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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. _____

MAY 21 2024
SUPERIOR COURT - CIVIL
AGT. JOHN E. POWERS, III
CLERK MAGISTRATE

In re Duvera Billing Services, LLC d/b/a EasyPay Finance

ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, §§2, 5

The Office of the Attorney General of the Commonwealth of Massachusetts, by and through its Attorney General, Andrea Joy Campbell (the “Attorney General”), and Duvera Billing Services, LLC d/b/a EasyPay Finance (“EasyPay”) (collectively, the “Parties”) hereby agree to this Assurance of Discontinuance (“Assurance”) pursuant to Massachusetts General Laws chapter 93A, §§ 2 and 5.

I. Introduction

1. The Attorney General is responsible for enforcing the Consumer Protection Act, G.L. c. 93A, which prohibits unfair and deceptive acts and practices in the conduct of any trade or commerce, and all other Consumer protection laws and regulations in Massachusetts.

2. EasyPay is a California company with a principal place of business at 3220 Executive Ridge, Suite 200, Vista, California 92081.

3. The Attorney General has conducted an investigation into whether EasyPay has engaged in unfair and deceptive practices in Massachusetts in violation of G.L. c. 93A, § 2, by issuing EasyPay a Civil Investigative Demand (“CID”) pursuant to her authority under G.L. c. 93A, § 6.

4. Based on the investigation, the Attorney General alleges that EasyPay violated G.L. c. 93A, § 2 by making loans with usurious interest rates in violation of G.L. c. 271, § 49.

5. In lieu of litigation and in recognition of EasyPay's assistance and cooperation throughout the investigation, the Attorney General agrees to accept this Assurance on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 5.

6. EasyPay, without admitting any facts, liability, or wrongdoing, in the interest of resolving this matter, agrees to accept this Assurance on the terms and conditions contained herein, as authorized by G.L. c. 93A, § 5.

II. Definitions

The following definitions shall apply wherever the defined terms are used within this Assurance:

7. "Active Loans" means all loans provided in Massachusetts pursuant to the Loan Program which have not been paid in full and are not Defaulted Loans as of the Effective Date.

8. "Covered Conduct" means those acts or practices alleged in Paragraphs 13-21, below.

9. "Defaulted Loans" means a loan made to a consumer in Massachusetts that is at least sixty (60) days past due as of the Effective Date of this Assurance, or a loan provided to a consumer in Massachusetts who filed for bankruptcy protection while the loan was in repayment.

10. "Effective Date" means the date that this Assurance is filed in the Superior Court.

11. “Loan Program” means the agreement between EasyPay and TAB Bank, a Utah state-chartered bank (“TAB Bank”), under which loans were provided to Massachusetts consumers.

12. “Restitution Consumers” means those Massachusetts consumers who: (1) entered into a loan through the Loan Program on or after May 30, 2018, (2) did not pay off the loan during the ninety (90) day interest rebate promotion period, (3) do not have a Defaulted Loan (4) paid interest in excess of 20% per annum, and (5) paid more than \$10 of interest in excess of 20% per annum.

III. Allegations

13. Loans were originated under the Loan Program in the period from May 30, 2018 to December 29, 2022. Under the Loan Program, TAB Bank is identified as the entity that originates loans to Massachusetts consumers and retains title of those loans. EasyPay purchases, without recourse, participation interests in the loan the first business day after the funding date for the loan.

14. The Attorney General alleges that EasyPay:
- a. has a 90% participation interest in the loans,
 - b. takes most of the risk of non-performance of the loans,
 - c. protects TAB Bank against the risk of non-performance of the loans,
 - d. does the marketing and provides customer service for the loans,
 - e. provides the underwriting model for the loans,

- f. takes responsibility for monitoring risk, including fraud and credit risk for the provision of the loans, and
- g. owns the trademark for EasyPay Finance.

15. The Attorney General alleges that EasyPay is the true lender in the Loan Program and made loans to Massachusetts consumers under the Loan Program.

16. In the provision of loans, G.L. c. 271, § 49 prohibits charging “interest and expenses the aggregate of which exceeds an amount greater than twenty per centum per annum upon the sum loaned.”

17. The loans in Massachusetts had an average annual percentage rate above 100%.

18. Interest on the loans made to Massachusetts consumers under the Loan Program uniformly exceeded 20%.

19. The Attorney General alleges that the acts or practices identified in paragraphs 13-18 above are independently or in combination unfair or deceptive, and as such constitute violations of G.L. c. 93A, §2.

20. The Attorney General alleges that EasyPay knew or should have known that these acts were unfair or deceptive and violated G.L. c. 93A, § 2.

21. EasyPay maintains it does not make loans and instead solely facilitates, purchases participation interests in, and services loans made by TAB Bank. For this reason, EasyPay denies that G.L. c. 271, § 49 applies to loans made by TAB Bank under the Loan Program.

IV. Assurances and Undertakings

22. The provisions of this Assurance shall apply to EasyPay and all persons or entities that it controls or has the ability to control, including without limitation its principals, officers, directors, employees, agents, successors, or assignees.

