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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF)	
FINANCE, CONSUMER FINANCE)	Docket No. 2009-9-16
BUREAU,)	
)	CONSENT ORDER TO
Complainant,)	CEASE AND DESIST
)	
ACTION COLLECTION SERVICE, INC.,)	
dba Interstate Collections of Idaho,)	
Action Collection, Financial Management,)	
Check-A-Check, and ACS,)	
)	
Respondent.)	
_____)	

The Director of the State of Idaho, Department of Finance (Director), pursuant to his authority under the Idaho Collection Agency Act, Idaho Code § 26-2221 *et seq.* (the Act), based on information obtained by financial examiners employed by the State of Idaho, Department of Finance, Consumer Finance Bureau (Department), and from information voluntarily provided to the Department by Action Collection Service, Inc., dba Interstate Collections of Idaho, Action Collection, Financial Management, Check-A-Check, and ACS (the Respondent), finds it in the public interest that this Consent Cease and Desist Order be issued. In lieu of the immediate revocation or suspension of the Idaho collection agency license currently held by the

Respondent, and in accordance with the terms of the Act, the Respondent hereby acknowledges and consents to all of the terms included in this Consent Order to Cease and Desist and to the issuance of such Order.

FINDINGS OF FACT

1. The Respondent is a collection agency that was originally established as an Idaho corporation on November 30, 1966. Continuously since that date, the Respondent has held Idaho Collection Agency License No. CCA-3255. The Respondent's corporate office is located at 1325 Vista Avenue, Boise, Idaho 83705. The Respondent has branch offices located in Nampa, Idaho; Idaho Falls, Idaho; Pocatello, Idaho; Twin Falls, Idaho; and Murray, Utah.

2. In 1975, the Respondent was purchased by the Muir family. The Respondent's current majority owners are John F. Muir and Grant Muir, Jr. Valera P. Muir is the Respondent's CEO, and Grant Muir, Jr. is the Respondent's responsible person in charge.

3. On July 30, 2009, a Department examiner conducted a routine examination of the Respondent's collection agency business. From the Respondent's records and other information reviewed during such examination, the examiner preliminarily concluded that on June 30, 2009, the Respondent was "out of trust" in the approximate amount of between \$140,000 and \$174,000, in violation of the Idaho Collection Agency Act.

4. On August 7, 2009, the Department examiner referenced in paragraph 3 above e-mailed Valera P. Muir to inform the Respondent of the conclusions reached from the Department's examination of the company. In that e-mail, the examiner informed the Respondent that if such conclusions were correct, the Respondent must immediately correct the "out of trust" condition and other items noted in the examination which constitute violations of the Act.

5. On August 10, 2009, the examiner received an e-mail from John F. Muir on behalf of the Respondent, admitting that the examiner's conclusions were correct, and that the Respondent was "out of trust." In that e-mail, John F. Muir asked for the opportunity to work with the Department in correcting that situation.

6. On August 13, 2009, a meeting was held at the Department's offices in Boise, Idaho, attended by Department staff; John F. Muir and Grant Muir, Jr. on behalf of the Respondent; and Department counsel. As they had done in recent communications with Department staff, John F. Muir and Grant Muir, Jr. confirmed at the meeting that the Respondent was "out of trust" with its clients in that monthly collections proceeds were being used to pay remittances owed to clients from the prior month's collections. By virtue of this circumstance, the Respondent is in arrears in remittances owed to its clients in an amount estimated to be between \$140,000 and \$174,000. Remittances owed to the Respondent's collection clients represent such clients' share of collections the Respondent has received on their behalf.

7. Under the Respondent's operational procedures, as indicated by records reviewed during the July 30, 2009 examination and in discussions between John F. Muir and/or Grant Muir, Jr. and Department staff, the Respondent has recently been initially depositing moneys received on behalf of collection clients in a money fund account rather than in a trust account. From the money fund account, the Respondent then transfers moneys to other accounts, which include expense accounts, as well as trust accounts used for the purpose of remitting moneys due to collection clients. Sufficient moneys have not been transferred to the Respondent's trust accounts to fully pay the Respondent's collection clients their share of collection moneys received by the Respondent on such collection clients' behalf.

8. At the August 13, 2009 meeting referenced in paragraph 6 above, Department staff discussed with John F. Muir and Grant Muir the scope of the Respondent's apparent non-compliance with the requirements of the Idaho Collection Agency Act, as shown by the information currently known to the Department; the need for the Respondent to provide further information to the Department as part of its ongoing investigation of the Respondent's business activities; and some of the steps the Department requires to establish the Respondent's compliance with the Act.

