

IN THE MATTER OF:

TURNING POINT SOLUTIONS, LLC,

Respondent.

BEFORE THE MARYLAND  
STATE COLLECTION AGENCY  
LICENSING BOARD IN THE  
OFFICE OF THE  
COMMISSIONER OF  
FINANCIAL REGULATION

CFR - FY2013 - 127 RJO  
Case No.: ~~GFR-FY2010-069~~ 2

**SETTLEMENT AGREEMENT AND CONSENT ORDER**

This Settlement Agreement ("Agreement") is entered into this 20<sup>th</sup> day of September, 2013, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the "Agency") and Turning Point Solutions, LLC (the "Respondent" or "Turning Point Solutions"), (with the Board and the Respondent collectively referred to as the "Parties"). The Agency and the Respondents ("the Parties") consent to the entry of this Agreement as a final resolution of this matter. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Collection Agency Licensing Act ("MCALA," at Business Regulations Article ("BR"), § 7-101 *et seq.*, Annotated Code of Maryland), the Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State").

2. The definition of "collection agency" under BR § 7-101(c) includes, among other things, "a person who engages directly or indirectly in the business of: (1)(i) collecting for, or soliciting from another, a consumer claim; or (ii) collecting a

consumer claim the person owns, if the claim was in default when the person acquired it.”

3. BR § 7-401(a) provides that, “except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license.”

4. The position of the Agency is that a non-exempt person who acquires consumer claims which were in default at the time of acquisition (a "Consumer Debt Purchaser"), who then attempts to collect on that debt through litigation in Maryland state courts, is knowingly and willfully doing business as a “collection agency” in the State under BR § 7-101(c). This applies regardless of whether the Consumer Debt Purchaser is represented in litigation by attorneys who are also licensed as collection agencies. As such, a Consumer Debt Purchaser collecting debts through litigation in Maryland State courts is required to be licensed as a collection agency under MCALA, and is subject to the regulatory authority of the Agency in the conduct of that litigation.

5. The position of the Agency is that a Consumer Debt Purchaser collecting debts through litigation in Maryland State courts also meets the definitions of “collector” under CL § 14-201(b) of the Maryland Consumer Debt Collection Act (“MCDCA,” at Commercial Law Article (“CL”), § 14-201 *et seq.*, Annotated Code of Maryland) and of “debt collector” under 15 U.S.C. § 1692(a) of the Fair Debt Collection Practices Act (“FDCPA,” at 15 U.S.C. § 1692, *et seq.*).

6. Pursuant to BR § 7-308(a), the Agency can bring an action to suspend or revoke the license of a collection agency “if the licensee or any owner, director, officer,

member, partner, or agent of the licensee” engages in various prohibited activities, including, among other things, the following: “(3) in connection with the collection of any consumer claim: . . . (ii) engages in any illegal or dishonest activities; or (4) knowingly or negligently violates the Maryland Consumer Debt Collection Act.”

7. Thus the Agency has the authority to bring actions under MCALA against persons engaged in various prohibited activities in connection with the collection of any consumer claim, including, but not limited to, for violations of the FDCPA pursuant to BR § 7-308(a)(3)(ii) (engaging in illegal activities), and for violations of the MCDCA pursuant to BR § 7-308(a)(4). It is the Agency’s position that such authority extends both to litigation-related collection activities, as well as to non-litigation (i.e. “traditional”) collection activities.

8. The FDCPA provides, in relevant part, as follows:

**§ 1692e. False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

\* \* \*

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

\* \* \*

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

\* \* \*

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

\* \* \*

**§ 1692f. Unfair practices**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

\* \* \*

9. The MCDCA provides, at CL § 14-202(8), as follows: “[i]n collecting or attempting to collect an alleged debt,” a debt collector (or “collector”) may not “[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”

10. Pursuant to FI § 11-204, “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan; or (2) [i]n any way use any advantage provided by the Maryland Consumer Loan Law.”

11. Pursuant to CL § 12-302, a “person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions.”

12. Pursuant to CL § 12-301(c), a “lender” “means a person who makes a loan under [Title 12, Subtitle 3 of the Commercial Law Article].”

13. Pursuant to CL § 12-301(e), a “loan” “means any loan or advance of money or credit made under [Title 12, Subtitle 3 of the Commercial Law Article].”

14. Pursuant to CL § 12-303, “[a] lender may not make a loan under this

subtitle unless the loan is in an original amount or value which does not exceed \$6,000.”

15. CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

16. Interest on unpaid loan balances, refinanced loans, and computation of interest are discussed in CL §§ 12-306(b) through (d), respectively, which state the following:

*(b) Interest on balance unpaid after original maturity date.—*

If any principal balance remains unpaid 6 months after the loan matures as originally scheduled or deferred, the lender may not contract for, charge, or receive interest at a rate exceeding 6 percent simple interest per annum on the actual unpaid principal balances from time to time.

