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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  
BUREAU,

Complainant,

vs.

ORION PAYMENT SOLUTIONS, LLC,  
d.b.a. ORION PROCESSING  
SOLUTIONS, LLC

and

PCR MANAGEMENT GROUP, LLC

Respondents.

Docket No. 2022-09-09

**ORDER TO CEASE AND DESIST**

The State of Idaho, Department of Finance staff (Department), pursuant to the Idaho Collection Agency Act, Idaho Code § 26-2221 *et seq.* (the Act), represents the following facts that constitute a basis for the issuance of an order pursuant to § 26-2244(1) of the Act, requiring ORION PAYMENT SOLUTIONS, LLC, d.b.a. ORION PROCESSING SOLUTIONS, LLC and PCR

MANAGEMENT GROUP, LLC (collectively referred to herein as the “Respondents”), to immediately cease and desist from violating the Act.

### **RESPONDENTS**

1. ORION PAYMENT SOLUTIONS, LLC, d.b.a. ORION PROCESSING SOLUTIONS, LLC (OPS) has been registered as a domestic limited-liability company under the laws of New York since February 2, 2010. Based on information obtained from the Better Business Bureau (BBB), OPS’s main business address is listed as 3840 East Robinson Rd #161, Amherst, NY 14228. Mail sent by the Department to OPS at this address, however, was returned as undeliverable.

2. According to documents provided to the Department by OPS’s legal counsel, David E. Gutowski, Esq. at Zdarsky, Sawicki, & Agostinelli LLP, 1600 Main Place Tower, 350 Main Street, Buffalo, New York 14202, the President of OPS is identified as Jeremy Poehler.

3. PCR Management Group, LLC (PCR) has an office address of 2001 Niagara Falls Boulevard, Suite 5, Amherst, New York 14228. No business registration information for PCR could be located on the State of New York’s online database, <https://apps.dos.ny.gov/publicInquiry/>.

4. According to the same documents provided by OPS’s counsel, referenced above, Paul Guadagno is listed as PCR’s President.

5. Neither OPS nor PCR have registered to conduct business in Idaho with the Idaho Secretary of State, nor have either of them ever been issued any license by the Department under the Act.

### **ACTIVITY**

6. The Director of the Idaho Department of Finance (Director) has jurisdiction over this matter.

7. On or about February 11, 2021, the Department's Consumer Affairs Officer (CAO) received a phone call from an Idaho resident, M.A., who received numerous phone call attempts from PCR regarding an account placed with them for collections. The CAO advised M.A. to complete an online submission of the Department's complaint form to initiate an investigation into her allegations.

8. On the same date, the CAO conducted online research on the inbound phone number used to conduct the alleged malicious collection activities provided by M.A., (877) 248-1750. On the BBB's website, the phone number appeared to be associated with OPS. The Department found approximately ten consumer complaints primarily focused on threatening collection tactics. No further action was taken by the Department at that time.

9. On August 30, 2021, the Department received a completed online complaint form from M.A. In her complaint, M.A. listed "PCR"<sup>1</sup> as the entity attempting to communicate with her regarding a delinquent account balance. M.A. stated an individual named "Roger" from PCR was calling several phone numbers indirectly related to her to collect on an alleged delinquent account balance. These calls were made to M.A.'s mother, daughter, brother, and her place of employment. M.A. stated that Roger disclosed that a lawsuit was being brought against her for defaulting on a debt without her consent to her mother and brother and that her desired resolution was for PCR to stop contacting consumers' family members to collect on debts and disclosing consumers' debts to their family members.

10. With her complaint, M.A. included a copy of a signed form she originally received from OPS. This form required M.A.'s signature authorization for OPS to be able to withdraw payments from M.A.'s bank account pursuant to a listed payment schedule. The payment arrangement

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<sup>1</sup> M.A. referenced a company name of "PCR Pioneer Recovery Center" as the subject of her written online complaint, as well as an address located for the company in Arcade, New York, however, after subsequent documents were provided by OPS, this is not the correct company.

letter referenced “Evergreen Solutions” as the original creditor of the delinquent account and curiously identified “Renell Coleman” as the person authorizing that the payments be processed (this may be a typographical error). The letter contains M.A.’s authorized signature and initials, both dated August 31, 2021.