23. The assurances and undertakings detailed below shall apply to EasyPay's business in the Commonwealth of Massachusetts or with residents of the Commonwealth of Massachusetts.

A. Cease Operations in Massachusetts

24. As of the Effective Date, EasyPay shall, in perpetuity, cease and desist from engaging in the following conduct in the Commonwealth of Massachusetts: any lending, facilitation of any lending, or servicing of any loans or lending product. For purposes of this paragraph, lending shall include the provision of any retail installment contracts.

B. Restitution to Consumers

25. As of the Effective Date, EasyPay shall perform a self-audit of all loans facilitated and serviced in Massachusetts pursuant to the Loan Program from May 30, 2018 through December 29, 2022, identifying all Active Loans, Defaulted Loans, and Restitution Consumers.

26. Within sixty (60) business days of the Effective Date, EasyPay shall attempt to pay restitution, in the form of pro rata refunds among the Restitution Consumers identified in the self-audit described in paragraph 25, totaling \$625,000.

27. All refunds shall be first attempted using the last known automatic payment method linked to the account. Within ten (10) business days of receiving notice that this form of

payment was unsuccessful, EasyPay shall attempt payment using any second form of payment linked to the account. If these methods result in the funds being undeliverable, EasyPay must issue the refunds by check within ten (10) business days of receipt of notice that the second attempt at automatic payment was unsuccessful. EasyPay shall exercise reasonable efforts and due diligence to attempt the refund, including using standard address-search methodologies and promptly attempting at least once to re-mail all returned checks.

28. Within sixty (60) business days of the Effective Date, EasyPay must e-mail to the last known e-mail address of each of the Restitution Consumers a written notice, in a form approved by the Commonwealth of Massachusetts stating that:

- a. EasyPay facilitated and serviced a loan to the consumer pursuant to the TAB Bank Loan Program;
- b. EasyPay has entered into an agreement with the Massachusetts Attorney General's Office concerning this loan;
- c. The refund is being provided pursuant to the agreement with the Massachusetts Attorney General's Office;
- d. If payment is made by check, if the consumer does not accept payment by a date to be identified that is one hundred and eighty (180) calendar days after the refund check was issued, the check will expire and the money will be paid over to the Massachusetts Attorney General's Office; and
- e. Instructions to contact the Massachusetts Attorney General's Office with questions relating to the agreement.

29. If any e-mail is returned as undeliverable, or EasyPay does not have an e-mail address for the consumer, it shall send the notice via first-class U.S. Mail to the last known address linked to the account.

30. In the event EasyPay is unable to locate any of the Restitution Consumers after reasonable efforts and due diligence, or to otherwise pay a refund to a Restitution Consumer, within the lesser of one hundred ninety (190) days of the last attempted issuance of payment or one (1) year from the Effective Date, such unpaid refunds shall be paid to the Attorney General by check or wire transfer payable to the "Commonwealth of Massachusetts."

31. At her sole discretion, the Attorney General may use or distribute the payment described in the foregoing paragraph in any amount, allocation or apportionment and for any purpose permitted by law, including but not limited to, payments to or for consumers and for the facilitation of this Assurance.

32. In agreeing to the payment amounts above, the Attorney General has relied upon EasyPay's self-audit of loans. The Parties agree that if that audit has undercounted the amount of restitution due to Restitution Consumers it shall constitute a violation of this Assurance.

C. Collections on Active and Defaulted Loans

33. EasyPay agrees not to collect, attempt to collect, or assign any right to collect payment on all Defaulted Loans and all Active Loans as of the Effective Date.

34. EasyPay shall not sell, assign, or otherwise transfer any Defaulted Loans or any Active Loans.

35. EasyPay shall, within forty-five (45) business days of the Effective Date of this Order, request that the tradelines for any Active Loans and Defaulted Loans be deleted from the consumer's credit reporting file with any credit reporting agency where EasyPay previously reported the debt.

36. Within forty-five (45) business days of the Effective Date of this Order, EasyPay shall e-mail at the last known e-mail address each of the consumers holding Active Loans and Defaulted Loans, except for those consumers whose accounts have already been discharged in bankruptcy or are the subject of an open bankruptcy case, a written notice, in a form approved by the Attorney General. If any e-mail is returned as undeliverable, or EasyPay does not have an e-mail address for the consumer, it shall send the notice via first-class U.S. Mail to the last known address linked to the account. The notice will inform the consumer of the following:

- a. EasyPay facilitated a loan to the consumer in conjunction with TAB Bank;
- b. EasyPay has entered into an agreement with the Massachusetts Attorney General's Office concerning this loan;
- c. EasyPay has agreed not to collect or attempt to collect any additional payments on this loan;
- d. EasyPay has agreed not to assign or transfer its right to collect payment on this loan;
- e. EasyPay requested deletion of the tradeline for the loan if it had previously reported it to any credit reporting agency; the credit reporting agencies are not

obligated to honor the request and EasyPay does not control the timing of any deletion; and

- f. Instructions to contact the Massachusetts Attorney General's Office with questions relating to the agreement.

