

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. 20-cv-6023

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2)(c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Yellowstone Capital LLC (“Yellowstone”) is a New York limited liability company with its principal place of business at 1 Evertrust Plaza, Jersey City, New Jersey 07302. Until at least March 2016, and the(e)-1 (de)JTJ 0.0004 Tc narkv7a -te e (l)-1.6 (ace o

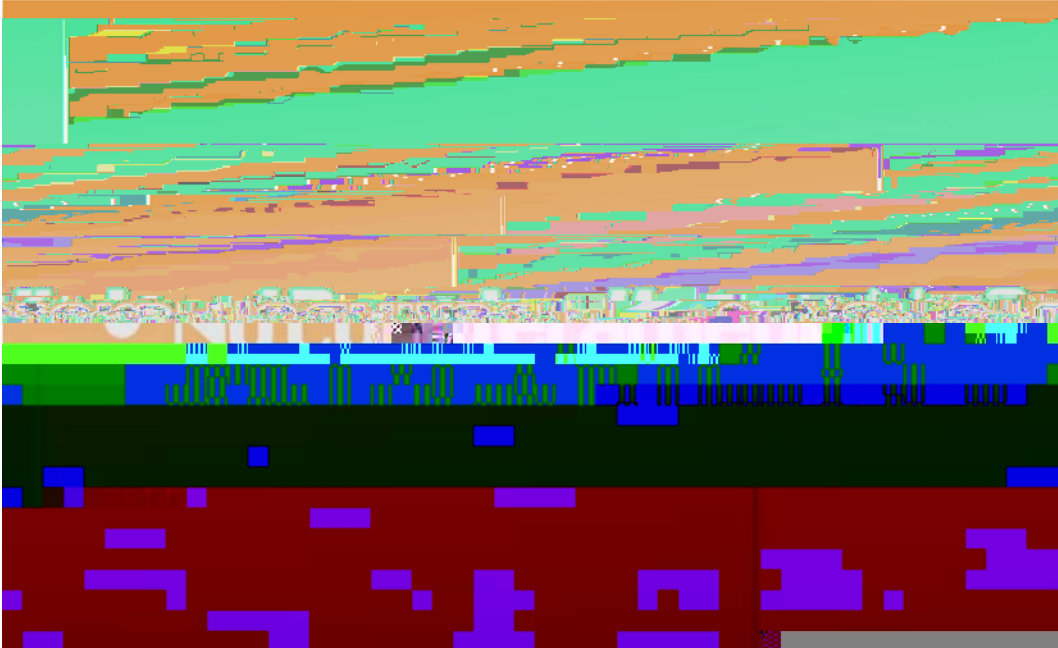
rs, Yellowstone has advertised, marketed, offered, or
buted financing to businesses throughout the United States.

7. Defendant Fundry LLC (“Fundry”) is a New York limited liability company

States. At times material to this Complaint, acting alone or in concert with others, Fundry has advertised, marketed, offered, or distributed financing to businesses throughout the United States.

8. Defendant Mitzhak D. Stern, also known as Isaac Stern ("Stern"), is a founder and the Chief Executive Officer of both Yellowstone and Fundry. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Stern, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant Jeffrey Reece ("Reece") is the President of both Yellowstone and Fundry. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Reece, in connection with the matters alleged herein, transacts or has trans



As this image is displayed, an audio voice makes the following representations: “No collateral required. No collateral, no personal guarantee.”

18. Defendants have also disseminated direct mail pieces that represent that they do not require personal guarantees. For example, such direct mail piece, attached as Exhibit I, states: “You do not need excellent credit or give us a personal guarantee.”

19. In reality, in many instances, Defendants do require business owners to sign a guarantee holding them personally responsible for the entire funded amount should the business default. Additionally, in many instances, Defendants do require that consumers provide collateral, by granting Defendants a purported security interest or lien in all business property consumers own, including all financial accounts, equipment, inventory and other assets.

20. When consumers default on their financing agreements, Defendants frequently file lawsuits against them, including against the individual business owners who provided the personal guarantees, in order to collect the unpaid funded amount. Additionally, in many instances, as part of these lawsuits, the Defendants seek court orders to seize the collateral that

consumers have pledged. Defendants ~~Stan~~ Reece have closely overseen and directed

account. The amount of those daily withdrawals is purportedly ~~but~~ 25% of the consumer's daily receipts. A redacted example of Defendants' financing agreement is attached to this complaint as Exhibit J.

