

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF A DISCIPLINARY PROCEEDING AGAINST THE SUPERVISED LENDER'S LICENSES OF EZPAWN COLORADO, INC., d/b/a EZMONEY PAYDAY LOANS, and EZMONEY COLORADO, INC., d/b/a EZMONEY PAYDAY LOANS,

Respondents.

THIS STIPULATION AND FINAL AGENCY ORDER (FAO) is made between the Administrator, Uniform Consumer Credit Code (Administrator), and Respondents, EZPawn Colorado, Inc., d/b/a EZMoney Payday Loans (EZPawn), and EZMoney Colorado, Inc., d/b/a EZMoney Payday Loans (EZMoney) (collectively Respondents), pursuant to § 5-2-303 of the Uniform Consumer Credit Code, § 5-1-101, *et seq.*, C.R.S. 2012 (Code), to resolve certain issues, including the instant administrative disciplinary proceedings against Respondents, as more particularly described herein, arising out of the Administrator's investigation into Respondents' compliance with the Code.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and Respondents, as follows:

1. The Administrator is the Administrator of the Code, *see* Code § 5-6-103. Among other things, she is authorized to enforce compliance with the Code, *see* Code § 5-6-104.

2. Respondents are, and at all relevant times were, licensed by the Administrator as supervised lenders under the Code. They currently hold master license numbers 987788 and 989096 (originally issued on June 25, 2001, and July 8, 2005, respectively), and currently hold, or at one time held, branch license numbers 987788-001 through -026 and 989096-001 through -032. They currently have 32 active locations, including their master licenses.

3. The Administrator has jurisdiction over Respondents and the subject matter of this FAO.

4. The Administrator commenced these disciplinary proceedings by the service and filing of a Notice of Duty to Answer, Notice to Set, Notice of Hearing, and Notice of Charges, dated November 15, 2012, Case No. CCC 2012-0006. She alleges that Respondents failed to comply with the Code by failing to refund to

consumers a prorated portion of the interest rate assessed on their loans when the consumers prepaid the loans prior to the loans' maturity. She further alleges that Respondents failed to comply with reports of examination that advised Respondents of this failure and required Respondents to take certain corrective action to rectify the failure.

5. The parties desire to resolve these proceedings without further litigation. Accordingly, the Administrator accepts this FAO that Respondents will cease and desist from and in the future will not engage in the acts and conduct which the Administrator alleges violate the Code, which acts and conduct are more particularly described herein, and further agree and accept the terms below. Respondents enter into this FAO without admitting or denying any liability under the Code.

6. Respondents admit, and the Administrator finds, the following facts:

a. Respondents make deferred deposit, or payday, loans.

b. Respondents assess and collect the interest rate portion of their loans' finance charge according to the simple interest, or declining balance, method. This means that, for loan installment payments made towards the beginning of a loan's term, a higher portion of the payment is applied to interest (as opposed to the loan's principal) than in those installment payments made towards the end of a loan's term.

c. Respondents and the Administrator dispute whether Respondents refund the interest they collect when a consumer prepays a loan in full prior to maturity on a pro rata basis.

d. Pursuant to Code § 5-2-305(1), the Administrator conducts periodic compliance examinations of licensed supervised lenders during which she examines the licensee's loans, business, and records to determine the licensee's compliance with, including whether the licensee violated, the Code. These examinations may result in reports of examination the Administrator provides the licensee. These reports may note any violations the examination found, and may require the licensee to take appropriate corrective action to rectify any such violations.

e. Beginning in September 2010, during compliance examinations of Respondents' locations, the Administrator found that Respondents did not refund to consumers on a pro rata basis the interest rate portion of the finance charge on those loans that consumers had prepaid in full prior to maturity.

f. The Administrator provided Respondents reports of those examinations. The reports required Respondents to take certain corrective

action within a certain period of time. This corrective action included that Respondents perform a self-audit of all of their loans to identify all loans prepaid in full prior to maturity and in which the consumer did not receive a refund of the pro rata portion of the interest rate. The corrective action also included that Respondents refund to consumers all interest collected in excess of a pro rata amount.

g. Respondents failed to comply with the corrective action the Administrator required regarding refunds to consumers.

h. By Assurance of Discontinuance, dated November 5, 2004, the Administrator disciplined EZPawn for failing to include in its loan agreements certain disclosures and information the Code required. Pursuant to this discipline, EZPawn paid a \$10,000.00 penalty.