11. The payment schedule lays out that one payment of \$117.28 would be processed about every two weeks to pay a total sum of \$703.68. The payment schedule showed a start date of August 31, 2021, and an end date on November 15, 2021. The letter also contains a file number associated with M.A.’s account that is listed as “PCR16900,” which may link PCR to OPS. During a phone call between M.A. and the CAO on February 11, 2021, M.A. stated that she felt pressured into signing the payment arrangement form after her family had been informed by OPS of the delinquent account.

12. Finally, the letter displays the following language below the authorized signature line: “Federal law requires we notify you, this is an attempt to collect a debt and any information obtained will be used for that purpose only.”

13. On October 12, 2021, the Department sent a certified letter to OPS, and cc’ing OPS’s registered agent listed in its formation documents with the State of New York, ZDARSKY, SAWICKI & AGOSINELLI, LLP, requesting all OPS’s documents relating to the alleged debt owed by M.A. The Department also directed OPS to cease all collection activities in Idaho and to provide information necessary for the Department to determine the extent of OPS’s unlicensed debt collection activities in Idaho. Further, the letter advised OPS of the license requirement for engaging in collection activities regulated under the Act in Idaho, and informed OPS of the possible sanctions under the Act for unlicensed activity. The letter also informed OPS of the process for obtaining a license. The Department required that OPS provide all the requested information by of November 4, 2021. The certified letter sent to OPS’s alleged office location was returned as undeliverable, but the

letter delivered to OPS's registered agent was confirmed as delivered successfully on October 25, 2021.

14. On November 3, 2021, the CAO received an emailed response letter from OPS's counsel and registered agent, David E. Gutowski, denying that OPS operates as a debt collector or that it engages in any third-party collection activities. Further, Gutowski claimed that OPS only operates as an electronic payment processor and it does not require a license as it has not acted as a "collection agency, collection bureau, collection office, debt counselor, credit counselor, or credit repair agency in Idaho." Therefore, it also had none of the Department's requested documentation to provide in response.

15. On November 4, 2022, the CAO replied to Gutowski's email requesting the name and contact information for the original creditor of the delinquent account that placed against M.A. No response was received from Gutowski.

16. On December 3, 2021, the CAO sent an official second information request letter to Gutowski, via email and certified mail, to provide a copy of OPS's business plan and client contracts, a copy of OPS's flow of funds chart, a listing of Idaho residents who have been communicated with regarding making payments, and to disclose the specific client creditor on M.A.'s delinquent account. The second information request letter included the deadline date of December 17, 2021.

17. On or about December 17, 2021, Gutowski responded to the CAO by email to state that the owner of M.A.'s debt was "The PCR Management Group, LLC," located at 2001 Niagara Falls Boulevard, Suite 5, Amherst, New York 14228. Gutowski then requested that the Department provide its regulatory authority over payment processors to review the other requested materials.

18. On December 21, 2021, the CAO responded to Gutowski with a letter that contained the statute verbiage for Idaho Code §26-2228 which states, "POWERS OF THE DIRECTOR: In

addition to any other duties authorized by law, the director shall: (1) Administer and enforce the provisions and requirements of this act; (2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this act, rule or order hereunder.” This letter also contained a link to the Department’s Guidance Statement, issued on July 1, 2020 (#2020-06-CFB), regarding five factors that exempt billing service providers from regulations under the Idaho Collection Agency Act<sup>2</sup>. The factors cited in the Guidance Statement include (these are generally referred to as the *Davis* factors):

- Are mailings and billings sent to debtors in the original creditor’s name?
- Has the purported billing service company taken an assignment of accounts from the original creditor?
- Does the purported billing service company deposit funds received for the original creditor in its bank account, or in the bank account of the original creditor?
- Is the purported billing service company paid for its services directly by the original creditor, from the original creditor’s account?
- Does the purported billing service company deal with delinquent accounts on behalf of the original creditor? Or, when an account is not paid in the regular billing process is that account turned over to a licensed collection agency for collection?

19. On January 11, 2022, CAO Kinney and Gutowski spoke on the phone about the letter request previously sent on December 21, 2021, to gather an anticipated response date. Gutowski advised that his client was working on obtaining files specific to Idaho and confirmed a response will be provided by January 18, 2022. An online file-sharing service link was created by the Department for Gutowski and OPS to securely share these files with the Department to ensure that any consumer personal data in the response was securely transferred.