25. In reality, however, Defendants routinely provide consumers with substantially less than the total amount promised on the ~~face~~ of the contract, by withholding fees that range from hundreds to thousands of dollars ~~from~~ disbursement. These fees are mentioned several pages into the contract without any ~~intention~~ that they are deducted from the "Purchase Price" – the funds promised to consumers. ~~As a~~ result, consumers, in numerous instances, have received significantly less funding than they were promised.

26. In numerous instances, Defendants ~~Stan~~ and Reece have received messages detailing the difference between the funding ~~amount~~ promised to specific consumers in Defendants' contracts and the ~~significantly~~ lower amount ~~disbursed~~ to those same consumers after additional fees were withheld.

27. To the extent Defendants reveal the actual funding amount consumers will receive, they sometimes do so in a brief telephone call ~~after~~ consumers have signed their contracts. In some instances, consumers ~~express~~ confusion and surprise when they learn that they will receive significantly ~~less~~ funding than they were ~~promised~~ in their contracts. For example, when one consumer learned that she would ~~receive~~ roughly \$4,000 less than her contract stated, she responded, "I think something is wrong," and "you guys are like highway robbery."

Unauthorized Withdrawals

28. Defendants require consumers to provide authorization for Defendants to withdraw daily payments – typically hundreds of dollars each day – from customers' accounts

using ACH debits until customers have fully paid the “Purchased Amount” they owe under their agreements.

29. Since at least 2015, Defendants have drawn money from customers’ accounts in excess of the amounts customers authorized by continuing to withdraw daily payments from customers after they have already fully repaid the “Purchased Amount.” These unauthorized overpayments have been a typical occurrence for Defendants’ customers, and have impacted at least thousands of them, in amounts ranging from hundreds to thousands of dollars.

30. Defendants have acknowledged that they take these overpayments from customers knowingly. Specifically, Defendants’ payment and recordkeeping processes create a “lag” or “debit delay” that results in them making an additional 4-5 or more unauthorized payments after customers have already fully paid the “Purchased Amount.” For example, Defendants received one customer complaint stating: “My loan payoff was met and exceeded . . . [by] 4 daily payments totaling the amount of \$3480.” Defendants explained to another customer who complained about excess, unauthorized debits that “there is a 4 day lag on ACH debits . . . it’s simply the way our processor works.”

31. In both internal communications and communications with customers in response to complaints, Defendants’ employees and agents repeatedly acknowledged that the “lag” or “debit delay” was common practice for Defendants. For example, in response to a customer complaint about such overpayments, Defendants’ Operations Manager wrote to one of Defendants’ in-house servicers: “Maybe send an account summary so [the customer] understands the 5 day debit delay.” When another customer questioned these overpayments during a telephone call, one Defendants’ in-house servicer responded that “there is always a delay” (emphasis added) in the prompt cessation of daily withdrawals. In response to another

VIOLATIONS OF THE FTC ACT

38. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

39. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

40. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Misrepresentations Regarding
Collateral and Personal Guarantees

41. In numerous instances in connection with the advertising, marketing, promotion, or offering of small business financing products Defendants have represented, directly or indirectly, expressly or by implication, that Defendants:

- a. require no collateral; and
- b. require no personal guarantee from business owners.

42. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 41, such representations were false or misleading at the time Defendants made them.

43. Therefore, Defendants’ representations as set forth in Paragraph 41 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Misrepresentations Regarding Financing Amount

44. In numerous instances in connection with the advertising, marketing, promotion, or offering of small business financing products, Defendants have represented, directly or indirectly, expressly or by implication, that consumers will receive a specific amount of financing.

45. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 44, such representations were false or misleading at the time Defendants made them.

46. Therefore, Defendants' representations as set forth in Paragraph 44 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III

Unfair Unauthorized Withdrawals

47. In numerous instances, Defendants have withdrawn money from consumers' bank accounts in amounts in excess of consumers' authorization without the express informed consent of consumers.

48. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves that is not outweighed by countervailing benefits to consumers or competition.

49. Therefore, Defendants' practices as described in Paragraph 47 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Dated: August 3, 2020

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

/s/ Christopher B. Leach
EVAN R. ZULLOW
(ezullo@ftc.gov)
THOMAS C. KOST
(tkost@ftc.gov)
CHRISTOPHER B. LEACH
(cleach@ftc.gov)
IOANA R. GORECKI
(igorecki@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave. NW
Mail Stop CC-10232
Washington, DC 20580
Tel: 202-326-2914 (Zullo);
202-326-2286 (Kost);
202-326-2394 (Leach);
202-326-2077 (Gorecki)
Fax: 202-326-2752

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION