

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

Bureau of Consumer Financial Protection,
South Carolina Department of Consumer
Affairs, and the State of Arkansas *ex rel.*
Leslie Rutledge, Attorney General,

Plaintiffs,

v.

Candy Kern, Howard Sutter III, and
Upstate Law Group LLC,

Defendants.

Civil Action No. 6:20-cv-00786-DCC

**STIPULATED FINAL JUDGMENT
AND ORDER**

Plaintiffs, the Bureau of Consumer Financial Protection (Bureau), the South Carolina Department of Consumer Affairs (Department), and the State of Arkansas *ex rel.* Leslie Rutledge, Attorney General (Arkansas) (Plaintiffs) commenced this civil action on February 20, 2020, to obtain injunctive and monetary relief and civil penalties from Candy Kern, Howard Sutter III, and Upstate Law Group LLC (Defendants). The Complaint alleges violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, in connection with Defendants' provision of substantial assistance to the brokering of contracts offering high-interest credit to consumers, including (1) misrepresenting to consumers that the contracts are valid and enforceable when, in fact, the contracts are void from inception because federal law prohibits agreements under which another person acquires the right to receive a veteran's pension payments, 38 U.S.C. § 5301(a)(3)(C), and because South Carolina law, which governs the contracts, prohibits sales of unpaid earnings and prohibits assignments of pensions as security on payment of a debt, S.C. Code Ann. § 37-3-403; (2) misrepresenting to consumers that

the offered product is a sale of payments and not a high-interest credit offer; (3) failing to inform consumers of the applicable interest rate on the credit offer, (4) representing to consumers that consumers may be subject to criminal prosecution if they breached their contracts, and (5) representing, expressly or impliedly, that consumers are legally obligated to make payments in accordance with the terms of their contracts when, in fact, the contracts were void from inception and consumers are not obligated to make payments. The Complaint also alleges violations of the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 (SCCPC), for unconscionable debt collection.

Plaintiffs and Defendants consent to entry of this Stipulated Final Judgment and Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute between these parties arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has subject-matter jurisdiction over this action because it is brought under “[f]ederal 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.

2. This Court has supplemental jurisdiction over the Department’s state-law claims because they are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over Defendants because they are located, reside, or do business in this district. 12 U.S.C. § 5564(f).

4. Venue is proper because Defendants are located, reside, or do business in this district. 12 U.S.C. § 5564(f).

5. Defendants neither admit nor deny the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court’s jurisdiction over them and the subject matter of this action.

6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorneys’ fees.

7. Defendants have documented to Plaintiffs’ satisfaction their inability to pay more than the redress ordered below.

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

DEFINITIONS

9. The following definitions apply to this Order:

a. “**Affected Consumer**” means a consumer who entered into a contract related to their pension or disability income stream:

- i. that was brokered, offered, arranged, purchased, or collected on by Andrew Gamber or any of his companies, Voyager Financial Group, LLC, BAIC, Inc., or SoBell Corp., or Katharine Snyder or any of her companies, Performance Arbitrage Company, Inc. or Life Funding Options, Inc., while working with Defendants, or
- ii. where Defendants reviewed the consumer’s application to enter into the transaction; directed or administered the execution of the contract; served as the payment processor for the initial lump-sum payment or

fees; served as the payment processor for consumer's payments on the contract; or collected or attempted to collect on the contract.

- b. **“Assisting Others”** means helping, aiding, or providing support to others, including but not limited to:
- i. consulting in any form whatsoever;
 - ii. providing paralegal or administrative support services;
 - iii. 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;
 - iv. providing names of, or assisting in the generation of, potential customers;
 - v. performing marketing, billing, or payment services of any kind;
 - vi. participating in or providing services related to the offering, sale, or servicing of a product or the collection of payments for a product;
 - vii. acting or serving as an owner, officer, director, manager, principal, partner, or limited partner of any entity; and
 - viii. investing or loaning money.
- c. **“Defendants”** means the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.
- i. **“Corporate Defendant”** means Upstate Law Group LLC, its employees, and its successors and assigns.

