

IN THE MATTER OF:

TEMPOE, LLC, d/b/a WHY NOT LEASE IT

and

SMART PAY LEASING, INC.,

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: LABOR-CFR-76-22-0690
CFR-FY2020-0029

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Office of the Commissioner of Financial Regulation (“OCFR”) as the result of consumer complaints against Tempoe, LLC, d/b/a Why Not Lease It (“Tempoe”), and Smart Pay Leasing, Inc., (“Smart Pay”), (hereinafter collectively referred to as “Respondents”). Based upon these complaints and the subsequent investigation, the Commissioner of Financial Regulation (“Commissioner”) determined charges against the Respondents are warranted for unlicensed consumer and/or installment lending. As a final resolution of this matter without a hearing and for the mutual benefit of the parties, OCFR and Respondents have agreed to enter into this Consent Order and Settlement Agreement (“Agreement”).

This Agreement is entered into this 7th day of June, 2022, by and between OCFR and Respondent Tempoe. OCFR and Respondent Tempoe agree and stipulate as follows:

1. At all times relevant to the factual allegations in this matter, Respondent Tempoe was a company formed as a Delaware limited liability company that operates from 720 E. Pete Rose Way, Suite 400, Cincinnati, Ohio. Respondent Tempoe is registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland. Tempoe is not nor has ever been licensed by the Commissioner of Financial Regulation to offer or engage in consumer or installment lending in Maryland.

2. At all times relevant to the factual allegations in this matter, Smart Pay Leasing was also a company incorporated in Delaware that also operates from 720 E. Pete Rose Way, Suite 400, Cincinnati, Ohio. Respondent Smart Pay is registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland. Smart Pay is not nor has ever been licensed by the Commissioner of Financial Regulation to offer or engage in consumer or installment lending in Maryland.

3. OCFR learned of Respondent Tempoe’s operations in Maryland on December 10, 2019, via the Montgomery County Office of Consumer Protection as a result of two consumer complaints. Both complaints involved “Consumer Lease Agreements” that included auto parts and related labor performed at Maryland auto businesses.

4. OCFR initiated an investigation into Respondents' business activities in Maryland.
5. As a result of the investigation, OCFR asserted that Respondents were engaged in consumer and/or installment lending transactions with Maryland consumers relating to auto parts and related labor at various Maryland auto businesses.
6. Despite Respondents' representation that Respondent Tempoe is not engaged in consumer and/or installment lending transactions with Maryland, OCFR continues to allege that the transactions noted above are in fact short-term loans under Maryland law designed to appear as leases. Respondents dispute and deny this allegation.
7. At no time relevant to the factual allegations herein were Respondents licensed by the Commissioner to make loans in Maryland in any capacity, and OCFR contends Respondents were not exempt from licensure.
8. Upon learning of OCFR's investigation, Respondents cooperated fully with OCFR.
9. At the conclusion of its investigation, OCFR brought charges against Respondents for violation of Maryland law, including for violations of Annotated Code of Maryland, Commercial Law Article ("CL") §12-301 et seq. and Financial Institution Article ("FI") §11-201 et seq. (collectively the "Maryland Consumer Loan Law" or "MCLL"), CL § 12-1001 et seq. (the "Credit Grantor Closed End Credit Provisions" or "CLEC"), as well as other applicable statutes and regulations. Specifically, OCFR alleged that Respondents violated the MCLL by making consumer loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement, and violated Maryland's Credit Grantor Closed End Credit Provisions for offering and/or making installment loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement.
10. OCFR's statement of charges against Respondents also names "Smart Pay Leasing, Inc." as an additional respondent. Respondent Smart Pay denies and disputes that it engaged in any of the business activities alleged in the Statement of Charges. Accordingly, OCFR shall dismiss this matter, as described below, with prejudice, as to Respondent Smart Pay, which is not a party to this Agreement.
11. Respondent Tempoe denies any and all wrongdoing related to the above-referenced allegations. Respondent Tempoe specifically denies that its transactions with Maryland consumers constitute loans, credit, or installment loans. Respondent Tempoe asserts that its transactions with Maryland consumers are proper consumer lease agreements under the federal Consumer Leasing Act, 15 U.S.C. § 1667, *et seq.*, and its implementing regulation, Reg. M, 12 C.F.R. Pt. 1013, *et seq.*, and further asserts that it was not required to obtain a license as alleged by OCFR.
12. However, Respondent, in consultation with independent legal counsel, desires and hereby agrees to fully and finally resolve this matter, thereby avoiding the costs associated with administrative hearings and any potential appeals, by entering into this Consent Order and Settlement Agreement.

