

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

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

Plaintiffs,

v.

Andrew Gamber, Voyager Financial
Group, LLC, BAIC, Inc., and SoBell
Corp.,

Defendants.

Case Number

[PROPOSED] STIPULATED FINAL JUDGMENT
AND ORDER

Plaintiffs, the Bureau of Consumer Financial Protection (Bureau) and the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (Arkansas), commenced this civil action on August 14, 2019, to obtain injunctive and monetary relief and civil penalties from Andrew Gamber, Voyager Financial Group, LLC, BAIC, Inc., and SoBell Corp. (Defendants). The Complaint alleges violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, the Arkansas Deceptive Trade Practices Act (ADTPA), Ark. Code Ann. § 4-88-101, et seq., and the Arkansas Constitution as amended by Amendment 89, §3, in connection with Defendants' brokering of contracts offering high-interest credit to consumers, including (1) misrepresenting to consumers that the contracts Defendants facilitated 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 § 37-3-403; (2) misrepresenting to consumers that the offered

product is a sale of payments and not a high-interest credit offer; (3) misrepresenting to consumers that they would receive funds from Defendants within a specified period when, in fact, many consumers would not receive funds by the specified date; and (4) failing to inform consumers of the applicable interest rate on the credit offer.

Plaintiffs and Defendants agree 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 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 Arkansas’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, and do business in this district. 12 U.S.C. § 5564(f).

4. Venue is proper because Defendants are located, reside, and do business in this district. 12 U.S.C. § 5564(f); 28 U.S.C. § 1391(b)-(c).

5. Defendants neither admit nor deny any 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. Entry of this Order is in the public interest.

DEFINITIONS

8. The following definitions apply to this Order:

- a. "**Affected Consumer**" includes consumers who entered into contracts related to their pension income streams that were brokered by Defendants between January 1, 2011 and December 31, 2017.
- b. "**Assisting Others**" means helping, aiding, or providing support to others, including but not limited to:
 - i. consulting in any form whatsoever;
 - ii. 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;
 - iii. providing names of, or assisting in the generation of, potential customers; and
 - iv. participating in or providing services related to the offering, sale, or servicing of a product, or the collection of payments for a product.
- c. "**Defendants**" means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.

- i. **“Corporate Defendants”** means Voyager Financial Group, LLC and its successors and assigns, BAIC, Inc. and its successors and assigns, and SoBell Corp. and its successors and assigns.
- ii. **“Individual Defendant”** means Andrew Gamber and any other name by which he 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”** includes from January 1, 2011, through December 31, 2017.

ORDER

CONDUCT RELIEF

I. Permanent Ban

IT IS ORDERED that:

- 9. Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, are permanently enjoined from brokering, offering, and

arranging agreements between pension-recipients and third parties under which the pension-recipient purports to sell a future right to the income stream, or any portion of the income stream, from his or her pension. Defendants are also permanently enjoined from Assisting Others in engaging in such conduct.

MONETARY PROVISIONS

II. Order to Pay Redress

IT IS FURTHER ORDERED that:

10. A judgment for monetary relief is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$2.7 million for the purpose of providing redress to Affected Consumers; however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraphs 11, 17, and 21 of this Order and subject to Section V of this Order.

11. Within 90 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, \$200,000, in partial satisfaction of the judgment referenced in Paragraph 10 of this Order.

12. With regard to any redress that Defendants pay under this Order, 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, 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 (Additional Payment) to the Bureau or to the Bureau's agent according to the

Bureau's wiring instructions. After the Bureau receives the Additional Payment, the amount of the suspended judgment referenced in Paragraph 10 will be reduced by the amount of the Additional Payment and the Additional Payment will be applied toward satisfaction of the monetary judgment entered in Paragraph 10.

13. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or the Bureau's agent according to applicable statutes and regulations to be used for redress for Affected 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.

14. 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 shall deposit the remaining funds in its possession 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.

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

III. Order to Pay a Civil Money Penalty to the Bureau on Federal Claims

IT IS FURTHER ORDERED that:

16. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3), Individual Defendant must pay a civil money penalty of \$1 to the Bureau.

17. Within 10 days of the Effective Date, Individual Defendant must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring office.

18. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

19. Individual Defendant must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Individual Defendant may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

IV. Order to Contribute to the Consumer Education and Enforcement Fund in Lieu of Paying a Civil Money Penalty to Arkansas on Arkansas State Claims

IT IS FURTHER ORDERED that:

20. In lieu of a civil money penalty, Defendants must pay \$75,000 to the Arkansas Attorney General's Consumer Education and Enforcement Fund.

21. Within 90 days of the Effective Date, Individual Defendant must pay the Consumer Education and Enforcement Fund by wire transfer in compliance with the Attorney General's wiring instructions, payable to the "State of Arkansas Consumer Education and Enforcement Fund," addressed to the attention of the Chief Financial Officer, and reference this Order.

22. The money paid under this Order will be deposited in the Arkansas Attorney General's Consumer Education and Enforcement Fund and used in accordance with Act 763 of 2013 for costs associated with the investigation and prosecution of this case.

23. Individual Defendant must treat this contribution to the Arkansas Attorney General's Consumer Education and Enforcement Fund as a penalty paid to Arkansas for all purposes. Regardless of how Arkansas ultimately uses those funds, Individual Defendant may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any contribution to the Arkansas Attorney General's Consumer Education and Enforcement Fund paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any contribution to the Arkansas Attorney General's Consumer Education and Enforcement Fund paid under this Order.

