

IN THE MATTER OF:

OZOEMENA O. ONUIGBO

and

OZOEMENA O. ONUIGBO, LLC

and

**FOVO PAYDAY ADVANCE
CONSULTING, LLC**

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2019-0057

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Office of the Commissioner of Financial Regulation (“OCFR”) as the result of a complaint filed by the Office of the Inspector General at the Washington Metropolitan Area Transit Authority (“WMATA”) against Ozoemena O. Onuigbo, FOVO Payday Advance Consulting L.L.C. (“FOVO”), and Ozoemena O. Onuigbo, LLC, (“OOO”)(hereinafter collectively referred to as “Respondents”). Based upon the complaint and subsequent investigation, the Commissioner of Financial Regulation (“Commissioner”) determined charges against the Respondents are warranted for unlicensed and usurious consumer lending. To resolve this matter without a hearing, OCFR and the Respondents have agreed to enter into this Consent Order and Settlement Agreement (“Agreement”) to provide for the imposition of disciplinary measures which are fair and equitable in these circumstances and which are consistent with the best interest of the people of the State of Maryland.

This Agreement is entered into this 5th day of November, 2020, by and between OCFR and Respondents.

OCFR and the Respondents agree and stipulate as follows:

1. At all times relevant, OCFR has jurisdiction over Respondents.
2. Respondent Onuigbo, at all times relevant to the factual allegations herein, was a WMATA employee and Maryland resident residing at 7507 Mandan Road, Apt. 202, Greenbelt, Maryland 20770.
3. Respondent FOVO Payday Advance Consulting L.L.C., at all times relevant to the factual allegations herein, was a Delaware limited liability corporation that offered and made consumer loans to residents of Maryland. FOVO operates from 7515 Annapolis Road Suite 209, Hyattsville, Maryland 20784. FOVO is not registered with the Maryland State Department of Assessment and Taxation to conduct business in Maryland.

4. Respondent Ozoemena O. Onuigbo, LCC, at all times relevant to the factual allegations herein, was a Maryland limited liability corporation that offered and made consumer loans to residents of Maryland. Ozoemena O. Onuigbo, LLC, operates from 7507 Mandan Road, Apt. 202, Greenbelt, Maryland 20770. Ozoemena O. Onuigbo, LLC, was registered with the Maryland State Department of Assessment and Taxation.

5. On or about May 30, 2019, OCFR received a complaint from Spec. Agent Brien Kie of the Office of the Inspector General at WMATA involving Respondents. WMATA initiated an investigation into Respondent Onuigbo's activities when it discovered that Respondent Onuigbo's co-workers were regularly depositing portions of their paychecks into his personal and business bank accounts. Further investigation by WMATA revealed that these deposits resulted from a payday lending business Respondents were operating. Upon conclusion of its investigation, WMATA contacted OCFR to report Respondents' lending activities and inquire into their legality. As a result of WMATA's complaint, OCFR initiated an investigation into Respondents' lending activities.

6. As a result of OCFR's investigation, Respondents were charged with violating Annotated Code of Maryland, Commercial Law Article ("CL") §12-301 *et seq.* and Financial Institution ("FI") §11-201 *et seq.* (collectively the "Maryland Consumer Loan Law" or "MCLL"), CL § 12-101 *et seq.* (the "Interest and Usury Law") as well as other applicable statutes and regulations. Specifically, Respondents violated the Maryland Consumer Loan Law for making consumer loans in Maryland without being licensed by the Commissioner to do so and without being exempt from the licensing requirement. Respondents also violated the Maryland Consumer Loan Law as well as the Interest and Usury Law for contracting for, charging and/or receiving interest on loans made to Maryland consumers in excess of amounts permitted by Maryland law. Respondents further violated the Maryland Consumer Loan Law by failing to provide consumers with written disclosures and/or information statements or receipts required under Maryland law.

7. The allegations supporting charges against Respondents are as follows:

a. Respondent Onuigbo, operating as Ozoemena O. Onuigbo LCC, and/or FOVO Payday Advance Consulting L.L.C., offered "payday" loans to Maryland consumers, including to Respondent Onuigbo's co-workers, in the amounts of \$4,000 or less and to be repaid within 90 days. Specifically, 18 Maryland consumers were identified as having obtained consumer loans from Respondents in 2018 and 2019. During interviews of these consumers, OCFR discovered that these consumers' loans ranged from \$1,000 to \$8,000. Maryland consumers reported that Respondents charged interest rates up to 498% on these loans, which is in excess of MCLL maximum interest rate of 33%. In total, Maryland consumers borrowed \$40,700.00 from Respondents and ultimately repaid Respondents \$54,592.10 in interest, fees, and/or principal.

