

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the
State of New York,

Petitioner,

– against –

YELLOWSTONE CAPITAL LLC, *et al.*,

Respondents.

Index No. 450750/2024
IAS Part 47
Assigned to Justice Goetz

CONSENT ORDER AND JUDGMENT

Upon reading the Verified Petition (“Petition”) (Doc. No. 1) of Petitioner, the People of the State of New York, by their attorney Letitia James, Attorney General of the State of New York (“NYAG”), the Affirmation of Adam J. Riff in support of the Petition (Doc. No. 4), and exhibits in support thereof (Doc. Nos. 5-476), alleging that Respondents engaged in repeated fraudulent, deceptive and illegal conduct in violation of Executive Law § 63(12) and General Business Law § 349 through conduct including (i) issuance and servicing of so-called purchases of receivables, also called merchant cash advances (“Merchant Cash Advances”) to merchants (“Merchants”); (ii) obtaining of personal guarantees from individuals (“Guarantors”); (iii) collection and receipt of payments from Merchants and Guarantors in connection with such Merchant Cash Advances; (iv) engaging in civil and criminal usury in violation of General Obligations Law § 5-501(1) and Penal Law § 190.40, respectively; (v) making of high-interest loans without a license in violation of Banking Law §§ 340 and 356; and upon the Motion to Dismiss filed by

Yitzhak ("Isaac") Stern ("Isaac Stern") and Jeffrey Reece ("the Settling Officers") (Doc. Nos. 541, 542, 543, 544, 545, 546, 547), and all papers filed therewith; and upon Petitioner's Opposition to Respondents' Motions to Dismiss (Doc. Nos. 582 and 583); and upon the Consent and Stipulation, dated December 2, 2024, which is incorporated by reference herein and in which the parties thereto consent to entry of this Consent Order and Judgment ("Consent Order"); and upon all other papers and proceedings had herein;

WHEREAS, the Settling Officers neither admit nor deny all of these and the other allegations the NYAG asserted in the Petition;

WHEREAS, in response to the Petition, the Settling Officers filed a motion to dismiss all of the Claims asserted in the Petition, which is pending at the time of this Consent Order;

IT NOW APPEARS that the Settling Officers and Petitioner are willing to enter this Consent Order to resolve all claims in the Petition as to the Settling Officers;

NOW, on application of LETITIA JAMES, Attorney General of the State of New York, attorney for Petitioner (Adam J. Riff and Oluwadamilola E. Obaro, of counsel), and upon consent of the Settling Officers and their counsel (collectively, the "Parties");

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows.

FINDINGS

1. This Court has jurisdiction over the Parties and the subject matter of this action.

2. Each Party has executed the Consent and Stipulation filed contemporaneously with this Consent Order consenting to entry of this Final Judgment without further notice.

3. Entry of this Consent Order and satisfaction of the provisions herein are in the public interest and the interests of substantial justice.

4. Entry of this Consent Order and satisfaction of the provisions herein is a complete settlement of the Claims against the Settling Officers.

PROHIBITION OF UNLAWFUL ACTS

5. The Settling Officers shall not engage in any acts or practices in violation of General Obligations Law § 5-501(1), Penal Law § 190.40, Banking Law §§ 340 and 356, General Business Law § 349, or Executive Law § 63(12).

TERMINATION OF MERCHANT CASH ADVANCE OPERATIONS

6. As of the entry of this Consent Order, the Settling Officers are permanently barred from engaging in any Merchant Cash Advance business, except for performing the actions required under paragraph 15 herein. In order to effect this provision, the Settling Officers are specifically restrained and enjoined from each of the following actions ("Enjoined Actions"):

- a. Marketing, advertising, or offering for sale any Merchant Cash Advance;
- b. Underwriting, planning, managing, administering, or servicing any Merchant Cash Advance;
- c. Receiving or collecting any money owed or purportedly owed in connection with any Merchant Cash Advance;

- d. Receiving any proceeds, profits, dividends, or other financial benefit in connection with the sale, issuance, and servicing of any Merchant Cash Advance or collecting or receiving any money from Merchants or Guarantors in connection with such transactions;
- e. Assisting or supervising any person or entity engaged in any of the Enjoined Actions; or
- f. Serving, whether directly or through an entity or entities, as a director, officer, owner, shareholder, member, employee, contractor, consultant, representative, or agent of any person or entity engaged in any of the Enjoined Actions.

