

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2016-CFPB-0023

In the Matter of:

Flurish, Inc., d/b/a LendUp

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the marketing and lending practices of Flurish, Inc., d/b/a LendUp (Respondent), and has identified the following violations of law: (1) deceptive practices related to marketing and advertising, in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536; (2) unfair and deceptive practices related to extension and default fees, in violation of §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536; (3) failure to establish policies and procedures regarding the accuracy and integrity of the information furnished to consumer reporting agencies, in violation of Regulation V, 12 C.F.R. § 1022.42(a) and § 1036 of the CFPA, 12 U.S.C. § 5536(a)(1)(A); and (4) inaccurate credit disclosures in loan contracts and failure to include APR disclosures in advertisements, in violation of the Truth in Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 1026.18(d)(2), 1026.22(a)(1)-(2), and 1026.24(d)(1) & (2). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, FCRA, 12 U.S.C. § 1681s(b)(1)(H), and TILA, 15 U.S.C. § 1607(a)(6).

II Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated September 26, 2016 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III Definitions

3. The following definitions apply to this Consent Order:
 - a. “Affected Consumers” includes:
 - i. consumers who were charged expedited-funding fees, from May 2013 to March 2016, and who received finance-charge disclosures that did not include the portion of that fee that LendUp retained;
 - ii. consumers who received incorrect APR disclosures for loans issued between September 2012 and January 2015;

- iii. consumers who, from March 2012 to February 2015, were charged extension fees in California, Mississippi, and Tennessee in connection with loans where the contract stated there were no such fees;
 - iv. consumers who were charged undisclosed default fees in connection with debt collections from November 2012 to December 2014;
 - v. consumers who, according to the company's website disclosures and advertisements, were eligible to have credit information reported to nationwide consumer-reporting agencies for Platinum-level and Prime-level loans before Respondent furnished information to nationwide consumer reporting agencies, from October 2012 to February 2014; and
 - vi. non-California consumers who, between February 2014 to June 2016, were eligible to access Platinum-level or Prime-level loans, when those products were not available in their states.
- b. "Board" means Respondent's duly elected and acting Board of Directors.
 - c. "Effective Date" means the date on which the Consent Order is issued.
 - d. "Regional Director" means the Regional Director for the West Region of the Office of Supervision for the Consumer Financial Protection Bureau, or his or her delegate.
 - e. "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 Respondent based on substantially the same facts as described in Section IV of this Consent Order.

- f. “Respondent” means Flurish, Inc., doing business as LendUp, and its successors and assigns.

IV **Bureau Findings and Conclusions**

The Bureau finds the following:

- 4. Respondent is a California corporation that is headquartered in San Francisco, California. Respondent is an online lender that offers single-payment loans and installment loans in 24 states.
- 5. These offerings are “consumer financial services or products” under the CFPA. 12 U.S.C. § 5481(5)(A), (15)(A)(i). Respondent is therefore a “covered person” under 12 U.S.C. § 5481(6).
- 6. Approximately 50,176 Affected Consumers require redress of about \$1,830,000.

Respondent’s Loan-Program Marketing

- 7. Respondent marketed its loan program with claims that it would build consumers’ credit, build consumers’ credit scores, furnish information regularly to consumer reporting agencies, and offer consumers access to “more money at better rates for longer periods of time” than other options available to them.
- 8. Respondent also advertised that consumers could obtain financial stability by taking out its payday loans, repaying them on time, and completing financial-education courses, which would allow them to take out additional payday or installment loans through Respondent with more favorable terms. Respondent referred to this prospect as the ability to move up the “LendUp Ladder.”

9. Respondent advertised four levels of loans for consumers: Silver, Gold, Platinum, and Prime. At each loan level, Respondent claimed that consumers could potentially borrow larger amounts of money at lower interest rates or repay over a longer period. Its website stated: "As you earn more points, you ascend in status from Silver, to Gold, to Platinum, to Prime."
10. Borrowers of Respondent's Platinum-level and Prime-level loans were eligible to have their credit information and payment history furnished to nationwide consumer reporting agencies (NCRAs). Borrowers of Respondent's Silver-level and Gold-level loans were not.
11. Respondent's Platinum-level and Prime-level loans also offered more favorable terms than Silver-level and Gold-level loans, including lower interest rates and the ability to pay back the loans over a longer period.
12. Many of the benefits Respondent advertised as available to consumers who moved up the LendUp Ladder were, in fact, not available. Although it advertised all of its loans nationwide, from 2012 until 2015, Respondent did not offer any loans at the Platinum or Prime levels outside of California. In many states, Respondent still does not offer such loans. And at least until February 2014, Respondent did not furnish any information, about any loans, to NCRAs.