b. For example, [REDACTED] ("Consumer O") is a Maryland resident and Respondent Onuigbo's co-worker at WMATA. Consumer O entered into a

written loan agreement with Respondent Onuigbo for a loan in or around March 2018 while Consumer O was residing in Maryland.

c. Upon execution of the loan agreement, Consumer O received a loan from Respondents in the amount of \$1,000. Respondent Onuigbo personally provided \$1,000 in cash to Consumer O.

d. Respondent Onuigbo also instructed Consumer O to complete an ACH (Electronic Funds Transfer) Authorization form and submit it to her employer in order make her weekly payments via payroll deduction.

e. Upon execution of the loan agreement, Respondents failed to provide a copy of the loan agreement to Consumer O.

f. During OCFR's investigation, Respondents produced a copy of a form agreement Respondents use as the written loan agreement with each consumer. The loan agreement is titled "Promissory Note." It includes the borrower's name and address, employer information, social security number, driver's license number, and amount borrowed.

g. The loan agreement contained no information describing the loan payment amount, the number of payments, or any interest rate. Further, the loan agreement failed to include the necessary disclosures, notices and/or language required by CL § 12-308.

h. According to Consumer O's payroll information, Consumer O made 12 weekly payments of \$120.66 to Respondents via payroll deduction from April 6, 2018, through June 22, 2018. Consumer O made payments to Respondents totaling \$1,447.92 on the loan. These payments constitute an annual interest rate of 194.63%.

i. Upon receipt of Consumer O's payments, Respondent Onuigbo sent a text message to Consumer O confirming receipt of payment. Respondent sent no additional information statements, receipts or records to Consumer O upon receiving payment.

j. In total, OCFR's investigation revealed that the Respondents engaged in similar transactions with at least eighteen (18) Maryland residents, (Consumers A through R as set forth in Appendix A), who obtained consumer loans from Respondents. All of these Maryland consumers applied for their loans from Respondents either in-person and/or via text message while these consumers were located in Maryland and executed a loan agreement indicating they resided in Maryland.

k. Respondents' transactions with Consumers A through R constituted "loans" under CL § 12-301(e), and thus the Respondents and all of their consumer loans to Maryland consumers are subject to the MCLL.

l. At no time relevant to these allegations were Respondents licensed by the State of Maryland to make consumer loans; nor were Respondents exempt from licensing under the MCLL, as required by CL § 12-302.

m. Respondents contracted for, charged and/or collected on loans issued to Consumers A through R containing interest rates in excess of 33% per annum in violation of CL §§ 12-306, 12-313, and 12-314.

n. Respondents failed to provide Maryland consumers with written disclosures and/or information statements or receipts required pursuant to CL § 12-308.

8. Pursuant to Maryland law, the Commissioner is authorized to enforce the Maryland Consumer Loan Law as well as the Interest and Usury Law, and in furtherance thereof the Commissioner does allege that Respondents violated FI §§ 11-203.1 and 11-204, as CL §§ 12-102 and/or 12-103, CL § 12-302, CL §§ 12-306(a) through (d), CL § 12-308(a) CL § 12-308(b) CL §12-313(a), CL §12-314(a) CL § 12-314(b)(1), CL § 12-314(b)(2), which provide in pertinent part:

a. A loan as "any loan or advance of money or credit made under [the Maryland Consumer Loan Law – Credit Provisions.]" See FI § 11-201(e) and CL § 12-301(e).

b. Pursuant to FI § 11-203.1(a), "[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan...."

c. Pursuant to FI § 11-204(a) , a "person may not... [r]eceive any application for a loan or allow any note or contract for a loan to be signed at any place of business for which the person does not have a license."

d. Pursuant to FI § 11-221, the provisions of Title 11, Subtitle 2 of the Financial Institutions Article "shall be interpreted and construed to effectuate [their] remedial purpose."

e. Pursuant to CL § 12-301(c) of the MCLL, a "lender" means "a person who makes a loan under this subtitle."

f. Pursuant to CL § 12-302, "[a] person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions."

g. CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article, namely the Maryland Consumer Loan Law – Credit Provisions. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

h. CL § 12-308 sets forth various duties that lenders have towards borrowers. Among these duties, CL § 12-308(a) requires a lender to provide a borrower with a statement containing specific language and provisions at the time the loan is made, providing as follows:

(a) *Statement to borrower.-*

(1) At the time a loan is made, the lender shall deliver to the borrower a statement in the English language which:

(i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this subtitle, in their entireties; and

(ii) Complies with § 12-106(b) of this title.