20. On January 11, 2022, the CAO also emailed and left a voice message for M.A., requesting clarification on the method in which OPS first communicated with her, whether she

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<sup>2</sup> In *Davis v. Professional Business Services, Inc.*, 109 Idaho 810, 712 P.2d 511 (1985), the Idaho Supreme Court determined that individuals and entities operating in Idaho solely as billing service companies are not subject to the provisions of the Idaho Collection Agency Act (the Act). The Court identified five factors as compelling elements of a true billing service company.

recognized the stated original creditor client, Evergreen Solutions, and confirmation of the total amount of payments she sent to OPS. The email also requested that M.A. provide any additional written or verbal communication attempts M.A. may have received from OPS.

21. By February 1, 2022, the CAO noted that there had been no response received from Gutowski for the December 21, 2021, letter, which Gutkowski had indicated would be provided by January 18, 2022. The CAO attempted to call Gutowski to follow up on the anticipated response date but had to leave a voicemail message with his assistant. To ensure Gutowski received the callback request, the CAO also sent Gutowski an email and requested an estimated upload date on the response submission. Gutowski replied on the same date to the CAO's email from earlier in the day indicating that the contract between OPS and PCR was ready to be uploaded to the secure file-sharing link that the Department had provided earlier. Gutowski further advised that OPS was unable to conduct a search for individuals in its systems for accounts in which the entity has "processed payments for" by the state of residency and could only filter its activity by the debtor's name or the date of the specific transaction(s) at issue.

22. On February 1, 2022, the CAO noted that there had also been no response from M.A. and sent a follow-up email and voicemail message requesting a response to the January 11, 2022, inquiry. Later in the day, the CAO received an email response from M.A., who was able to provide clarification on how OPS was assigned the delinquent account and the original owner of the debt. M.A. stated that the first communication attempt from OPS was conducted by phone calls to several numbers potentially associated with her account, including calls made to M.A. and some of her family members. M.A. stated that she called Evergreen Solutions and learned that it was not the original creditor of the debt but had, instead, purchased it. M.A. also stated that Evergreen Solutions claimed that it sold the debt to an active Idaho licensed debt buyer, Debt Management Partners, LLC, in 2019

and no longer had any interest in the debt. Upon a review of Debt Management Partners, LLC's Idaho collection agency license, a Department investigator found Debt Management Partners, LLC is solely owned by ValMar Holdings, Inc. and neither of these entities appeared to be associated with OPR or PCR, however, the investigator was unable to rule out the possible assignment of the delinquent account. M.A. indicated that she had paid a total of \$351.84 to OPS.

23. On February 8, 2022, the CAO referred the investigation to an Examiner, to review the complaint details and supporting evidence received during the complaint investigation. In the early stages of this matter, OPS claimed through a response letter from Gutowski, that OPS is conducting activity under an exempt status or payment processor pursuant to Idaho Code § 26-2223. Based on the Department's guidance from the *Davis* factors on billing services the Department made the following analysis:

1. **The entity must prove that all mailings and billings sent to debtors are in the original creditor's name.** The payment arrangement letter that was received by M.A. and signed to withdraw payments from her accounts had the letterhead for Orion Payment Solutions and did not have *Debt Management Partners, LLC* or *PCR Management Group, LLC* listed as the owner of the debt. The only other listed entity on the consumer's letter communication was the potential original creditor or previous debt buyer, *Evergreen Solutions*.
2. **The purported billing service company has taken an assignment of accounts from the original creditor.** The Department's Davis case guidance references that true billing service entities should not be assigned the accounts by the original creditor in which it is collecting on. The response received on December 16, 2021, from OPS clarified for the Department that, "*Orion Payment Solutions LLC processed payments by the claimant for The PCR Management Group, LLC.*"
3. **The purported billing service company must deposit funds received for the original creditor into the original creditors bank account, not its own.** In the provided client agreement from OPS's third information request response, with the service provider defined as OPS and Company defined as *The PCR Management Group, LLC* respectfully, the agreement stated, "*The costs for services provided by the Service Provider will be deducted by the Service Provider from the remit due to the Company from payments processed on behalf of the Company.*" Thus, the agreement seems to follow the



structure of a collection agency to retain payments on behalf of the original creditor and send remittances of payments less the commission split amount.

4. **The purported billing service company must be paid for its services directly by the original creditor and from the original creditor's account.** As referenced in item 3, OPS appears to be remitting consumer payments from its accounts to the original creditor, and thus keeping the total balance due for its services prior to sending the consumers payments to the original creditor. Therefore, OPS is not funded by the original creditor, but by a portion of the original creditors profits made from consumer payments.