7. Nothing in the foregoing paragraph shall prohibit the Settling Officers from carrying out obligations pursuant to this Consent Order.

MONETARY RELIEF

8. The Settling Officers agree, within five (5) calendar days of the signing of this Consent Order by the Court, to pay to the NYAG by wire transfer to the State the total amount of 12.7 Million Dollars (\$12,700,000.00) ("Settlement Amount") and comply fully with the terms of this Consent Order. Settling Officers shall use the wire instructions provided by the NYAG.

9. If the NYAG reasonably determines that Isaac Stern has materially failed to comply with the terms of this Consent Order, including paragraph 15 below, the NYAG shall provide written notice of such non-compliance sufficient for Stern to cure any issues. If Stern fails to cure an instance of material non-

compliance within sixty (60) days of his receipt of the NYAG's notice (the "Cure Period") then this Consent Order shall constitute a judgment pursuant to New York Executive Law § 63(12) against Stern, in favor of the NYAG on behalf of the People of the State of New York, in the total amount of Thirty Million Dollars (\$30,000,000.00) less any cash settlement payments previously made by the Settling Officers or Yellowstone Capital LLC ("Judgment Amount").

10. Any payment and all correspondence related to this Consent Order shall reference Index No. 450750/2024.

11. The NYAG shall apply any monetary relief obtained from the Settling Officers to restitution for Merchants and/or Guarantors, penalties, costs of investigation, or costs of administering restitution and debt relief, as determined by the NYAG in its sole discretion.

COOPERATION

12. The Settling Officers agree to cooperate fully in any investigation or legal proceeding by the NYAG, including the above-captioned proceeding, concerning the non-settling Respondents named in the Petition but not party to the Consent and Stipulation (the "Non-Settling Respondents"), or individuals or entities affiliated with the Non-Settling Respondents, or other individuals or entities involved in the Merchant Cash Advance business. Such cooperation includes but is not limited to the Settling Officers, upon reasonable notice, making themselves available to the NYAG for interviews, depositions, or sworn investigatory hearings and providing complete and truthful answers to the questions asked; providing truthful testimony, written or oral, under oath before the NYAG and any other

tribunal or court of law; and providing documents and information as requested by the NYAG. The Settling Officers retain the right to assert valid and applicable privileges, including the attorney-client privilege. This paragraph does not alter Settling Officers' independent obligation to provide documents and testimony pursuant to subpoena.

COMPLETE SETTLEMENT OF CLAIMS

13. Upon receipt of the full Settlement Amount, this Consent Order shall resolve all claims brought by Petitioner, or which could have been brought by Petitioner, against the Settling Officers concerning their Merchant Cash Advance business prior to the date of the filing of the fully executed Consent and Stipulation, as well as trusts organized for the benefit of Mr. Stern, Mr. Reece, or their family members, their successors and assigns, entities they own or control, including Sokaor Capital LLC, JLR Capital, Inc., and YDS2 Capital, Inc., but excluding any Non-Settling Respondents, and merged or acquired entities and wholly-owned subsidiaries of such Non-Settling Respondents, concerning the Yellowstone Entities' Merchant Cash Advance business prior to the date of the filing of the fully executed Consent and Stipulation, which is incorporated herein.

14. The terms of the Consent Order were agreed upon as a compromise, and the Settling Officers' acceptance of its terms do not constitute, and may not be construed as, admissions of liability or wrongdoing.

GUARANTY OF PERFORMANCE OF
YELLOWSTONE CONSENT ORDER

15. Isaac Stern shall use his best efforts to ensure the full and punctual performance and observance by the Yellowstone Entities (as herein defined) of the terms, covenants, obligations, and conditions that are to be kept, performed, or observed by the Yellowstone Entities in Paragraphs 4 through 18 inclusive and Paragraph 25 through 27 inclusive of the Consent Order and Judgment resolving the claims asserted by Petitioner against the Yellowstone Entities (the "Yellowstone Consent Order").