7. Respondents neither admit nor deny that the foregoing facts constitute violations of the Code.

8. Nevertheless, the Administrator finds and concludes that, by reason of the foregoing, Respondents violated Code §§ 5-2-305(5) (requiring licensee to take corrective action Administrator's report of examination requires), 5-3.1-105 (requiring lender to refund a pro rata portion of a loan's annual percentage rate upon consumer's prepayment of the loan prior to maturity), and Uniform Consumer Credit Code Rule 17(I)(2), 4 Code Colo. Reg. 902-1 (requiring refund of pro rata portion of interest rate component of loan's annual percentage rate upon consumer's prepayment of loan in full prior to maturity).

9. Respondents agree to, and the Administrator hereby orders, the following remedies:

a. Respondents, and their officers, directors, agents, servants, employees, managers, members, heirs, successors, and assigns, and any and all other persons, corporations, associations, or other entities acting by, through, on behalf of, or in active concert or participation with Respondents, hereby are permanently prohibited and immediately shall cease and desist from engaging in or committing, and shall not in the future engage in or commit, any of the acts, conduct, or practices described in this FAO, or any other acts, conduct, or practices in violation of the Code. In particular, and without limitation, Respondents shall refund to consumers on a pro rata basis, in accordance with the Administrator's interpretation of "pro rata" as reflected in the examination reports referred to in ¶6(f) above, all interest on all loans that consumers prepay in full prior to the loans' maturity.

b. Respondents shall perform a self-audit of all of their loans in order to identify all loans prepaid in full prior to maturity and in which the consumer did not receive a refund in accordance with the Administrator's

interpretation of the pro rata portion of the interest rate. Respondents shall make refunds to consumers of all interest in excess of that amount on all such loans so identified. Respondents shall perform the self-audit and make the refunds in accordance with ¶10, below.

c. Within 30 days after the Effective Date, Respondents shall provide the Administrator a list and description of their actions taken in order to ensure that they will not in the future violate the Code in this manner. Respondents shall ensure that their point of sale systems and processes are modified no later than 60 days from the Effective Date to ensure that refunds made to consumers who prepay loans in full prior to maturity are made in accordance with the Administrator's interpretation of "pro rata."

d. Respondents shall remit a penalty in the amount of \$24,000.00, payable to the Administrator. Such penalty shall be immediately due and payable at the time Respondents execute this FAO.

10. Respondents shall complete the self-audit and make refunds, as follows:

a. Self Audit. Within 30 days after the Effective Date, Respondents shall complete the self-audit required in ¶9(b), *supra*. Within such 30 days, Respondents shall provide the Administrator with an alphabetical-by-consumer list of all loans the self-audit identifies. The list shall identify and contain, as to each such consumer: (i) the name and address of the consumer; (ii) with respect to each loan made to the consumer, (A) the date of, (B) the amount of, (C) an itemization of all charges or fees imposed in connection with, (D) the date and amount of the repayment of, and (E) the amount of the refund corresponding to, the loan; and (iii) the total amount of the refunds to the particular consumer. Respondents shall provide the list in an electronic format acceptable to and determined by the Administrator, such as Microsoft Excel.

b. Making Refunds. Respondents shall make all refunds due hereunder within 30 days after the Effective Date. All refunds shall be made by check directly to the consumer. Respondents shall make supplemental refunds as necessary for any loans made up through the time that Respondents' systems are modified within 30 days after Respondents' systems are modified as referenced in ¶9(c) above.

c. Proof of Refunds. Within 60 days after the Effective Date, Respondents shall provide the Administrator with proof of all refunds made hereunder. Such proof shall consist of an electronic report containing the check number and check amount of each check issued to consumers along with a bank statement showing the refund checks that have cleared. Respondents shall provide proof for all supplemental refunds issued within

30 days from the date that all supplemental refunds are made.

d. Uncashed, Undeliverable, or Unclaimed Refund Checks. Within 120 days after the Effective Date, Respondents shall remit to the Colorado State Treasurer (Treasurer) the total amount of any and all refund checks that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise, to be held by the Treasurer as unclaimed funds under the Colorado Unclaimed Property Act, § 38-13-101, *et seq.*, C.R.S. 2012. Within such 120 days, Respondents shall provide the Administrator a list, alphabetized by consumer, of all such outstanding refund checks and the total amount remitted to the Treasurer.

e. Transmittal Letter. Respondents shall accompany all refunds with a cover letter, the form and contents of which shall be pre-approved by the Administrator, stating that: (i) the enclosed check represents a refund the Administrator found due and owing to the consumer by reason of the Administrator's examination of Respondents' loans; and (ii) the amount of the refund.

11. Any material violation of the terms of this FAO shall provide grounds for discipline against Respondents' licenses and shall be deemed failure to comply with a valid agency order in violation of Code § 5-2-303(1). The appropriate penalty shall be imposed for any such violation proven at a hearing.

12. All penalties paid, payable, or otherwise due pursuant to this AOD shall be held in trust by the Administrator, including any interest earned thereon, to be used in her sole discretion for reimbursement of the Administrator's costs and attorney's fees, and for consumer or creditor educational purposes or consumer credit or consumer protection enforcement efforts.

13. It is the intent and purpose of this FAO to resolve fully the particular issues, allegations, or charges raised by the Administrator's investigation of Respondents' activities as set forth above and over which the Administrator has jurisdiction, and only those issues. In consideration of Respondents' full, complete, and strict compliance with all of the terms of this FAO, the Administrator will not initiate or continue any actions or proceedings against Respondents arising out of the above-described violations and will dismiss the pending disciplinary case, Case No. CCC 2012-0006. Further, the omission from this FAO of other acts, conduct, or practices which might constitute other violations of the Code shall not be deemed or construed to be approval by the Administrator of such acts, conduct, or practices. Nothing herein in any way shall limit, constrain, abridge, abrogate, waive, release, affect, impair, or otherwise prejudice the rights of or belonging to any individual consumer.

14. This FAO is governed by Colorado law. In addition to the remedies

provided in ¶11, above, or any other remedy the Administrator may have, in the event of any claims or causes of action arising out of or based upon this FAO the Administrator may commence an action in the District Court for the City and County of Denver, and Respondents hereby consent to the jurisdiction, venue, and process of such court. In the event of any action or proceeding alleging or asserting a violation of or failure to comply with this FAO, this FAO shall be admissible in full and shall be evidence that prior to this FAO Respondents engaged in the conduct described herein.

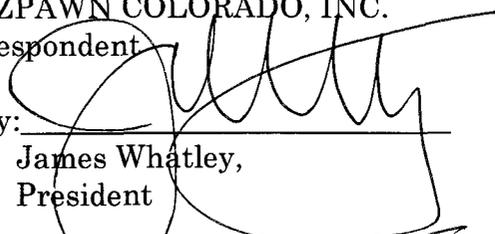
15. Respondents have had the opportunity to be represented by legal counsel and to consult with counsel for the Administrator to negotiate a resolution of this matter. Respondents knowingly and voluntarily enter into this FAO and waive any right to a formal hearing on the matters forming the basis of this FAO and any right to appeal this FAO or the Final Agency Order contained herein.

16. This FAO represents the entire agreement between the parties and is binding upon all officers, directors, employees, shareholders, managers, members, principals, affiliates, heirs, agents, and successors of the parties. It shall not be modified except by writing signed by the parties or their authorized representatives.

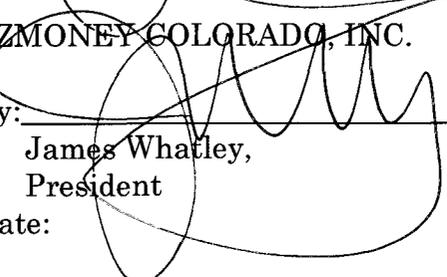
17. On the date this FAO is executed by the Administrator, it shall become the Final Agency Order of the Administrator, and such date shall be the Effective Date of this FAO for all purposes hereunder.

EXECUTED AND SO ORDERED by the Administrator this 12th day of February, 2013.

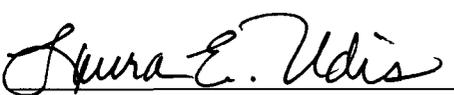
EZPAWN COLORADO, INC.
Respondent

By: 
James Whatley,
President

EZMONEY COLORADO, INC.

By: 
James Whatley,
President

Date:


LAURA E. UDIS,
Administrator,
Uniform Consumer Credit Code

APPROVED AS TO FORM:

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