*(c) Refinanced loan.* – If the lender refinances a loan in the ordinary course of business, he may not add to the principal balance or deduct from the proceeds of the new loan more than 60 days’ interest then due.

*(d) Computation of interest.* –

(1) The lender shall compute interest on the actual unpaid principal balances outstanding from time to time, and he may not contract for, charge, or receive interest in advance or compounded interest.

(2) For each day on which an unpaid principal balance is outstanding, the lender may charge on that unpaid balance 1/30th of the interest permitted under this subtitle to be charged for 1 month.

\* \* \*

17. Pursuant to CL § 12-313(a)(1), a lender may not “[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle.”

18. CL § 12-314 provides, in relevant part, as follows:

(a) *Prohibited.* – A person may not lend \$6,000 or less if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.

(b) *Loans unenforceable; exceptions.* –

(1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

\* \* \*

19. Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 “shall be interpreted and construed to effectuate its general remedial purpose.”

20. The Agency issued an Advisory Notice dated July 20, 2009, which notified all collection agencies licensed to conduct business in Maryland that it was a violation of Maryland law for them to pursue collection actions against Maryland

residents for loans that were made by unlicensed entities, and that it was a violation of Maryland law for them to collect on loans that exceeded permissible interest rate caps. This notice was also made available to the general public on the Agency's website at: <http://www.dllr.state.md.us/finance/advisories/advisory7-09a.shtml>.

21. The Agency has reasonable grounds to believe that Respondents engaged in unlicensed collection agency activities, and that they engaged in other violations of MCALA and of the provisions of the MCDCA and the FDCPA referenced above (collectively the "Alleged Violations"), and has determined that action under Financial Institutions Article ("FI"), § 2-115, and under State Government Article ("SG"), § 10-226(c)(2), Annotated Code of Maryland, would be appropriate.

22. This Agreement is intended to resolve all administrative, judicial, or other legal actions which the Agency could have brought prior to the execution of this Agreement, relating to those issues and pending collection matters which are currently known to the Parties.

23. Respondents deny the Alleged Violations set forth herein but, nonetheless, wish to resolve the Alleged Violations in lieu of an administrative action being filed, thereby avoiding the costs associated with an administrative hearing and any potential appeals, and therefore agree to resolve this matter fully, finally, and completely without an administrative action being filed as set forth in this Agreement, and further accept without condition, and fully agree to abide by, each and every term set forth in this Agreement.

24. Respondents state that they have completely ceased all collections

activities in the state of Maryland, and that if they ever decide to resume collections efforts in the state of Maryland, they will be fully licensed as collection agencies before doing so, and will use good faith efforts to ensure that their collections activities, as well as any complaints, affidavits, or other court filings will fully comply with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, the FDCPA, and the Maryland Rules of Civil Procedure.

25. The Agency desires to ensure that Respondents comply with all applicable statutes, regulations, and others laws governing collection agency activities in the State of Maryland, including complying with MCALA, the MCDCA, and the FDCPA, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals. The Agency further considers that the resolution of this matter is appropriate in light of the following: Respondents' full cooperation with this investigation; Respondents' willingness to change certain of their collection business practices in response to the concerns of the Agency; and Respondents representation that they have ceased collections activities in the state if Maryland, and that in the event that they ever decide to resume collections activities in the state of Maryland in the future, they will be fully licensed as collection agencies before doing so, and will use good faith ensure that their collections activities, as well as any complaints, affidavits, or other court filings will fully comply with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, the FDCPA, and the Maryland Rules of Civil Procedure.

26. Respondents have agreed to take each and every one of the following



actions in exchange for a final resolution of this matter:

a. Respondents will pay a voluntary civil fine of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) in the form of a certified check made payable to the "Commissioner of Financial Regulation," to be delivered to the Agency upon execution of this Agreement.

b. On or before October 15, 2013, Respondents will issue restitution to the Maryland consumers identified and in the amounts specified in Attachment A, with the amount of restitution to be paid by the Respondent to these affected Maryland consumers totaling \$ 27,643.90 (TWENTY-SEVEN THOUSAND, SIX HUNDRED FORTY-THREE DOLLARS AND NINETY CENTS).

c. The Respondents agree to forfeit and write-off the total amount of all unpaid money which the Respondents might allege is due the Respondents from Maryland consumers, and the Respondents agree that they will not sell, assign, or otherwise transfer any such unpaid accounts receivable to any third party, and that they will not attempt to collect on those unpaid accounts, directly or indirectly. The Respondents also agree that, from and after the date that this Agreement is fully executed, to the extent the Respondents receive any payment from a Maryland consumer from whom the Respondents had previously attempted to collect, the Respondents shall forthwith refund such payment directly to the Maryland consumer from whom such payment was received.