16. The "Yellowstone Entities" are Yellowstone Capital LLC, Fundry LLC, ABC Merchant Solutions, LLC, Advance Merchant Services LLC, Business Advance Team LLC, Capital Advance Services LLC, Capital Merchant Services, LLC, Cash Village Funding LLC, Fast Cash Advance LLC, Fundzio LLC, Green Capital Funding LLC, HFH Merchant Services LLC, High Speed Capital LLC, Merchant Capital Pay LLC, Merchant Funding Services LLC, Midnight Advance Capital LLC, Mr. Advance Capital LLC, Ocean 1213 LLC, Simply Equities LLC, TVT Cap Fund LLC, TVT Capital HR, LLC, Thryve Capital Funding LLC, WCM Funding LLC, West Coast Business Capital LLC, World Global Capital LLC, and their respective parent, subsidiary, or affiliate entities.

17. Isaac Stern's obligations under paragraph 15, above, commence upon the Court's signing of the Yellowstone Consent Order.

18. In the case of a judicial finding of the invalidity, illegality, or unenforceability of the Yellowstone Consent Order, Isaac Stern shall be excused

from any performance of those parts of the Yellowstone Consent Order that have been deemed invalid, illegal or unenforceable.

19. In the event Isaac Stern's ability to comply with paragraph 15, above, is impaired for reasons beyond his control, and provided that the creation and existence of such impairment was/is also beyond his control, and provided that he has acted in good faith, then Isaac Stern shall be excused from compliance with paragraph 15 only to the extent, and for the duration, of such impairment. Isaac Stern is precluded from relying upon this paragraph as a defense unless he has, during the Cure Period, demonstrated the basis for such reliance to the NYAG.

ENFORCEMENT

20. This Court shall retain jurisdiction to hear any proceeding seeking to enforce the terms of this Consent Order. The Court shall also retain jurisdiction of this action for the purpose of carrying out or modifying the terms of this Consent Order or granting such further relief as the Court deems proper.

21. The Settling Officers shall reimburse reasonable costs paid by the NYAG to third parties (e.g., translators, court fees, court reporters, etc.) related to any action to enforce this Consent Order.

22. In any subsequent civil litigation or claim by the NYAG against Isaac Stern to enforce any provision of this Consent Order, including the NYAG's rights to any payment, money judgment, or other relief pursuant to this Consent Order, such as a nondischargeability complaint in any bankruptcy case, Isaac Stern agrees that he shall not contest the facts set forth in the Petition, which shall be taken as true, without further proof thereof. These facts are sufficient to establish all the

elements necessary to sustain a nondischargeability action by the NYAG pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Consent Order shall have collateral estoppel effect for such purposes. However, if a court, including a bankruptcy court, deems the facts in the Petition insufficient to establish the elements to necessary to sustain an action by the NYAG pursuant to § 523(a)(2)(A) of the Bankruptcy Code, such a determination shall not itself constitute a default of this Consent Order. The Settling Officers specifically reserve their rights to deny and contest the facts set forth in the Petition where such facts are asserted by any party other than the NYAG.

23. Each of the Settling Officers represent and warrant for his own part each of the following: (i) that the Financial Asset Summaries ("FAS") provided by him to the NYAG were materially accurate and complete, to the best of his knowledge, information and belief at the time such FAS was provided; (ii) that he did not exclude any material assets from the FAS he provided, (iii) that his FAS did not exclude any assets with a fair market value greater than \$10,000.00; and (iv) that he exercised best efforts to diligently discover all relevant assets prior to submitting his FAS to the NYAG.

24. Isaac Stern represents and warrants that as of the date of the Consent and Stipulation, he does not have any intention or plans to file a bankruptcy petition, and has no knowledge of any third-party's intention or plans to file a bankruptcy petition, for any of the following: (i) Isaac Stern; (ii) the Yellowstone Entities; or (iii) any parent company of the Yellowstone Entities, including Pinnex Capital Holdings, LLC.

25. Should any of the representations and warranties of Isaac Stern described in the foregoing paragraphs 23 and 24 be materially false, then upon application by the NYAG, the Court shall determine that Isaac Stern is in non-curable material non-compliance under paragraph 9 of this Consent Order.