(2) If there are two or more borrowers, the lender:

(i) May deliver the statement to any one of the borrowers; and

(ii) At the request of any other borrower, shall deliver a copy of the statement to that borrower within 10 days after the request.

i. CL § 12-308(b) requires that, at the time a lender receives a payment on a loan, the lender shall deliver to the person making the payment a statement containing information regarding the loan, provided as follows:

(b)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall deliver to the person making the payment a receipt which specifies:

(i) The amount applied to principal;

(ii) The amount applied to interest and other charges;

and

(iii) The unpaid principal balance of the loan.

(2) The lender may deliver an unitemized receipt at the time of payment if he delivers the required itemized receipt within 10 days after the payment.

(3) The lender is not required to issue a receipt if, before the due date of each payment, he regularly delivers to the borrower a billing statement which specifies:

(i) The previous unpaid principal balance of the loan;

(ii) The amount and date of each payment made during the billing period;

(iii) The amount of each of these payments applied to interest;

(iv) The amount of each of these payments applied to principal;

(v) The current unpaid principal balance; and

(vi) The amount and due date of the next maturing installment.

j. Pursuant to CL § 12-313(a) (which was recodified at CL § 12-314 and amended effective January 1, 2019), a person is prohibited from lending \$6,000 or less “if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.” Prior to January 1, 2019, CL §§ 12-314(b)(1) and (2) provided as follows:

(1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

k. Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 of the Commercial Law Article (i.e., the Maryland Consumer Loan Law – Credit Provisions) “shall be interpreted and construed to effectuate its general remedial purpose.”

l. Various sections of the MCLL restrict the types and amounts of fees that lenders are permitted to charge in conjunction with

consumer loans, these sections include, but are not limited to, CL §§ 12-307, 12-307.1, and 12-313(a)(1). Pursuant to CL § 12-307 (“Collection of certain fees”), the following fees are authorized:

(a) *In general.*- At the time a loan is made, a lender may collect from the borrower:

(1) As to any item of the total property that secures a loan:

(i) The fees paid to a public official or governmental agency for recording or satisfying a mortgage, encumbrance, or lien on any property securing the loan; or

(ii) An equal or lesser amount for nonfiling insurance premium on any property, or portion of the property, that is not recorded if:

1. The Insurance Commissioner approves the rates; and

2. A commission is not paid on the policy; and

(2) The title insurance premiums or reasonable attorney's fees paid for searching and insuring the title to any real property securing the loan.

(b) *Bad check fee.*- A lender may collect from the borrower a fee not exceeding \$15 if payment is made with a check that is dishonored on the second presentment.

m. Pursuant to CL § 12-101(k) (which was subsequently recodified at CL § 12-101(m) effective January 1, 2019), “usury” is defined as “the charging of interest by a lender in an amount which is greater than that allowed by this subtitle.”

n. Pursuant to CL § 12-102, “a person may not charge interest in excess of an effective rate of simple interest of 6 percent per annum on the unpaid principal balance of a loan.

o. Pursuant to CL § 12-103(a)(3) of the Interest and Usury Law, the maximum annual interest rate which a lender may charge on the unpaid principal balance of a loan made on or after July 1, 1982 and “secured by the pledge of collateral which is other than a savings account or if such loan is unsecured” is 24 percent.

p. Pursuant to CL § 12-103(c)(4), a lender who makes a loan subject to CL § 12-103(c) of the Interest and Usury Law “is subject to the licensing provisions of Title 11, Subtitle 3 of the Financial Institutions Article.”

q. Penalties for violating the usury and disclosure provisions of the Interest and Usury Law are set forth in CL § 12-114, which provides, in relevant part, as follows:

(a) *Usury.*-

(1) Any person who violates the usury provisions of this subtitle shall forfeit to the borrower the greater of:

(i) Three times the amount of interest and charges collected in excess of the interest and charges authorized by this subtitle; or

(ii) The sum of \$500.

* * *

(b) *Failure to provide required statement.*- Any person who violates the disclosure provisions of § 12-106 (b) and (c) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding one year or both.

* * *

9. Upon learning of OCFR's investigation into Respondents' consumer lending operations and that consumer loans made or offered in Maryland required licensure from the Commissioner, Respondents permanently suspended their consumer lending operations, ceased accepting payment for any loans, including any outstanding principal, and forfeited their business licenses. Throughout the investigation, Respondents cooperated fully with OCFR.

