to engage in any act or practice prohibited by any Texas or federal law.

34. The Parties agree that except as otherwise stated herein (for example, as in Sections 8 and 9) the nothing in this AVC shall in any way limit the authority of the Texas Consumer Credit Commissioner.

35. The Parties agree that except as otherwise stated in this AVC and Exhibit A, nothing is intended to confer, create, expand or limit any rights of any third party and is solely an agreement between the State of Texas and Defendant.

36. The Parties agree the Court retains its jurisdiction to enforce, modify, and construe this AVC.

[Intentionally Left Blank – signatures to follow on next page]

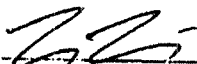
SIGNED this _____ day of _____, 20_____.

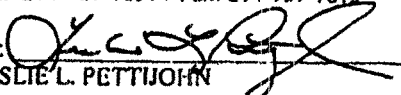
SEE ORDER

JUDGE PRESIDING
14th JUDICIAL DISTRICT COURT
DALLAS COUNTY, TEXAS


AGREED AS TO FORM AND SUBSTANCE WITH ENTRY REQUESTED:

PLAINTIFF STATE OF TEXAS

By: 
ROB ROBINSON - SBN: 00794545
Assistant Attorney General
Lead Attorney in Charge for Plaintiff,
State of Texas
JESSICA LESSER - SBN: 24001974
OFFICE OF THE ATTORNEY GENERAL
1412 Main Street, Suite 810
Dallas, Texas 75202
Tel: 214-969-7639 / Fax: 214-969-7615

By: 
LESLIE L. PETTIGREW
CONSUMER CREDIT COMMISSIONER
STATE OF TEXAS

DEFENDANT LOWERMYBILLS, INC.

By: 
MITCH VINER
General Counsel of CPI, Holdings, LLC.
parent company to LowerMyBills, Inc.

Claims Administration – Exhibit A

1. General Obligations

- 1.1 The Claims Administrator will carry out all necessary functions of disbursing payments as eligible for restitution payments under the AVC.
- 1.2 The scope of work may include, without limitation, reviewing information, providing written reports, participating in conferences by telephone or in person, or other matters helpful or necessary to coordinate, deliver, or reconcile any payment or transaction and performance of administering the claims.
- 1.3 The Claims Administrator shall provide Eligible Consumers with information regarding eligibility for restitution or disbursement along with instructions on how the consumer can elect to participate in the process. The administration process shall include a robust, multi-pronged notice program to give the best notice and information reasonable, and with appropriate and reasonable options for Eligible Consumers to participate and respond.
- 1.4 The Claims Administrator shall use standard and customary practices to verify accuracy of the contact information, including the information contained in a pre-populated claim form ("Claim Form"). The Claims Administrator shall use commercially reasonable efforts to ensure that electronic mail is not sent to "junk" or "spam" folders and will track returned or "bounced" electronic mail. The Claims Administrator will employ customary practices to review and process the provided contact information associated with Eligible Consumers for accuracy. The Claims Administrator may contact Eligible Consumers for the purpose of facilitating the claims administration process.
- 1.5 The Claims Administrator shall update the consumer contact information if notified by the consumer of new information regardless of the method of the communication. The Claims Administrator shall maintain a database of electronic records that includes the date of each delivery and the method of delivery, the date of any inquiry, and the date contact information was updated as it pertains to an Eligible Consumer.

2. Trust Account

- 2.1 The Claims Administrator shall open a special trust account for the Claim Fund to hold and disburse the funds. The trust account shall be used for no other purpose by the Claims Administrator, LowerMyBills, or any other third party other than the deposit, processing, and payment of the Claim Fund and consumer restitution in compliance with the AVC.

3. Claim Process

- 3.1 The claims administration process shall be designed consistent with Fed. R. Civ. P. 23 and to encourage consumer participation. The Claim Administrator shall use best efforts to notify (by regular and electronic mail) Eligible Consumers about the available restitution process and on how an Eligible Consumer can elect to participate in the process.

4. Duty to Maintain Records.

4.1 The Claims Administrator shall maintain and retain for a period of four (4) years after the submission of the final expenditure and reconciliation report, or until full and final resolution of all audit or litigation matters which arise after the expiration of the four (4) year period, such records as are necessary to fully disclose the extent of services provided under this Agreement including, but not limited to, records of all disbursements, cancelled checks, correspondence, and other records that may show basis of the charges made or performances delivered.

5. Audit Trails.

5.1 The Claims Administrator shall maintain appropriate audit trails to provide accountability for mission critical information, charges, procedures, and performances. Audit trails maintained by the Claims Administrator will, at a minimum, identify the supporting documentation prepared by the Claims Administrator to permit an audit by tracing the activities of the individuals through the record keeping system.