MISCELLANEOUS PROVISIONS

26. Petitioner and the Settling Officers waive all rights to seek judicial review or otherwise challenge or contest the validity of this Consent Order.

27. Nothing in this Consent Order shall be construed as relieving Settling Officers of their obligation to comply with all state, city, and federal laws and regulations, nor shall any of the terms of this Consent Order be deemed to grant Settling Officers permission to engage in any acts or practices prohibited by such laws and regulations. Acceptance of this Consent Order by the NYAG shall not be deemed approval by the NYAG of any of the practices or procedures referenced herein, and Settling Officers shall make no representation to the contrary.

28. Any failure of the NYAG to exercise any right under any provision of this Consent Order shall not constitute a waiver of any rights of the NYAG hereunder.

29. Nothing contained in this Consent Order shall be construed to deprive any individual or entity of any private right of action under the law.

30. This Consent Order (along with the Consent and Stipulation that is incorporated by reference into this Consent Order) sets forth all of the promises, covenants, agreements, conditions, and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings,

inducements, or conditions, express or implied, between the parties. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Order that are not fully expressed herein.

31. Settling Officers shall not state or cause to be stated that the NYAG has approved, sanctioned, or authorized any practice, act, or conduct of Settling Officers.

32. Settling Officers shall not take any action or make any statement denying the propriety of this Consent Order, or expressing the view that this Consent Order is without basis. Nothing in this provision affects Settling Officers' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

33. The terms, duties, and obligations in this Consent Order are not transferable to parties which are not the Settling Officers.

34. Settling Officers waive any further notice of submission of this Consent Order to and filing thereof with this Court and agree to accept service of a conformed copy by email to the email addresses stated in Paragraph 36.

35. This Consent Order shall be administered, construed, and enforced according to the laws of the State of New York.

36. Any notices, statements or other written documents required by this Consent Order shall reference Index No. 450750/2024, and shall be provided by electronic mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address.

For Petitioner:

Adam J. Riff, Esq.
Assistant Attorney General
Office of the New York State Attorney General
Bureau of Consumer Frauds and Protection
28 Liberty Street
New York, NY 10005
Adam.Riff@ag.ny.gov

Or, in his absence, to the person holding the title of Bureau Chief at the
Office of the New York State Attorney General Bureau of Consumer Frauds and
Protection.

For the Settling Officers:

Andrew St. Laurent, Esq.
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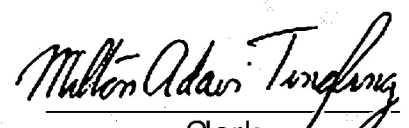
37. Settling Officers shall provide the NYAG with written notice within
thirty (30) days of any changes to the information in the foregoing paragraph.

38. The Clerk is hereby directed to enter this Consent Order and
Judgment forthwith.



J.S.C.
HON. PAUL A. GOETZ
J.S.C. 1-6-25

FILED
Jan 16 2025
NEW YORK
COUNTY CLERK'S OFFICE



Clerk

450750/2024

People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York
v.

Yellowstone Capital Llc, Fundry Llc, Delta Bridge Funding Llc, Cloudfund Llc, Abc Merchant Solutions, Llc, Advance Merchant Services Llc, Business Advance Team Llc, Capital Advance Services Llc, Capital Merchant Services, Llc, Cash Village Funding Llc, Fast Cash Advance Llc, Fundzio Llc, Green Capital Funding Llc, Hfh Merchant Services Llc, High Speed Capital Llc, Merchant Capital Pay Llc, Merchant Funding Services Llc, Midnight Advance Capital Llc, Mr. Advance Capital Llc, Ocean 1213 Llc, Simply Equities Llc, Tvt Cap Fund Llc, Tvt Capital Hr, Llc, Thryve Capital Funding Llc, Wcm Funding Llc, West Coast Business Capital, Llc f.k.a. YELLOWSTONE CAPITAL WEST LLC, World Global Capital Llc, David Glass, Yitzhak Stern a.k.a. Isaac Stern, Jeffrey Reece, Bartosz Maczuga a.k.a. Bart Maczuga, Vadim Serebro, Tsvi Davis a.k.a. Steve Davis, Aaron Davis, Matthew Melnikoff, Mark Sanders, David Singfer

Judgment