- ii. “**Individual Defendants**” means Candy Kern, Howard Sutter III, collectively, or in any combination, and each of them by any other name by which they might be known.
- d. “**Effective Date**” means the date on which the Order is entered on the docket.
- e. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection or his or her delegate.
- f. “**Related Consumer Action**” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendants based on substantially the same facts as described in the Complaint.
- g. “**Relevant Period**” means the period from January 1, 2012, through December 31, 2020.

ORDER

CONDUCT RELIEF

I. Permanent Ban

IT IS ORDERED that:

- 10. Defendants, whether acting directly or indirectly, are permanently restrained from engaging in, and Assisting Others in engaging in:
 - a. brokering, offering, or arranging purported sales or assignments of pensions and disability benefits, including extensions of credit related to pension or disability benefits;

- b. any collection activity related to any contract purporting to sell or assign a consumer's pension or disability benefits or any alleged debt arising from the purported sale or assignment of a consumer's pension or disability benefits; and
- c. any financial-services business in the State of South Carolina (including the business of securities, commodities, banking, insurance, or real estate), unless acting in the regular course of the practice of law.

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

II. Prohibition on Use of Customer Information

IT IS FURTHER ORDERED that:

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

- a. disclose, use, or benefit from customer information, including names, addresses, telephone numbers, email addresses, social security numbers, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendant obtained before the Effective Date; or
- b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who entered into a contract related to their pension or disability income stream.

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

MONETARY PROVISIONS

III. Order to Pay Redress

IT IS FURTHER ORDERED that:

12. A judgment for equitable monetary relief is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$725,000.

13. Within 30 days of the Effective Date, Defendants must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$725,000, in full satisfaction of the judgment as ordered in Paragraph 12 of this Section.

14. With regard to any redress ordered under this Section, if Defendants receive, directly or indirectly, any reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, or if Defendants secure a tax deduction or tax credit with regard to any federal, state, or local tax, Defendants must: (a) immediately notify the Enforcement Director in writing, and (b) within 10 days of receiving the funds or monetary benefit, Defendants must transfer to the Bureau the full amount of such funds or monetary benefit (Outside Payment) to the Bureau or to the Bureau's agent according to the Bureau's wiring instructions. After the Bureau receives the Outside Payment, the amount of the judgment referenced in Paragraph 12 will be reduced by the amount of the Outside Payment.

15. 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 injured 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.

16. 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 as disgorgement. Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

17. Payment of redress to any Affected Consumer under this Consent Order may not be conditioned on that Affected Consumer waiving any right.

IV. Additional Monetary Provisions

IT IS FURTHER ORDERED that:

18. In the event of any default on Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment and will immediately become due and payable.

19. Defendants relinquish all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law, and no part of the funds may be returned to Defendants.

20. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any subsequent civil litigation by or on behalf of the Bureau to enforce this Order or the Bureau's rights to any payment or monetary judgment under this Order, such as a non-dischargability complaint in any bankruptcy case.

21. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Defendants must notify Plaintiffs in writing of the final judgment, order, or settlement. That notification must indicate the amount of redress, if any, that Defendants paid or

are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

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

COMPLIANCE PROVISIONS

V. Reporting Requirements

IT IS FURTHER ORDERED that:

23. Defendants must notify Plaintiffs of any development that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any act or practice subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against any Defendant; or a change in any Defendant's name or address. Defendants must provide this notice at least 30 days before the development or as soon as practicable after learning about the development, whichever is sooner.

24. Within 7 days of the Effective Date, each Defendant must:
- a. designate at least one telephone number and email, physical, and postal address as points of contact, which Plaintiffs may use to communicate with each Defendant;

- b. identify all businesses for which any Defendant is the majority owner, or that any Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - i. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales;
- c. identify each Individual Defendants' telephone numbers and all email, Internet, physical, and postal addresses, including all residences; and
- d. describe in detail each Individual Defendants' involvement in any business for which they perform services in any capacity or which they wholly or partially own, including each Individual Defendants' title, role, responsibilities, participation, authority, control, and ownership.