9. This paragraph 9 sets forth the Respondent's response to the Department's allegations of fact contained in paragraphs 1 through 8 above. Upon assuming ownership and control of the Respondent in 2008, John F. Muir and Grant Muir, Jr. inherited, by current standards, a dated accounting system and related hardware that was utilized to operate the business of the Respondent. Although functional, the system made it difficult to readily track funds with specificity. In order to remedy this situation, John F. Muir and Grant Muir, Jr., implemented a new accounting and operations software system that became fully operational in June, 2009. This system upgrade brought to light the shortage of funds actually held in trust. The shortage of funds held in trust derived from the procedure under the previous system whereby the proceeds from collections had been initially deposited and held in a general money market account before depositing them at the end of each month into the trust account for disbursement. The shortfall had never come to light, as the Respondent always had sufficient funds to make timely payments to its clients as said payments came due. On July 30, 2009, a Department examiner conducted a routine examination of the Respondent's collection agency business operation. Said examination was performed on information generated by the Respondent's newly implemented accounting software system and resulted in the conclusion that

the Respondent was “out of trust” as reported in paragraph 3 above. In the August 10, 2009 e-mail to the Department examiner, John F. Muir provided additional information regarding the banking and accounting system used by the Respondent and disclosed that the procedure theretofore utilized by the Respondent to maximize income had been to deposit collected funds into a general, interest-bearing money market account prior to monthly disbursement to other accounts, including its client trust account, for further disbursement. John F. Muir expressed the Respondent’s desire to have the opportunity to work with the Department so as to amend said procedures as necessary to conform to legal requirements.

10. This Consent Cease and Desist Order sets forth the Respondent’s violations of the Idaho Collection Agency Act, based on the information currently known to the Department, and the initial steps the Department requires the Respondent to take to re-establish its compliance with the Act.

VIOLATIONS OF LAW

I. FAILURE TO DEPOSIT TRUST FUNDS IN TRUST ACCOUNT

11. Paragraphs 1 through 10 above are fully incorporated herein by this reference.

12. Idaho Code § 26-2233(1) provides that every licensee under the Act that receives or holds funds belonging to another in connection with the business activities authorized by the Act shall, in its own name, establish and maintain a separate trust account for deposit and remittance of such funds in a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

13. The Respondent’s business practice of depositing funds collected on behalf of its collection clients in an account other than the appropriate trust account, as referenced in paragraph 7 above, constitutes a violation of Idaho Code § 26-2233(1).

II. MISAPPLICATION OF MONEY HELD IN TRUST

14. Paragraphs 1 through 13 above are fully incorporated herein by this reference.

15. Idaho Code § 26-2233(1) provides that a licensee under the Idaho Collection Agency Act may not, either directly or indirectly, misapply money held in trust.

16. The Respondent's acts of paying collection clients amounts due them from funds collected on behalf of other collection clients, constitute violations of Idaho Code § 26-2233(1).

ORDER AND REMEDIES

17. The Respondent agrees to immediately cease and desist from all acts or practices constituting a violation of the Idaho Collection Agency Act, to include the acts or practices constituting violations of the Act as specified in this Order.

18. The Respondent and the Department agree that the purpose of this Consent Order to Cease and Desist is to bring the Respondent into compliance with the Idaho Collection Agency Act as soon as practicable, but in no event by later than ninety (90) days from the entry of this Order, to specifically include establishing that the Respondent is properly depositing client funds in a trust account, is current with its trust obligations under the Act, and is properly handling its trust account as required by the Act. To that end, the Respondent agrees to take the steps set forth in the following paragraphs to establish compliance with the requirements of the Act.

19. Effective immediately, all moneys received by the Respondent pursuant to its collection agency business shall be deposited into such bank account(s) as designated by the Department. The Department authorizes the Respondent to disburse from its accounts as necessary for ongoing normal business expenses, unless otherwise directed by the Department. If feasible, the Respondent may use one or more of its existing bank accounts for such purposes.

If it is not feasible to use one or more of the Respondent's existing accounts to effect the terms of this Order, a new account or accounts may be established by the Respondent. If requested to do so by the Department, the Respondent shall sign any documents required by the bank(s) where the Respondent's operating and/or trust accounts are held to allow a designee of the Director to become a co-signer on such accounts.

20. Effective immediately, the Respondent shall deposit all moneys collected on behalf of its collection clients in the account(s) described in paragraph 19 above within one (1) business day following receipt of such moneys by the Respondent. With respect to moneys collected in the form of credit card payments, debit card payments, and electronic check payments, the Respondent shall deposit its clients' share of such payments into account(s) described in paragraph 19 above within one (1) business day following receipt of such moneys from the Respondent's electronic payments processor. Any moneys properly payable to the Respondent's business shall be directed and deposited to such account(s), and not to any owner, officer, agent, or employee of the Respondent, subject to disbursement from said accounts as necessary for ongoing normal business purposes (including payroll) as provided in paragraph 19 above. If requested to do so by the Department, in the event that a new bank account or accounts is/are established to effect the terms of this Consent Order to Cease and Desist, the Respondent shall transfer any and all sums presently on deposit in any of the Respondent's operations, trust, or other accounts to the newly established account.