13. By entering into this Consent Order and Settlement Agreement, Respondent Tempoe expressly waives its right to: (a) appear before an Administrative Law Judge of the Office of Administrative Hearings for an administrative hearing to defend the charges; (b) the making of Findings of Fact and Conclusions of Law by the Administrative Law Judge; and (c) appeal from this Consent Order and Settlement Agreement to a court of competent jurisdiction.

14. Having consulted with independent legal counsel regarding the negotiation and execution of this Consent Order and Settlement Agreement, Respondent Tempoe hereby acknowledges it is entering into this Consent Order and Settlement Agreement knowingly, willingly, and voluntarily and with the advice of counsel.

15. Respondent Tempoe agrees to comply with each and every one of the following terms and conditions in exchange for final resolution of this matter:

- a. Respondent Tempoe shall immediately cease and desist from originating, making or otherwise offering any consumer lease agreements and/or consumer or installment loans with Maryland consumers either directly or by, through or at any Maryland retailer, specifically including the "Consumer Lease Agreements" which made the basis of the Commissioner's Statement of Charges.
- b. Respondent Tempoe shall pay an investigative fee of \$42,000 (Forty-Two Thousand Dollars) to the Commissioner in the form of a Cashier's Check or Money Order made payable to the Maryland Commissioner of Financial Regulation, to be delivered to OCFR, 500 N. Calvert Street, Suite 402, Baltimore, Maryland 21202, on or before July 31, 2022.
- c. Respondent Tempoe shall make payment to the 12 consumers identified by OCFR during its investigation and described in Appendix A to this Agreement, in the cumulative amount of \$17,805.81 (Seventeen-Thousand, Eight Hundred and Five Dollars, and Eighty-One Cents), in the following manner:
 - i. Respondent Tempoe shall mail a check to each consumer via First Class U.S. Mail, to each affected consumer's last known address, or to an updated address as can be identified through customary address verification means, or, alternatively, authorize an electronic credit to the consumer's last known method of payment on file. Each check shall be mailed on or before July 31, 2022, and accompanied by a letter indicating that the payment is being issued pursuant to a Settlement Agreement between Respondent Tempoe and the Commissioner of Financial Regulation.
 - ii. On or before August 31, 2022, Respondent Tempoe shall furnish evidence to the Commissioner that payments were tendered to each consumer identified herein in the agreed amount by providing a

copy of the front and back of the check for each payment that was negotiated by the affected consumer, or other reasonable means by which OCFR may verify compliance with this provision.

- iii. On or before September 31, 2022, if any payments made by Respondent Tempoe to Maryland consumers in accordance with this Agreement are either not cashed, are returned to Respondent Tempoe as non-deliverable (collectively, the "Undeliverable Payments"), or otherwise not received by consumers, such Undeliverable Payments will escheat to the State of Maryland. Respondent Tempoe will stop payment on such undeliverable payment checks, and shall pay the total amount of all Undeliverable Payments in the form of a single check made payable to the "Comptroller of Maryland," and accompanied by a spreadsheet in both hard copy and electronic format that contains the name of the consumer, the social security number of the consumer (if known), the date of birth of the consumer (if known), the date on which each check was mailed, and an indication of which checks were cashed, and which checks were either not cashed or were returned to Respondent Tempoe as non-deliverable. Such action on the part of Respondent Tempoe shall relieve it of any further obligation to make payments to these consumers under this agreement.

16. In consideration of the foregoing obligations, the Commissioner OCFR agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No. LABOR-CFR-76-22-0690 and CFR-FY2022-0029 and agrees not to pursue an administrative enforcement action against Respondents based on the alleged violations cited therein, unless Respondent Tempoe fails to perform its obligations under this Consent Order and Settlement Agreement. The Commissioner further agrees to release and dismiss all charges in Case No. LABOR-CFR-76-22-0690 and CFR-FY2022-0029, with prejudice to the refiling of same, and prior to the scheduled hearing set for June 9, 2022.

17. OCFR and Respondent Tempoe further acknowledge and agree that, at all times relevant to this matter, OCFR possessed jurisdiction over the facts alleged in the Statement of Charges.

18. OCFR and Respondent Tempoe further acknowledge and agree that this Consent Order and Settlement Agreement is admissible and shall be binding and enforceable in a court of competent jurisdiction by OCFR should Respondent Tempoe fail to perform its obligations.

19. OCFR and Respondent Tempoe further acknowledge and agree that this Consent Order and Settlement Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, or preclude OCFR from bringing or continuing actions against persons not Parties to the underlying Statement of Charges and/or this Consent Order and Settlement Agreement. Further, this Consent Order and Settlement Agreement is by and between the Commissioner and Respondent Tempoe in Case No. LABOR-CFR-76-22-0690 and CFR-FY2022-0029.

20. OCFR and Respondent Tempoe further acknowledge and agree this Consent Order and Settlement Agreement shall be admissible in any court proceedings to which OCFR is a party, and shall be binding upon Respondent's present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

21. OCFR and Respondent Tempoe further acknowledge and agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Office of the Commissioner of Financial Regulation
Maryland Department of Labor
1100 N. Eutaw Street, Suite 611
Baltimore, MD 21201
Attn: Dana Allen, Director of Enforcement

And

Kevin McGivern
Assistant Attorney General
1100 Eutaw Street, Suite 605
Baltimore, Maryland 21201

b. To Respondent:

Eric R. Hail
Hunton, Andrews, Kurth, LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202

BASED ON THE STIPULATIONS AND AGREEMENTS SET FORTH ABOVE IT IS, BY THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION, HEREBY:

ORDERED that Respondent Tempoe shall adhere to all terms of this Consent Order and Settlement Agreement; and it is further

ORDERED that, in the event Respondent Tempoe violates any provision of this Consent Order and Settlement Agreement, or otherwise engage in the activities which formed the basis for the allegations set forth above, the Commissioner may, at the Commissioner's discretion, bring an enforcement action against Respondent pursuant to the Commissioner's authority under applicable State law; such enforcement actions may include the issuance of an order to cease and desist, the imposition of civil money penalties, an order to provide restitution of money or property to any aggrieved persons, an action for relief in the Circuit Court of Maryland, and/or referral for criminal

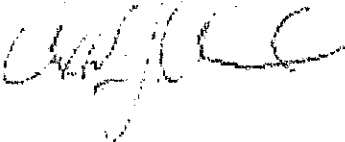
prosecution; and it is further

ORDERED that this matter shall be resolved in accordance with the terms of this Consent Order and Settlement Agreement and the same shall be reflected among the records of OCFR; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland Commissioner of Financial Regulation and that the Commissioner may consider this Consent Order and Settlement Agreement and the facts set forth herein in connection with, and in deciding, any action or proceeding before the Commissioner; and that this Consent Order and Settlement Agreement may, if relevant, be admitted into evidence in any matter before the Commissioner, the Office of Administrative Hearings, or court of competent jurisdiction in which OCFR is a party.

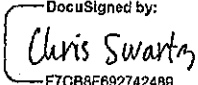
IN WITNESS WHEREOF, this Consent Order and Settlement Agreement is executed on the day and year first above written.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

By: 

Clifford Charland
Acting Assistant Commissioner

RESPONDENT

By: 

Chris Swartz
President