D. Reporting

37. Within thirty (30) business days of the Effective Date, EasyPay shall submit to the Attorney General a report based upon the self-audit described in paragraph 28, including:

- a. A list of all Defaulted Loans and the amount of outstanding principal and interest of said loans as of the Effective Date.
- b. A list of all Active Loans and the amount of outstanding principal and interest of said loans as of the Effective Date.
- c. A list of all Restitution Consumers and the amount of restitution to be provided to each Restitution Consumer pursuant to paragraphs 25-29.

38. Within sixty (60) business days of the Effective Date, EasyPay shall submit to the Attorney General:

- a. A list of the loans that EasyPay requested be deleted from credit reporting files; and
- b. Copies of each notice e-mailed or mailed to the consumers pursuant to paragraphs 28 and 37.

39. Within ninety business days (90) after the Effective Date, EasyPay shall provide the Attorney General with a list of all Restitution Consumers who have received payments.

40. Within one (1) year after the Effective Date, EasyPay shall:
 - a. Provide the Attorney General with evidence reasonably acceptable to the Attorney General, that EasyPay timely sent refunds to consumers, such as copies of checks or confirmations of electronically transmitted funds; and
 - b. Provide the Attorney General with a list of consumers who accepted payments and a list of consumers who did not accept payments.

V. Release

41. Contingent on EasyPay's compliance with the obligations set forth in paragraphs 22-40, the Attorney General fully and finally releases EasyPay from all civil liability to the Attorney General for all civil claims arising from the Covered Conduct occurring prior to the Effective Date. This release shall not bind any other private or governmental entity.

42. Further, nothing in this Assurance shall be deemed to preclude the Attorney General's review of conduct that occurs after the Effective Date, or any claims that may be brought by the AGO to enforce EasyPay's compliance with the Assurance.

VI. Notice

43. Any notice that is made or required under the terms of this Assurance shall be provided via electronic mail and first-class mail to the following addresses.

For the Commonwealth:

Massachusetts Attorney General's Office
Consumer Protection Division
ATTN: Yael Shavit
One Ashburton Place, 18th Floor
Boston, MA 02108

yael.shavit@mass.gov

For EasyPay:

Ashley L. Taylor
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point, Suite 1500
Richmond, VA 23219
Ashley.Taylor@troutman.com

VII. General Provisions

44. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and Superior Court for Suffolk County shall retain jurisdiction over this Assurance.

45. This Assurance shall be effective as of the Effective Date.

46. This Assurance contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this Assurance have been made by either party. This Assurance supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether written or oral.

47. The provisions of this Assurance are severable. If any provision herein is found to be legally insufficient, invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

48. This Assurance shall be binding on EasyPay's successors, subsidiaries, and all other persons who have authority to control or who in fact control and direct EasyPay's business in the Commonwealth of Massachusetts.

49. Nothing contained in this Assurance shall be used, offered, or received in evidence in any proceeding to prove any liability, any wrongdoing, or any admission on the part of EasyPay or by any individual or entity not a party hereto; provided, however, that the foregoing provision shall not limit the Attorney General's rights under G.L. c. 93A, § 5, and shall not prevent this Assurance from being used, offered, or received in evidence in any proceeding between the Parties to enforce its terms.

50. EasyPay and the Attorney General's Office participated in the drafting of this Assurance.

51. EasyPay waives all rights to appeal or to otherwise challenge or contest the validity of this Assurance.

52. Except as to the Notice provision, this Assurance can be amended or supplemented only by a written document signed by all Parties or by court order.

53. This Assurance, as well as any amendments thereto, may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole.

54. Nothing in this Assurance shall relieve EasyPay of any obligations to comply with all applicable federal and state laws, rules, and regulations.

55. This Assurance does not constitute an approval by the Attorney General of EasyPay's acts or practices, and EasyPay shall make no representation to the contrary.

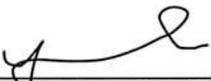
56. EasyPay shall not cause, encourage, or knowingly permit third parties acting as EasyPay's agent, on EasyPay's behalf or for its benefit, or otherwise under EasyPay's control or direction, to engage in practices from which EasyPay is prohibited by this Assurance.

57. EasyPay and its signatories have consulted with counsel in connection with their decision to enter into this Assurance.

58. Signatories for EasyPay represent and warrant that they have the full legal power, capacity, and authority to bind EasyPay.

59. By signing below, EasyPay agrees to comply with all of the terms of this Assurance.

COMMONWEALTH OF MASSACHUSETTS
ANDREA JOY CAMPBELL, ATTORNEY GENERAL

By: 

Yael Shavit, BBO #695333
Assistant Attorney General
Consumer Protection Division
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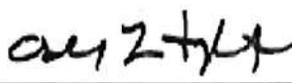
Dated: 5/20/2024

DUVERA BILLING SERVICES, LLC
d/b/a EasyPay Finance



Mary Jones
CEO, Duvera Billing Services, LLC d/b/a/ EasyPay Finance

Dated: 5/17/2024

By: 

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Dated: 5/17/2024