

New Jersey Reaches Consent Order with Yellowstone Capital Regarding MCA Agreements

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On December 27, 2022, New Jersey's Attorney General and Office of Consumer Protection and Yellowstone Capital, LLC and several other associate companies signed a consent order to resolve a lawsuit that alleged violations of the New Jersey Consumer Fraud Act and Regulations Governing General Advertising. The order requires Yellowstone to modify its merchant cash advance agreements extensively, as well as its practices for servicing the agreements. The order focuses especially on the "reconciliation" provisions of the agreements. Generally, a reconciliation provision allows a merchant to adjust its payment obligation to align with the merchant's actual revenue. Under the order, a reconciliation provision:

- must allow a merchant to request reconciliation more than five days after the start of the month;
- must provide a look-back period equal to the life of the transaction rather than only one month; and
- must not allow a reconciliation to result in the merchant owing additional money.

Yellowstone agreed to provide these benefits to both new and existing MCA customers, and it may not attempt to collect any unpaid balance while a reconciliation request is pending. The order also requires Yellowstone to conduct an internal review of a transaction before it declares a default with respect to that transaction. The order prohibits certain terms in an MCA agreement, including but not limited to:

- provisions requiring a merchant to waive all legal claims against Yellowstone;
- provisions requiring a merchant to waive objections to jurisdiction and venue; and
- provisions establishing that 25% of the accelerated unpaid balance is a reasonable attorney fee and that Yellowstone need not prove the reasonableness of such a fee.

The order also establishes specific disclosure requirements, including a requirement that Yellowstone disclose fees as dollar amounts rather than percentages. It requires Yellowstone to terminate a UCC financing statement without further action by a merchant when the merchant has satisfied its obligations under an MCA agreement. Yellowstone must inform its third-party service providers about the requirements of the order and require by contract that those providers follow the applicable provisions of the order.

As part of the order, the parties agreed to pay about \$27 million, including about \$22 million in forgiveness of its customers' outstanding obligations and about \$5 million to the Office of Consumer Protection. The parties also must report to the Office of Consumer Protection the names and addresses of the businesses whose obligations are forgiven under the order, as well as the names of the associated guarantors and the dates of the MCA agreements. The parties will be subject to the order for 10 years after the order's effective date. A copy of the consent order is available [here](#).

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410.684.3200

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