25. Each Defendant must report any change in the information required to be submitted under Paragraph 24 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

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

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

VI. Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

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

28. Within 30 days of the Effective Date, each Defendant (including each Individual Defendant, for any business of which he or she is the majority owner or which he or she directly or indirectly controls) must deliver a copy of this Order to each of its owners, board members, and officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

29. For 5 years from the Effective Date, each Defendant (including each Individual Defendant, for any business of which he or she is the majority owner or which he or she directly or indirectly controls) must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section V, any future owners, board members, and officers, as well as any employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

30. Defendants must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

31. Within 90 days of the Effective Date, each Defendant must provide the Bureau with a list of all persons and their titles to whom this Order was delivered through that date under

Paragraphs 28 and 29 and a copy of all signed and dated statements acknowledging of receipt of this Order under Paragraph 31.

VII. Recordkeeping

IT IS FURTHER ORDERED that:

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

33. Defendants (including each Individual Defendant, for any business of which he or she is the majority owner or which he or she directly or indirectly controls) must retain for 5 years from the Effective Date, the following business records:

- a. all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to Plaintiffs;
- b. copies of all sales scripts; training materials; advertisements; websites; and other marketing materials relating to the subject of this Order, including any such materials used by a third party on behalf of Defendants;
- c. for each individual Affected Consumer: the consumer's name; address; phone number; email address; amount of the lump sum the consumer received; amount of any fees or additional costs the consumer incurred; the amount of any payments the consumer made; a copy of any promotional or welcome materials provided; and a copy of any contracts the consumer signed;

- d. for all contracts related to Affected Consumers, accounting records showing the gross and net revenues generated; and
- e. all complaints and refund requests (whether received directly or indirectly, such as through a third party) by Affected Consumers, and any responses to those complaints or requests.

34. Defendants must make the documents identified in Paragraph 33 available to Plaintiffs upon request.

VIII. Notices

IT IS FURTHER ORDERED that:

35. Unless otherwise directed in writing by Plaintiffs, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “*Bureau, et al. v. Candy Kern, et al.*, Case No. 6:20-cv-00786-DCC,” and send them by overnight courier or first-class mail to the below addresses and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

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

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

State of Arkansas *ex rel.* Leslie Rutledge, Attorney General
ATTENTION: Consumer Protection Attorney
323 Center St., Ste. 200
Little Rock, AR 72120

IX. Cooperation with Plaintiffs

IT IS FURTHER ORDERED that:

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

37. Defendants must cooperate fully with Plaintiffs in this matter and in any investigation or lawsuit related to or associated with the conduct described in the Complaint. Without the service of compulsory process, Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendants must appear and must cause Defendants' officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that any Plaintiff may reasonably request upon 14 days written notice, or other reasonable notice, at such places and times as any Plaintiff may designate, without the service of compulsory process.

X. Compliance Monitoring

IT IS FURTHER ORDERED that:

38. Within 14 days of receipt of a written request from any Plaintiff, Defendants must submit additional Compliance Reports or other requested information, which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

39. For purposes of this section, Plaintiffs may communicate directly with Defendants, unless Defendants retain counsel related to these communications.

40. Defendants must permit Plaintiffs' representatives to interview any employee or other person affiliated with Defendants who has agreed to such an interview regarding: (a) this

matter; (b) anything related to or associated with the conduct described the Complaint; or (c) compliance with this Order. The person interviewed may have counsel present.

41. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6, or the Department's lawful use of its subpoena power, under S.C. Code Ann. § 37-6-106, or Arkansas's lawful use of its subpoena power, under Ark. Code Ann. §§ 4-88-111, 25-16-705.

XI. Retention of Jurisdiction

IT IS FURTHER ORDERED that:

42. All pending motions are hereby denied as moot.

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

XII. Service

IT IS FURTHER ORDERED that:

44. This Order may be served upon Defendants by 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 Plaintiffs.

IT IS SO ORDERED:

s/Donald C. Coggins, Jr.
UNITED STATES DISTRICT JUDGE

DATED: January 21, 2021

Spartanburg, South Carolina