d. The Respondents further agree that, to the extent the Respondents have reported to any consumer credit reporting agency any delinquency or other negative

comment or remark regarding any Maryland consumer from whom the Respondents attempted to collect a debt during the time the Respondents were unlicensed, the Respondents shall remove such negative comment or remark. The Respondents further agree that, the Respondents shall not in the future report any negative information regarding Maryland consumers to the consumer credit reporting agencies unless and until the Respondents are properly licensed as a debt collector in Maryland.

e. On or before October 15, 2013, Respondents will provide the Commissioner of Financial Regulation a written document listing the names and addresses of all original creditors of Maryland consumers whose accounts have been acquired by or serviced by the Respondents. When available, Respondents will also provide the name of a contact person or officer for the original creditors of Maryland consumers. In the event that Respondents do not have the name and address of the original creditor because they received the account from a down-stream debt-buyer, they will provide the name and address of the creditor who sold or assigned the account to Respondents.

f. The Respondents shall issue refunds to the affected Maryland consumers indicated in Paragraph 26.b. above, in accordance with the following:

(1). On or before October 15, 2013, Respondents shall mail a check for the amount of money to be refunded to each consumer via First Class U.S. Mail, to each affected consumer's last known address, or to an updated address as can be identified through customary address verification means. Each refund shall be accompanied by a letter indicating that that the refund is being issued pursuant to a

Settlement Agreement between the Respondents and the Commissioner of Financial Regulation, and that the Settlement Agreement does not in any way affect the consumer's legal rights.

(2). On or before December 15, 2013, the Respondent shall furnish evidence to the Agency that refunds were tendered to each affected consumer in the agreed amount by providing a copy of the front and back of the cancelled check for each refund payment that was negotiated by the affected consumer.

(3). On or before December 31, 2013, if any refund payment checks mailed by the Respondent to affected Maryland consumers in accordance with this Agreement are either not cashed or are returned to the Respondent as non-deliverable (collectively, the "Undeliverable Refunds"), such Undeliverable Refunds will escheat to the State of Maryland. In such event, the Respondent will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds in the form of a single check made payable to the "Comptroller of Maryland," which shall be submitted to Rebecca Coleman, Assistant Attorney General, Office of the Attorney General, Department of Labor Licensing and Regulation, 500 N. Calvert Street, Suite 406, Baltimore, Maryland, 21202, copy to the Agency, both of which shall be accompanied by a spreadsheet with the following additional information for each Undeliverable Refund: the social security number of the consumer (if known), the date of birth of the consumer (if known), the date on which each refund check was mailed, and an indication of whether the refund check was either not cashed or was returned to the Respondents as non-deliverable. Such action on the part of the

Respondents shall relieve the Respondents of any further obligation to make refunds to the affected consumers pursuant to this Agreement.

(4). The Respondents shall not seek releases from consumers in conjunction with these refunds.

g. The Respondents, as well as the owners, directors, officers, members, partners, managers, employees, and agents of the Respondents, agree not to or attempt to collect debts from Maryland residents, or to otherwise engage collections activities in Maryland or involving Maryland residents, without first becoming licensed by the Agency as a collections agency subject to the Maryland Collection Agency Licensing Act and the Maryland Consumer Debt Collection Act.

27. Respondents acknowledge that they have voluntarily entered into this Agreement with full knowledge of their right to a hearing pursuant to FI § 11-518 and the Maryland Administrative Procedure Act (SG § 10-201 *et seq.*), arising from any charges that could be brought by the Agency based on the Alleged Violations, and that Respondents hereby waive their right to a hearing. Respondents further acknowledge that they have had an opportunity to consult with independent legal counsel in connection with the waiver of this right and with the negotiation and execution of this Agreement, and that they have in fact consulted with independent legal counsel.

28. The Parties hereto agree that this Agreement shall be binding and enforceable in court by the Agency and by Respondents, shall be admissible in proceedings between those Parties, and shall be binding upon and inure to any of the Respondents' present and future owners, directors, officers, members, partners, agents,

successors, and assigns.

29. The Parties hereto acknowledge that this Agreement does not in any way relate to, impact, or otherwise effect the legal rights of, or preclude the Agency from bringing actions against, persons not Parties to this Agreement.

30. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation  
500 North Calvert Street, Suite 402  
Baltimore, Maryland 21202-3651  
Attention: Mark Kaufman, Deputy Commissioner

Copy to:

Rebecca Coleman, Assistant Attorney General  
Department of Labor, Licensing, and Regulation  
500 North Calvert Street, Suite 406  
Baltimore, Maryland 21202-3651

b. To the Respondents:

Frank Galbo  
Turning Point Solutions, LLC  
3221 Southwestern Blvd  
Suite 120  
Orchard Park, NY 14127

Copy to:

Patrick M. Corbett, Esq.  
The Law Offices of Patrick M. Corbett, P.C.  
24 Caspian Court  
Amherst, New York 14228

NOW, THEREFORE, it is, by the Commissioner of Financial Regulation on behalf of the Agency, HEREBY

**ORDERED** that Respondents shall adhere to all terms of this Settlement

Agreement; and it is further

**ORDERED** that Respondents shall use good faith efforts to conduct their collection agency business activities in compliance with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, and the FDCPA; and it is further

**ORDERED** that, in the event Respondents, or any of the owners, directors, officers, members, partners, employees, or agents of Respondents, violate any provision of this Settlement Agreement, or otherwise engage in the activities which formed the basis for the Alleged Violations set forth above, the Agency may, at the Agency's discretion, take any enforcement actions available under FI § 2-115 and/or BR § 7-205, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, suspension or revocation of a Maryland State collection agency license, civil money penalties of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation, and an order to provide restitution or to take other affirmative action to correct the violation; and it is further

**ORDERED**, that this matter shall be resolved in accordance with the terms of this Settlement Agreement and the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

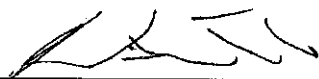
**ORDERED** that this document shall constitute a Final Order of the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Agency may consider this Settlement Agreement in connection

with, and in deciding, any action or proceeding before the Agency; and that this Settlement Agreement may, if relevant, be admitted into evidence in any matter before the Agency.

It is so **ORDERED**.

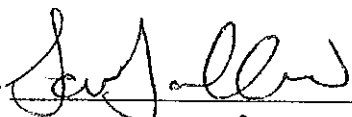
IN WITNESS WHEREOF, this Settlement Agreement is executed on the day and year first above written.

MARYLAND STATE COLLECTION  
AGENCY LICENSING BOARD IN THE  
OFFICE OF THE COMMISSIONER OF  
FINANCIAL REGULATION

  
By: Keisha Whitehall Wolfe  
Acting Deputy Commissioner of  
Financial Regulation

For: Mark Kauffman  
Commissioner of Financial Regulation,  
Chairperson, State Collection Agency  
Licensing Board

TURNING POINT SOLUTIONS, LLC  
AND  
~~FRANK GALBO~~ Sam Galbo

  
By: ~~Frank Galbo~~ Samuel Galbo  
Turning Point Solutions

For: All Respondents

**ATTACHMENT A**

<b>Number</b>	<b>Name</b>	<b>Refund Amount</b>	<b>Account #</b>
Consumer 1		\$300.00	
Consumer 2		\$285.00	
Consumer 3		\$300.00	
Consumer 4		\$510.00	
Consumer 5		\$585.00	
Consumer 6		\$309.35	
Consumer 7		\$870.00	
Consumer 8		\$496.00	
Consumer 9		\$185.00	
Consumer 10		\$136.20	
Consumer 11		\$635.35	
Consumer 12		\$483.00	
Consumer 13		\$300.00	
Consumer 14		\$490.00	
Consumer 15		\$762.20	
Consumer 16		\$625.00	
Consumer 17		\$510.00	
Consumer 18		\$210.00	
Consumer 19		\$520.00	
Consumer 20		\$700.00	
Consumer 21		\$610.00	
Consumer 22		\$610.00	
Consumer 23		\$971.00	
Consumer 24		\$271.00	
Consumer 25		\$900.00	
Consumer 26		\$100.00	
Consumer 27		\$286.64	
Consumer 28		\$308.00	
Consumer 29		\$689.69	
Consumer 30		\$376.34	
Consumer 31		\$400.00	
Consumer 32		\$292.50	
Consumer 33		\$580.02	
Consumer 34		\$778.34	
Consumer 35		\$450.00	
Consumer 36		\$1200.00	
Consumer 37		\$420.00	
Consumer 38		\$719.69	
Consumer 39		\$410.00	
Consumer 40		\$985.00	
Consumer 41		\$609.98	
Consumer 42		\$394.00	



Consumer 43		\$777.50	
Consumer 44		\$640.00	
Consumer 45		\$640.00	
Consumer 46		\$602.00	
Consumer 47		\$120.00	
Consumer 48		\$1050.00	
Consumer 49		\$200.00	
Consumer 50		\$95.00	
Consumer 51		\$180.00	
Consumer 52		\$1167.74	
Consumer 53		\$364.98	
Consumer 54		\$232.38	