

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

YELLOWSTONE CAPITAL LLC, a New York
limited liability company,

FUNDRY LLC, a New York limited liability
company,

YITZHAK D. STERN, a/k/a Isaac Stern,
individually and as an officer of Yellowstone
Capital LLC and Fundry LLC, and

JEFFREY REECE, individually and as an officer
of Yellowstone Capital LLC and Fundry LLC,

Defendants.

Case No. 1:20-cv-06023-LAK

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for a permanent injunction, and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §53(b). The Commission and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in the advertising, marketing, offering, and servicing of small business financing.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorneys' fees. Defendants waive and release any claims that they may have against the Commission and its agents that relate to this action.
5. The parties agree that this Order resolves all allegations in the Complaint.
6. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **"Clear(ly) and Conspicuous(ly)"** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented

simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

1. “Corporate Defendants” means Yellowstone Capital LLC and Fundry LLC, and their successors and assigns.
 2. “Individual Defendants” means Yitzhak D. Stern, a/k/a Isaac Stern, and Jeffrey Recce.
- C. “**Express Informed Consent**” means an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous Disclosure of all material information related to the charge.
- D. “**Financing Product or Service**” means any product or service represented, expressly or by implication, to provide or assist in providing, directly or indirectly, funds in exchange for future receivables, revenues, proceeds, or other payments or amounts.
- E. “**Funder**” means any entity, organization, or sole proprietorship, or any person not otherwise affiliated with any entity, organization or sole proprietorship, that underwrites, funds, services, or assists in obtaining repayment of Financing Products or Services for Defendants’ consumers.
- F. “**Marketer**” means any entity, organization, or sole proprietorship, or any person not otherwise affiliated with any entity, organization or sole proprietorship, that works with or for Defendants to assist Defendants in marketing, advertising, brokering, selling, or acquiring consumers interested in Defendants’ Financing Products or Services.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, distributing, servicing, or offering any Financing Product or Service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. Any requirements for obtaining the Financing Product or Service, including but not limited to whether consumers are required to provide Defendants with a personal guarantee, security interest, collateral, or any other rights or remedies;
- B. The existence, amount, or timing of any fees or charges, or the total amount consumers will repay;
- C. The amount of funds consumers will receive or will likely receive; or
- D. Any other material fact about the performance, costs, benefits, or characteristics of the Financing Product or Service.

II. REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, distributing, servicing, or offering any Financing Product or Service, are permanently restrained and enjoined from making any representation, or assisting others in making any representation, expressly or by implication, regarding the amount of funds

consumers will receive or the amount consumers will repay, unless Defendants disclose Clearly and Conspicuously, and in close proximity to the representation:

- A. The existence, amount, and timing of any fees or charges;
- B. If fees or charges will reduce the amount of funds that consumers will receive at the time of funding, that fact; and the specific amount of funds consumers will receive after paying those fees and charges; and
- C. The total amount consumers will repay (absent the future assessment of any fees or charges for any breach or default by the consumer);

and the claim is not otherwise misleading.

III. PROHIBITION AGAINST UNFAIR BILLING PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from causing debits or withdrawals to be made from any consumer's bank or other financial account, or from billing any consumer for any charge, without the consumer's Express Informed Consent.

IV. REQUIREMENTS REGARDING MARKETERS AND FUNDERS

IT IS FURTHER ORDERED that Defendants shall, as a condition of doing business with any Marketer or Funder, establish, implement, and thereafter maintain a system to monitor their Marketers and Funders to ensure compliance with this Order. This system shall include, but not be limited to:

- A. Providing each Marketer and Funder with a copy of this Order;
- B. Requiring that each Marketer and Funder provide Defendants with a signed and dated

- acknowledgement of receipt of this Order;
- C. Clearly and conspicuously disclosing to the Marketer or Funder in writing that engaging in the acts or practices prohibited by this Order will result in immediate termination of any business relationship between Defendants and such Marketer or Funder, and forfeiture of all monies owed to such Marketer or Funder;
 - D. Requiring that each Marketer and Funder provide the Order and any other information required by this Subsection to each of its employees and agents that may do business with Defendants;
 - E. Promptly investigating any complaints that Defendants receive through any source to determine whether any Marketer or Funder has engaged in acts or practices prohibited by this Order;
 - F. Immediately terminating and ceasing payment to any Marketer or Funder who Defendants reasonably conclude has engaged in acts or practices prohibited by this Order; and
 - G. To the extent Defendants terminate any business relationship with any Marketer or Funder for engaging in acts or practices prohibited by this Order, Defendants shall maintain records detailing the circumstances of such termination, and will take reasonable steps to ensure that Defendants will not do business with the Marketer or Funder or their principals.

V. MONETARY JUDGMENT FOR EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Nine Million, Eight Hundred Thirty Seven Thousand Dollars (\$9,837,000.00) is entered in favor of the Commission against Individual

Defendants and Corporate Defendants, jointly and severally, as equitable monetary relief.

- B. Defendants are ordered to pay to the Commission Nine Million, Eight Hundred Thirty Seven Thousand Dollars (\$9,837,000.00), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 30 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

VI. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously

submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

- E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all others in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly failing to provide their customer information to enable the Commission to efficiently administer consumer redress. Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For a period of 10 years after entry of this Order for each Corporate Defendant and Individual Defendant Yitzhak Stern, and for a period of 3 years after entry of this Order for Individual Defendant Jeffrey Reece, for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives that participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Yellowstone Capital LLC*.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants in connection with Financing Products or Services and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party that provides or is authorized to provide such records to Defendants, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. a copy of each unique advertisement or other marketing material; and

F. that Defendants create for a period of 10 years, and retain for a period of 5 years, the following data for each and every Financing Product or Service any Defendant has provided to consumers:

1. the total amount of receivables, revenues, proceeds, or other payments that the Defendant has purchased;
2. the daily or other periodic payment amount stated in the contract;
3. the date of the consumer's first daily or other periodic payment;
4. the date of the consumer's final daily or periodic payment applied to the purchased receivables, revenues, proceeds, or other payments;
5. the total amount the consumer actually paid to the Defendant (before, if applicable, any refund was provided); and
6. any refund amount the Defendant provided, along with the date of that refund.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED



LEWIS A. KAPLAN, C.S.D.J.

5/4/2021

SO ORDERED this _____ day of _____, 202_.

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION:



Date: 4/21/21

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**FOR DEFENDANTS YELLOWSTONE CAPITAL LLC; FUNDRY LLC;
YITZHAK D. STERN, A/K/A ISAAC STERN; AND JEFFREY REECE:**


_____ Date: 3/19/21

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Counsel for Defendants Yitzhak D. Stern and Jeffrey Reece

DEFENDANTS:



Date: 3/19/2021

YITZHAK D. STERN, a/k/a Isaac Stern, individually
and as an officer of Yellowstone Capital LLC and Fundry LLC



Date: 03/19/21

JEFFREY REECE, individually and as an officer of
Yellowstone Capital LLC and Fundry LLC