Extension and Default Fees

13. Respondent offered Silver-level, single-payment borrowers the option to select a loan-maturity—i.e., payment—date. Borrowers could select a date as late as the law in their state allows, or an earlier date.

14. If a borrower chose a date earlier than the latest available date, Respondent gave the borrower a “discount” on the fee it charged at origination. The discount was pro-rated for the number of days that the borrower chose to pay “early.”
15. After the borrower selected the repayment date and the loan agreement was electronically signed, Respondent allowed the borrower to extend the due date for loan repayment, up to the maximum term allowed under state law.
16. From March 2012 to February 2015, for borrowers who extended their repayment dates, Respondent reversed the discount it applied at origination. The reversal, like the discount, was pro-rated for each day beyond the original due date that the borrower elected to extend the date.
17. Respondent did not disclose to borrowers at the time they signed their loan agreements that a discount would be reversed if they subsequently extended their repayment date or if they ultimately defaulted on the loan.
18. From March 2012 through at least February 2015, Respondent’s loan contracts in California, Mississippi, and Tennessee expressly stated that Respondent did not charge extension fees to extend payment due dates.
19. In addition, when Silver-level borrowers defaulted, Respondent added the amount of the discount reversal to the amount that it sent to collections. Respondent did not disclose this fact to the consumers at any time.

Credit Reporting Policies and Procedures

20. In February 2014, Respondent began furnishing information to NCRAAs for its Platinum- and Prime-level borrowers in states where those levels were available. It furnished information on a monthly basis beginning in July 2014.

21. From its inception until April 2015, however, Respondent had no written policies or procedures related to credit reporting.

Expedited Funding Fees and Inaccurate APRs

22. Respondent offers an optional expedited-funding service through third-party payment processors. The service allows consumers to obtain their loan proceeds sooner than they would otherwise be able to. Instant, debit-card, and same-day funding options are available.
23. If a consumer opts for expedited funding, Respondent charges an expedited-funding fee (EFF), which varies depending on the particular funding service available to and selected by the consumer.
24. The expedited-funding services Respondent offers are provided by third parties. Respondent charges fees to borrowers for the services and pays the third parties for providing them.
25. From May 2013 to March 2016, Respondent retained a portion of the EFFs it charged.
26. Respondent did not include the retained portion of the EFFs in the finance charge it disclosed or in the annual percentage rate (APR) calculations for loans subject to expedited-funding from May 2013 to March 2016. As a result, Respondent understated the finance charge and APR for those loans.
27. In addition, from at least September 2012 to at least January 2015, due to a faulty APR-calculation tool, Respondent miscalculated the APR for certain other installment loans, understating the rates it disclosed to consumers. These miscalculations affected the rates provided to California borrowers who obtained installment loans during this period.

28. During this period, Respondent did not take reasonable steps to verify the accuracy of the tool before using it or otherwise to ensure accurate APR calculations, including monitoring or testing APRs before or after consummation.

Advertisements with Triggering Terms

29. Respondent used online banner advertisements appearing on Facebook and with Internet search results that included statutory triggering terms, but Respondent failed to disclose in those advertisements the APR and whether the rate could be increased after consummation.
30. Specifically, banner advertisements used by Respondent until at least 2015 included “slider bars” that allowed a consumer to view various loan amounts and repayment terms (in number of days). These advertisements did not contain APR disclosures.

Findings and Conclusions as to Deceptive Marketing Practices in Violation of the CFPA

31. By advertising the LendUp Ladder, credit-building loans, and the opportunity for consumers to improve their credit scores through use of Respondent’s loans, Respondent represented that those benefits were available to consumers who borrowed from Respondent.
32. In fact, between February 2012, when Respondent was founded, and February 2014, Respondent did not offer loans that would be reported to NCRAAs, other than to borrowers in California, and did not actually furnish credit or payment information to NCRAAs for loans that were eligible. The benefits Respondent advertised therefore were not available to its customers.

33. Respondent's misrepresentations were likely to mislead consumers acting reasonably under the circumstances to borrow from Respondent, and constitute deceptive acts or practices under the CFPA.

Findings and Conclusions as to Deceptive Practices Related to Extension Fees in Violation of the CFPA

34. Between March 2012 and February 2015, Respondent stated in loan agreements that it used in California, Mississippi, and Tennessee that it did not charge fees to consumers for extending their loan-repayment dates.
35. In fact, during the same period, where consumers extended their loan-repayment dates, Respondent reversed a "discount" it had previously applied for each day a consumer's loan-repayment date was extended. Respondent's reversal of the discount operated as an extension fee for consumers.
36. Respondent's misrepresentations in its loan agreements regarding its extension fees constitute deceptive acts or practices.