10. Respondent, in consultation with independent legal counsel, desires and hereby agrees to fully and finally resolve this matter by entering into this Consent Order and Settlement Agreement.

11. By entering into this Consent Order and Settlement Agreement, Respondent 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.

12. Having consulted with independent legal counsel regarding the negotiation and execution of this Consent Order and Settlement Agreement, Respondents hereby acknowledge they are entering into this Consent Order and Settlement Agreement knowingly, willingly, and voluntarily and with the advice of counsel.

13. Respondents represent and warrant that if they elect to do business in Maryland in the future that it will be in compliance with, and will continue to comply with, all laws, regulations, and rules governing consumer lending in Maryland. Respondents acknowledge that OCFR is relying upon Respondent's representations and warranties as to their compliance with Maryland law. This Consent Order and Settlement Agreement may be

revoked and OCFR may pursue any and all remedies available under the law against Respondent if OCFR finds that Respondents have knowingly or willfully withheld information from OCFR during the investigation of this matter or during the negotiation of this Consent Order and Settlement Agreement.

14. OCFR agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No. CFR-FY2019-0057 and agrees not to pursue an enforcement action based on the alleged violations cited herein, unless Respondents fail to perform their obligations under this Consent Order and Settlement Agreement.

15. OCFR and Respondent further 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 Respondents fail to perform their obligations.

16. OCFR and Respondent further acknowledge 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 this Consent Order and Settlement Agreement.

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

ORDERED that Respondents shall immediately cease and desist from making or offering consumer loans in Maryland as that term is defined above; and it is further

ORDERED that for their violations, Respondents shall pay a civil money penalty of **\$5,000.00** (Five Thousand Dollars) in the form of a Cashier's Check or Money Order made payable to the Commissioner of Financial Regulation, to be delivered to OCFR, 500 N. Calvert Street, Suite 402, Baltimore, Maryland 21202, on or before November 6, 2020; and it is further

ORDERED that for their violations, Respondents agree to shall pay restitution all interest paid to Respondents by the 18 consumers identified in Appendix A to this Agreement issued against Respondents, in the total amount of **\$13,892.10** (Thirteen-Thousand, Eight Hundred, Ninety-Two Dollars and Ten Cents), in the following manner:

a. Respondent shall mail a check for the amount of money to be refunded 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. Each refund shall be mailed on or before May 1, 2021, and accompanied by a letter indicating that the refund is being issued pursuant to a Settlement Agreement between Respondents and the Commissioner of Financial Regulation.

b. On or before May 15, 2021, Respondents shall furnish evidence to the Commissioner that refunds were tendered to each affected consumer in the

agreed amount by providing a copy of the front and back of the check for each refund payment that was negotiated by the affected consumer.

c. On or before July 1, 2021, if any refund payment checks mailed by Respondents to Maryland consumers in accordance with this Agreement are either not cashed or are returned to Respondents as non-deliverable (collectively, the “Undeliverable Refunds”), such Undeliverable Refunds will escheat to the State of Maryland. Respondents will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds 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 amount of interest Respondents collected from 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 refund check was mailed, and an indication of which refund checks were cashed, and which refund checks were either not cashed or were returned to Respondents as non-deliverable. Such action on the part of Respondents shall relieve Respondents of any further obligation to make refunds to these consumers under this agreement.

ORDERED that for their violations, Respondents agree to cease and desist from collecting or accepting any monies allegedly owed to Respondents, whether presently known to OCFR or not, as a result of Respondents’ consumer or “payday” lending operations described herein, and forever forfeit and/or waive any right or claim to said monies, including any principal, interest, or other fees, owed to Respondents by Maryland consumers. Respondent represents to OCFR, and OCFR acknowledges, that the total amount of principal, interest, or other fees Respondents agree to cease collecting and/or accepting totals approximately **\$55,560.00** (Fifty-Five Thousand, Five Hundred, Sixty Dollars and Zero Cents).

ORDERED that, in the event Respondents 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 Respondents 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.

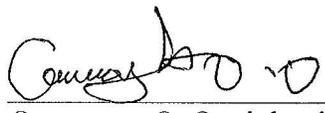
IN WITNESS WHEREOF, this Consent Order and Settlement Agreement is executed on the day and year first above written.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

By: 

Jedd Bellman
Assistant Commissioner

RESPONDENTS

By: 

Ozoemena O. Onuigbo, individually, and
on behalf of FOVO Payday Advance
Consulting LLC, and Ozoemena O.
Onuigbo, LLC