21. By no later than the date this Consent Order to Cease and Desist is signed by the Director, the Respondent shall provide to the Department, or make such information available to the Department at the Respondent's offices, a full, complete, and accurate accounting of all moneys paid to the Respondent for any purpose, and all payments or disbursements made by the

Respondent for any purpose, during the period from January 1, 2007 to the present date. Such accounting shall include copies of all bank statements concerning any bank account(s) maintained by the Respondent during such time period, as well as true and correct copies of any documents prepared in connection with the Respondent's financial accounting system during such time period, to include bank account reconciliation statements, financial statements, budgets, tax returns or other tax-related documents, and any other financial documents.

22. By no later than September 16, 2009, the Respondent shall provide to the Department a complete list of all of its collection clients and creditors. Such list shall include the name, address, and contact information of each collection client and creditor. Such list shall also include the name, address, and contact information of all of the Respondent's former collection clients as to which the Respondent collected accounts during the time period from January 1, 2007 to the present date.

23. During the period from the date of the entry of this Consent Order to Cease and Desist Order through no more than ninety (90) days thereafter, the Respondent shall be limited to the following activities in its collection business under the Act:

- (a) Receiving payments from debtors for all on-going and active collection client accounts;
- (b) Depositing payments received on behalf of collection clients only in accounts designated by the Department;
- (c) Posting payments received on behalf of collection clients to the proper collection client account;
- (d) Paying the Respondent's business expenses only as authorized in writing by the Department;

- (e) Continuing collection lawsuits only where a civil complaint has already been filed and the debtor has been served;
- (f) Reporting to consumer reporting agencies information concerning payments received from debtors on behalf of collection clients;
- (g) Continuing normal collection activities on existing collection client accounts;
- (h) Continuing prosecution of civil lawsuits already filed; initiating the prosecution of civil lawsuits only when statutes of limitation require doing so to avoid loss of the cause of action; and renewing judgments already obtained;
- (i) Receiving and continuing normal collection activities on new collection client accounts, as authorized by this Consent Order to Cease and Desist; and
- (j) Such other activities as authorized in writing by the Department.

24. The Respondent agrees to comply with such other reasonable requirements the Department deems necessary to ensure the Respondent's compliance with the requirements of the Idaho Collection Agency Act, other applicable law, and this Order.

25. The Respondent agrees to pay full restitution to any collection clients injured by its violations of the Act as set forth in this Order, once an accurate restitution figure is determined pursuant to the Department's ongoing investigation of the Respondent's business activities conducted under the Act.

26. The Respondent acknowledges and understands that the Department's investigation into the Respondent's business activities is in progress and that additional requests

for documents, records, and other information may be made by the Department in furtherance of such investigation. The Respondent agrees to timely comply with such requests, and provide full access to all business records, offices, and premises, as required by the Act.

27. The Respondent acknowledges and understands that the Department's investigation into the Respondent's business activities under the Act may result in the issuance of additional orders, and/or possible administrative or civil actions seeking penalties and other sanctions for violations found, as authorized by the Act.

28. The Respondent acknowledges and agrees that the Department shall have no liability for any expenses incurred by the Respondent either before or after the execution of this Consent Order to Cease and Desist.

29. The Respondent agrees to all of the foregoing actions, and that such actions are in the public interest and that an emergency exists justifying the same. The Respondent waives any right it may have to a hearing as to any of the actions and steps set forth in this Order.

DATED this 9th day of September, 2009.

ACTION COLLECTION SERVICE, INC.

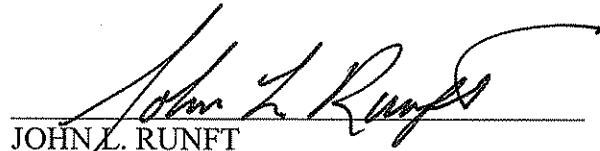
By: _____

John F. Muir
Printed Name

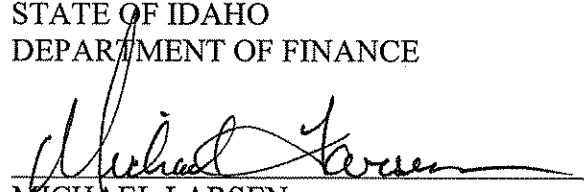
CFO / OWNER
Title

APPROVED AS TO FORM AND CONTENT:

DATED this 9th day of September, 2009.


JOHN L. RUNFT
Counsel for the Respondent


DATED this 10th day of September, 2009.

STATE OF IDAHO
DEPARTMENT OF FINANCE

MICHAEL LARSEN
Consumer Finance Bureau Chief

IT IS SO ORDERED.

DATED this 10th day of September, 2009.



STATE OF IDAHO
DEPARTMENT OF FINANCE

GAVIN M. GEE, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of September, 2009, I served a true and correct copy of the foregoing CONSENT ORDER TO CEASE AND DESIST upon the following by the designated means:

John L. Runft
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main St., Suite 400
Boise, ID 83702

- U.S. Mail, postage prepaid
- Certified mail
- Facsimile
- Hand delivery