Findings and Conclusions as to Unfair Practices Related to Default Fees in Violation of the CFPA

37. Respondent charged undisclosed fees to consumers in default. Consumers were not aware of the extension fees that would be added to their loans upon default and thus could not factor those fees into their decision-making about whether to take the loan in the first place or whether to budget differently in order not to default on the loan. Respondent's practice caused or was likely to cause substantial harm to consumers that was not reasonably avoidable by consumers and was not outweighed by countervailing benefits to consumers or competition.
38. Respondent's practice of charging unauthorized and undisclosed fees to consumers in default was unfair.

Findings and Conclusions as to Lack of Written Credit Reporting Policies and Procedures in Violation of FCRA and Regulation V

- 39. Respondent was a furnisher under the FCRA and subject to Regulation V beginning in or around February 2014.
- 40. By failing to have any written policies or procedures regarding the accuracy and integrity of the information relating to consumers that it furnished until at least April 2015, Respondent violated the FCRA and Regulation V. 12 C.F.R. § 1022.42(a).
- 41. Respondent's violations of the FCRA and Regulation V also constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

Findings and Conclusions as to Understated Finance Charges in Violation of TILA and Regulation Z

- 42. From May 2013 until March 2016, Respondent failed to include the portion of the expedited-funding fees that it retained, resulting in inaccurate finance-charge disclosures in violation of TILA and Regulation Z. 15 U.S.C. § 1605; 12 C.F.R. § 1026.18(d)(2).
- 43. Respondent's violations of TILA and Regulation Z constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

Findings and Conclusions as to Inaccurate APR Disclosures in Violation of TILA and Regulation Z

- 44. On many loans issued in California between September 2012 and January 2015, Respondent disclosed an inaccurate, understated APR.
- 45. In most of these instances, the APR disclosure was understated by more than .125%.

46. From September 2012 to January 2015, for certain California loans, Respondent disclosed inaccurate APRs in violation of Regulation Z. 12 C.F.R. §§ 1026.18(e) and 1026.22(a)(1) & (2).
47. Respondent's violations of TILA and Regulation Z constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

Findings and Conclusions as to Deceptive Practices Related to TILA Disclosures in Violation of the CFPA

48. Respondent misrepresented loan terms to consumers by failing to disclose the retained portion of EFFs as part of the finance charge and understating the APR disclosure.
49. Respondent's disclosures of inaccurate finance charges and APRs constitute deceptive acts or practices in violation of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(B).

Findings and Conclusions as to Failure to Disclose APR and Other Information in Advertisements with Triggering Terms in Violation of TILA and Regulation Z

50. Respondent used triggering terms in online advertisements appearing on Facebook and with Internet search results but failed to disclose in those advertisements (a) the APR, using that term, and (b) whether the rate could be increased after consummation.
51. Respondent therefore violated TILA and Regulation Z. 12 C.F.R. §1026.24(d)(1) & (2).
52. Respondent's violations of TILA and Regulation Z constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

ORDER

V
Conduct Provisions

IT IS ORDERED, under §§ 1053 and 1055 of the CFPB, that:

53. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate §§ 1031 and 1036 of the CFPB, 12 U.S.C. §§ 5531 and 5536, Regulation V, 12 C.F.R. § 1022.42(a), TILA, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. §§ 1026.18(d) & (e), 1026.22(a)(1) & (2) and 1026.24(d)(1) & (2), or any other provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14) and must take the following affirmative actions:
 - a. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with marketing and offering consumer credit, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
 - i. The benefits of borrowing from Respondent, including access to and availability of loan products and credit reporting opportunities;
 - ii. The fees charged for loan extensions;
 - iii. The fees charged upon loan default;
 - iv. The finance charge for loans;
 - v. The APR for loans; or
 - vi. Any other fact material to consumers.

- b. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with marketing or offering consumer credit must:
 - i. Regularly review all of its marketing materials and website content, including advertisements, to ensure Respondent is not misleading consumers;
 - ii. Conduct thorough due diligence of its service providers to ensure that any marketing or advertising done through service providers is not misleading to consumers;
 - iii. Regularly review compliance with Federal consumer-financial laws, including, specifically, those laws that govern loan disclosures;
 - iv. Include the correct finance charge and APR in its disclosures; and
 - v. Regularly test APR calculations and disclosures to consumers to ensure compliance with TILA and Regulation Z.