5. **The purported billing service company or the original creditor should turn over any consumer accounts to a licensed collection agency once the account has defaulted.** The initial complaint filing sent by M.A. stated that Roger from "PCR" told her family members that a lawsuit was being brought against M.A. for defaulting on a loan. Also, the client agreement between *The PCR Management Group LLC* and OPS states, "*1.01 Purpose. The Company will be utilizing services provided by the Service Provider to aid and assist in the Company's primary business purpose of collecting consumer and commercial debt.*" This indicates that the entities are conducting collection activity on delinquent accounts. The potential original creditor or previous debt buyer, *Evergreen Solutions*, sold the debt account to *Debt Management Partners, LLC* who assigned these accounts to PCR Management Group, LLC, for collections.

24. The Department's position on billing service entities and the exempt clause in the Idaho Collection Agency Act is that individuals or entities engaging in the business of collecting or receiving payments for others of any account, bill, claim or other indebtedness in Idaho, and who operate outside of the Davis factors described above, are collection agencies subject to the Act and jurisdiction of the Department. Based on the limited information received from OPS during the complaint investigation, the examiner was able to determine that *The PCR Management Group, LLC* and *Orion Payment Solutions, LLC* are both conducting unlicensed collection activity on Idaho residents.

25. On February 10, 2022, the Examiner closed the complaint file and completed the investigation into OPS's business activities with Idaho. The client services

agreement provided by Gutowski in a BOX shared access folder provided a clear picture of the shared responsibilities between PCR and OPS in its collection activities. In the Service Agreement, OPS is referred as the Service Provider and The PCR Management Group, LLC., referred as the Company, provided a copy of the client service agreement which includes the following statements:

1. *"1.01 PURPOSE. The Company will be utilizing services provided by the Service Provider to aid and assist in the Company's primary business purpose of collecting consumer and commercial debt"*
2. *"1.02 SERVICES TO BE PROVIDED. Pursuant to this Agreement the Service Provider will provide the Company with certain services as outlined in Exhibit A, to aid and assist the Company in performing consumer and commercial debt collection activities. "*
3. *"1.07 INDEPENDENT CONTRACTOR RELATIONSHIP. For the purposes of this Agreement, the relationship between the Service Provider and the Company is that of the Service Provider being an independent contractor of the Company. By entering into this Agreement, all parties agree that no joint venture has been created nor does either party have an ownership interest in the other party. Additionally, the Company will not mention or utilize the name of the Service Provider when undertaking debt collection activities unless expressly authorized to do so by the Service Provider. "*
4. *"1.08 ACCESS TO COMPANY EQUIPMENT. Pursuant to this Agreement, the Company will have access to equipment so designated by the Service Provider in which to perform their debt collection activities. "*
5. *"1.10 NON- SUFFICIENT FUNDS. The Company is responsible for any and all fees charged by the bank with respect to a payment coming back as not having sufficient funds. These charges will be deducted from the remittance due to the Company. "*
6. *"IT IS EXPRESSLY UNDERSTOOD THAT THE BUSINESS OF THE SERVICE PROVIDER CONSISTS OF PAYMENT PROCESSING AND ACCOUNTING SOLUTIONS AND THAT THE SERVICE PROVIDER ITSELF DOES NOT ENGAGE IN THE ACQUISITION OR COLLECTION OF CONSUMER DEBT"*

26. On June 6, 2022, the Examiner completed the investigation and referred the matter to the legal department for an administrative action against *Orion Payment Solutions, LLC* and *The PCR Management Group, LLC* for unlicensed collection activity pursuant of Idaho Code § 26-2223.

27. Based on information provided to the Department and described above, the Respondents have engaged in debt collection activity in Idaho and are not licensed, in violation of the Act.

### CONCLUSIONS OF LAW AND VIOLATIONS

#### *UNLICENSED COLLECTION ACTIVITY IN IDAHO*

28. The allegations set forth in paragraphs 1 through 23 above are fully incorporated herein by this reference.

29. Idaho Code § 26-2223 provides as follows, in pertinent part:

**26-2223. Collection agency, debt counselor, credit counselor, or credit repair organization – License required.** – No person shall without complying with the terms of this act and obtaining a license from the director:

- (1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.
  - (2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.
  - (3) Solicit or advertise in this state to collect or receive payment for another of any account, bill, claim or other indebtedness.
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- (5) Engage in any activity in this state which indicates, directly or indirectly, that a third party is or may be involved in effecting any collection.
  - (6) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

30. "Collection activities" is defined in Idaho Code § 26-2222(3) as the activities enumerated in Idaho Code § 26-2223(2) through (6).

31. The Respondents are not true billing services according to the *Davis v. Professional Business Services, Inc.*, 109 Idaho 810, 712 P.2d 511 (1985) factors.

32. The Respondents' acts of engaging in collection activities in Idaho without a license, as referenced above, constitute violations of Idaho Code § 26-2223. Each contact made by the Respondents to the Idaho residents for the purposes of collection constitutes a separate violation.

33. Idaho Code § 26-2229A(1) provides: "Every licensee or person required to be licensed under this chapter and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this chapter." Idaho Code § 26-2229A(9) provides:

No person licensed or required to be licensed under this chapter shall make a representation or statement of material fact, or omit to state a material fact, in connection with the offer, sale, or performance of any service authorized under this chapter, if the representation, statement, or omission is false or misleading or has the tendency or capacity to be misleading.

34. The acts of the OPS in representing that Idaho consumer M.A. had a debt that was owed to PCR violated Idaho Code § 26-2229A.

35. Idaho Code § 26-2244(1) provides that whenever it appears to the Director that it is in the public interest, he may order any person to cease and desist from acts, practices, or omissions which constitute a violation of the Act.

### **ORDER**

The Director, having reviewed the foregoing, good cause being shown, and the public interest being served thereby,

NOW, THEREFORE, the Director HEREBY FINDS that the Respondents have violated the Idaho Collection Agency Act as set forth above.

Pursuant to Idaho Code § 26-2244(1), IT IS HEREBY ORDERED that the Respondents and their agents and employees immediately CEASE AND DESIST from acts, practices, or omissions which constitute a violation of the Act, including specifically from engaging in collection activity in Idaho without the license required by the Act.

This ORDER TO CEASE AND DESIST is effective upon issuance.

**IT IS SO ORDERED.**

DATED this 25<sup>th</sup> day of October 2022.



STATE OF IDAHO  
DEPARTMENT OF FINANCE

  
PATRICIA R. PERKINS, Director

**NOTICE**

The Respondents are HEREBY NOTIFIED that this ORDER TO CEASE AND DESIST is a final order of the Director.

The Respondents may file a motion for reconsideration or request for hearing concerning this final order within twenty-one (21) days of the service date of this order. Any such motion for reconsideration or request for hearing must be in writing, addressed to:

Erin Van Engelen  
Consumer Finance Bureau Chief  
Idaho Department of Finance  
P.O. Box 83720  
Boise, Idaho 83720-0031

A copy of such motion for reconsideration or request for a hearing shall also be served on the Department's counsel, Erick M. Shaner, Deputy Attorney General, at the same address.

Alternatively, the Respondents may email any request for reconsideration or hearing to: [CFLegal@finance.idaho.gov](mailto:CFLegal@finance.idaho.gov).

The Department will dispose of a motion for reconsideration within twenty-one (21) days of the receipt of a motion for reconsideration, or the motion will be considered denied by operation of law. Idaho Code § 67-5246(4); Idaho Rules of Administrative Procedure of the Attorney General (IRAP) at IDAPA 4.11.01.740.02.a.

Should the Respondents make a timely request for a hearing, the Director will vacate this final order and appoint a hearing officer to review the matter de novo and issue a preliminary order and the matter shall proceed pursuant to the Administrative Procedures Act and IRAP.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of November 2022, I caused a true and correct copy of the foregoing fully-executed ORDER TO CEASE to be served on the following by the designated means:

Orion Payment Solutions, LLC  
C/O David E. Gutowski, Esq.  
ZDARSKY, SAWICKI, &  
AGONSTINELLI, LLP  
1600 Main Place Tower, 350 Main Street,  
Buffalo, NY 14202

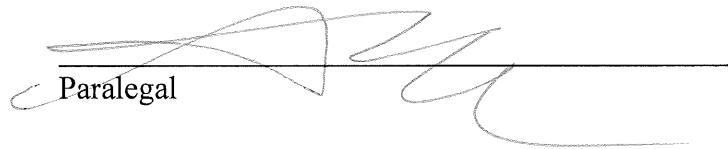
U.S. mail, postage prepaid  
 Certified mail  
 Facsimile:  
 Email: [dgutowski@zsa.cc](mailto:dgutowski@zsa.cc)  
[jsullivan@zsa.cc](mailto:jsullivan@zsa.cc)

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Paralegal