V. Effect of Misrepresentation or Omission Regarding Financial Condition

IT IS FURTHER ORDERED that:

24. The suspension of the judgment for redress entered in Section II of this Order is expressly premised on the truthfulness, accuracy, and completeness of the Financial Statement of Individual Defendant Andrew Gamber, including the attachments, signed on or about March 25, 2019 and submitted to Plaintiffs on or about March 25, 2019.

25. If, upon motion by the Bureau or Arkansas, the Court determines that Individual Defendant has failed to disclose any material asset or that any of his financial statements contain

material misrepresentations or omissions, the Court shall terminate the suspension of the judgment for redress entered in Section II and, without further adjudication, reinstate the judgment entered in Section II of this Order, and the full judgment for redress of \$2.7 million shall be immediately due and payable, less any amounts previously paid to Plaintiffs under Section II of this Order.

26. If the Court terminates the suspension of the judgment for redress under this section, Plaintiffs will be entitled to interest on the judgment, computed from the date of entry of this Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

27. If the Court terminates the suspension of the judgement for redress under this section, in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court, and proceedings instituted under this section would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that either Plaintiff may initiate to enforce this Order.

VI. Additional Monetary Provisions

IT IS FURTHER ORDERED that:

28. In the event of any default on Individual Defendant's 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.

29. Individual Defendant relinquishes 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 Individual Defendant.

30. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau in a proceeding to enforce its rights to any payment or monetary judgment under this Order.

31. Under 31 U.S.C. § 7701, Individual Defendant, unless he already has done so, must furnish to the Bureau his taxpayer-identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

32. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Individual Defendant must notify the Enforcement Director and Arkansas in writing of the final judgment, order, or settlement. That notification must indicate the amount of redress, if any, that Individual Defendant paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

33. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Individual Defendant may not argue that it is entitled to, nor may Individual Defendant benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Individual Defendant based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Individual Defendant must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the United States Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

COMPLIANCE PROVISIONS

VII. Reporting Requirements

IT IS FURTHER ORDERED that:

34. Defendants must notify the Bureau and Arkansas 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 acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Defendants; or a change in Defendants' names or addresses. 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.

35. Within 7 days of the Effective Date, Defendants must:

- a. designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau and Arkansas may use to communicate with Defendants;
- b. identify all businesses for which Defendants are the majority owner, or that Defendants directly or indirectly control, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales;
- d. identify Individual Defendant's telephone numbers and all email, Internet, physical, and postal addresses, including all residences; and

e. describe in detail Individual Defendant's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including Individual Defendant's title, role, responsibilities, participation, authority, control, and ownership.

36. Defendants must report any change in the information required to be submitted under Paragraph 35 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

37. Within 90 days of the Effective Date, and again one year after the Effective Date, Defendants must submit to the Enforcement Director and Arkansas an accurate written compliance-progress report sworn 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 VIII, unless previously submitted to Plaintiffs.

VIII. Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

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

39. Within 30 days of the Effective Date, Defendants (including Individual Defendant, for any business of which he is the majority owner or which he directly or indirectly

controls) must deliver a copy of this Order to each of their board members and executive 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.

40. For 5 years from the Effective Date, Defendants (including Individual Defendant, for any business of which he is the majority owner or that he 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 VII, any future 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.

41. 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.

IX. Recordkeeping

IT IS FURTHER ORDERED that:

42. Defendants (including Individual Defendant, for any business of which he is the majority owner of that he 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 the Bureau and Arkansas;

- 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; a copy of any promotional or welcome materials provided; and a copy of any contracts the consumer signed;
- d. for all contracts brokered by Defendants, accounting records showing the gross and net revenues generated; and
- e. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party) related to contracts brokered by Defendants, and any responses to those complaints or requests.

43. Defendants must make the documents identified in Paragraph 42 available to the Bureau and Arkansas upon request.

X. Notices

IT IS FURTHER ORDERED that:

44. Unless otherwise directed in writing by the Bureau, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "In re Andrew Gamber, ENF Matter No. 2017-1908-02," and send them by overnight courier or first-class mail to the below address 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.

Arkansas Attorney General's Office
ATTENTION: Consumer Protection Division
323 Center Street, Ste. 200
Little Rock, Arkansas 72201

XI. Cooperation with the Bureau and Arkansas

IT IS FURTHER ORDERED that:

45. Defendants must cooperate fully to help the Bureau and Arkansas determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Individual Defendant must provide such information in his or his agents' possession or control within 14 days of receiving a written request from the Bureau or Arkansas.

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

XII. Compliance Monitoring

IT IS FURTHER ORDERED that:

47. Within 14 days of receipt of a written request from the Bureau or Arkansas, Defendants must submit additional Compliance Reports or other requested non-privileged

information, which must be sworn under penalty of perjury; provide sworn testimony; or produce non-privileged documents.

48. For purposes of this section, the Bureau and Arkansas may communicate directly with Defendants, unless Defendants retain counsel related to these communications.

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

XIII. Retention of Jurisdiction

IT IS FURTHER ORDERED that:

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

XIV. Service

IT IS FURTHER ORDERED that:

51. 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 the Bureau or Arkansas.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED: _____