VI Role of the Board

IT IS FURTHER ORDERED that:

54. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
55. Although this Consent Order requires the Respondent to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with Federal consumer financial law and this Consent Order.

56. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
- a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
 - b. Require timely reporting by management to the Board on the status of compliance obligations; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with Board directives related to this Section.

VII **Order to Pay Redress**

IT IS FURTHER ORDERED that:

57. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account at least \$1,830,000 for the purpose of providing redress to Affected Consumers as required by this Section.
58. Within 30 days of the Effective Date, Respondent must submit to the Regional Director for review and non-objection a comprehensive written plan describing any redress that may have been paid by Respondent and addressing the remaining redress that is outstanding consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the Regional Director directs the Respondent to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the Regional Director within 15 days. After receiving notification that the Regional Director has made a determination of non-objection to the Redress

Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

59. The Redress Plan must:
 - a. Specify how Respondent has identified all Affected Consumers;
 - b. Describe how Respondent has calculated the amount of redress paid or to be paid to Affected Consumers in each category;
 - c. Identify the Affected Consumers in each category and, for each: (1) provide the total redress required to compensate the consumer for the practices described in this Consent Order; (2) state any refund provided by Respondent to the consumer before the Effective Date for the practices described in this Consent Order; and (3) state the remaining redress owed to the consumer (Remaining Redress);
 - d. State the total amount refunded by Respondent before the Effective Date to all consumers affected by the practices described in this Consent Order (Total Refunds), and the form in which those refunds were made; and
 - e. Provide the form in which the Remaining Redress will be provided to Affected Consumers.
60. Within 30 days of receipt of non-objection to the Redress Plan, if the sum of the Total Refunds and Remaining Redress under the Redress Plan is less than \$1,830,000, Respondent must pay the difference by wire transfer to the Bureau or to the Bureau's agent, according to the Bureau's wiring instructions.
61. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. Upon receiving a written request from Respondent, the Bureau may provide Respondent with information concerning additional redress. If the

Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

62. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

VIII Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

63. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$1,800,000 to the Bureau.
64. Within 10 days of the Effective Date, Respondent 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 instructions.
65. The civil money penalty paid under this Consent 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).
66. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent 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 Consent 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 Consent Order.
67. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. 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.

IX Additional Monetary Provisions

IT IS FURTHER ORDERED that:

68. In the event of any default on Respondent's obligations to make payment under this Consent 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.

69. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
70. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
71. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent 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.

X
Reporting Requirements

IT IS FURTHER ORDERED that:

72. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent 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 Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent

must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

73. Within 7 days of the Effective Date, Respondent must:
 - a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent;
 - b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
 - c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
74. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report), which, at a minimum:
 - a. Describes in detail the manner and form in which Respondent has complied with this Consent Order; and
 - b. Attaches a copy of each Order Acknowledgment obtained under Section XI, unless previously submitted to the Bureau.

XI **Order Distribution and Acknowledgment**

IT IS FURTHER ORDERED that,

75. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its 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 Consent Order.

76. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section X, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
77. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent 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 Consent Order under this Section.

XII Recordkeeping

IT IS FURTHER ORDERED that

78. Respondent must create, or if already created, must retain for at least 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 Consent Order, including all submissions to the Bureau.
 - b. All documents and records pertaining to the Redress Plan, described in Section VII above.
 - c. Copies of all sales scripts; training materials; advertisements; websites;

and other marketing materials; and including any such materials used by a third party on behalf of Respondent.

79. Respondent must retain the documents identified in Paragraph 78 for the duration of the Consent Order.
80. Respondent must make the documents identified in Paragraph 78 available to the Bureau upon the Bureau's request.

XIII Notices

IT IS FURTHER ORDERED that:

81. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "In re Flurish, Inc. dba LendUp, 2016-CFPB-0023," and send them as follows:
 - a. via email to WestRegion@cfpb.gov; and
 - b. via overnight courier (not the U.S. Postal Service), as follows:

Regional Director
 CFPB West Region
 301 Howard Street, 12th Floor
 San Francisco, CA 94105.

XIV Cooperation with the Bureau

IT IS FURTHER ORDERED that:

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

83. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony. Respondent must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

XV Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Respondent's compliance with this Consent Order:

84. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
85. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
86. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XVI Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

87. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional Director.
88. The Regional Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

XVII **Administrative Provisions**

89. Except as set forth in the following paragraph, the provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent.
90. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

91. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
92. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
93. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
94. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

95. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
96. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
97. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondents, their officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 27th day of September, 2016.

Richard Cordray

Richard Cordray
Director
Consumer Financial Protection Bureau