

BEFORE THE
ADMINISTRATOR,
UNIFORM CONSUMER CREDIT CODE

STIPULATION AND FINAL AGENCY ORDER

In the Matter of:

TEMPOE, LLC

Respondent.

This Stipulation and Final Agency Order (“Stipulation” or “Order”) is entered into by Tempoe, LLC and the Administrator of Colorado’s Uniform Consumer Credit Code (collectively, “Parties”) to resolve issues arising from Tempoe’s violations described herein.

SECTION I
Definitions

1. “Effective Date” means the date upon which this Stipulation is signed by the Administrator.

2. “Lessee(s)” means any person who has executed a Tempoe Lease Contract as a counterparty.

3. “Remaining Balance” means a simple monetary amount equaling the total amount owed to Tempoe under a Tempoe Lease Contract less any amounts paid by Lessee to date.

4. “Retail Partner” means any person or business entity that offers or has offered Tempoe Lease Contracts to its customers; and any such person or business entity that has entered into an agreement with Tempoe for the purpose of offering Tempoe Lease Contracts to its customers.

5. “Tempoe” means (1) Tempoe, LLC, (2) all of Tempoe’s employees, officers, executives, and agents, and (3) all successors in interest to Tempoe.

6. “Tempoe Lease Contract” means any written agreement offered by Tempoe to any person for the purpose of leasing personal property and ancillary services from Tempoe for an initial term exceeding fourth months subject to the

federal Consumer Leasing Act, 15 U.S.C. section 1667, *et seq.*, and its implementing regulation, Reg. M, 12 C.F.R. section 1013, *et seq.* (the “Consumer Leasing Act”).

7. “Truth in Lending Act” means 15 U.S.C. section 1601, *et seq.*, and its implementing regulation, Reg. Z, 12 C.F.R. section 1026.1, *et seq.*

8. “UCCC” means Colorado’s Uniform Consumer Credit Code, Colo. Rev. Stat. section 5-1-101, *et seq.*

9. Unless otherwise specified, all definitions found in the UCCC are incorporated herein, and any term defined therein shall have the same meaning when used in this Stipulation.

SECTION II

Findings of Facts and Conclusions of Law

10. Tempoe is a Delaware limited liability company with a principal place of business in Manchester, New Hampshire.

11. Tempoe is a registered retail seller of credit in Colorado.

12. Tempoe made purported consumer leases available to Colorado consumers, leasing both personal goods and services, primarily through various retailers and through retailers’ websites.

13. Tempoe has made assurances to the Administrator that it has not entered into any new consumer leases after April 1, 2022 and has disabled all computer-based and paper-based systems used by Retail Partners in initiating Tempoe Lease Contract’s on Tempoe’s behalf. Tempoe’s assurances are made with the full authorization of each of its respective boards of directors, shareholders, members, officers, and executives. The Administrator has relied upon Tempoe’s assurances, and such assurances are material to the Administrator in agreeing to the provisions contained in this Order.

14. The Administrator is authorized to enforce the UCCC and, among other things, she is authorized to: examine retail sellers of credit; conduct examinations and investigations of possible violations; and enforce compliance with the UCCC via an administrative enforcement order, assurance of discontinuance, or civil action. C.R.S. §§ 5-6-103; 5-6-106; and 5-6-109 to 5-6-114.

15. On September 3, 2018, the Administrator issued a compliance examination report (“Exam”) to Tempoe identifying certain purported statutory violations and directing Tempoe to take corrective action.

16. The Administrator concluded that Tempoe violated the UCCC by charging 1,352 Colorado Lessees unpermitted administrative fees totaling approximately \$53,195.58 in violation of Colo. Rev. Stat. section 5-2-202.

17. The Administrator also concluded that Tempoe violated the UCCC, the Consumer Leasing Act, and the Truth in Lending Act by disguising consumer credit sales as consumer leases, resulting in greater profits—in the form of higher finance charges—and less regulatory restriction.

18. Among other things: (1) Tempoe Lease Contracts purported to lease electronics or other products—some of which are typically purchased and have little to no residual value—to Colorado consumers; (2) Tempoe Lease Contracts stated that Colorado consumers were responsible for installation costs, wear and tear, and all maintenance and repair of the leased property; and (3) Tempoe Lease Contracts were structured such that a Lessee paid as much as 90% of the cash price over the course of the lease period. The Administrator concluded that all of the foregoing indicate that the consumer assumed the indicia of ownership—including the risks, burdens, and benefits of ownership—upon consummation of the Tempoe Lease Contract and, accordingly, these transactions are functionally consumer credit sales. *See* Truth in Lending Act, Reg. Z, 12 C.F.R. § 1026.17(a)(1), cmt. 1–7 for paragraph 17(a)(1); and C.R.S. §§ 5-3-101(2) and 5-12-101.

SECTION III Order

Pursuant to Colo. Rev. Stat. section 5-6-109, the Administrator hereby orders as follows:

19. Tempoe agrees that it shall not engage in, now or in the future, any conduct described herein that violates the UCCC.

20. Tempoe shall cease filing notification with the Administrator as a retail seller of credit.

21. Tempoe shall release all existing Colorado Lessees from their respective Tempoe Lease Contracts, deeming any Remaining Balance as satisfied in full. The aggregate value of the Tempoe Lease Contracts' balance deemed satisfied in full pursuant to this Order is approximately \$400,000.

22. Tempoe shall close each Lessee account and grant each existing Lessee currently in possession of leased property ownership of their leased property. Neither paragraph 21 nor paragraph 22 apply to TEMPOE Lease Contracts, or related debt,

that TEMPOE may have sold or assigned prior to the Effective Date and, therefore, no longer owns or controls.

23. Within thirty (30) days of the Effective Date, Tempoe must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of this Order.

24. Tempoe shall not collect any past due amounts from Lessees, either through first-party or third-party collections, including, but not limited to, a Remaining Balance, past due amounts owed under a Tempoe Lease Contract, and/or any and all fees related to a Tempoe Lease Contract.

25. Tempoe shall not sell, transfer, or assign any Lessee's debt to a debt buyer or any person(s) that would attempt to collect on a Tempoe Lease Contract. For the avoidance of doubt, this provision does not apply to debt that Tempoe may have sold prior to the Effective Date and, therefore, no longer owns or controls.

26. Tempoe shall not provide negative information pertaining to a Lessee's account to any consumer reporting agency.

27. Tempoe shall not enter into any new Tempoe Lease Contracts with Colorado consumers.

28. Tempoe shall have no activities in the future pertaining in any way to leasing personal property, goods, or services, to Colorado consumers other than the obligations set forth in this Order.

SECTION IV **Stipulation and Release**

29. Tempoe agrees and stipulates to this Order and all terms contained herein.

30. It is the intent and purpose of this Order to resolve fully the particular issues, allegations, or charges raised by the Administrator's investigation of Tempoe's activities as set forth above, and only those issues. Further, the omission from this Stipulation of other acts, conduct, or practices which might constitute violations of the UCCC shall not be deemed or construed to be approval by the Administrator of such acts, conduct, or practices.

31. Tempoe acknowledges that it has a right to request an evidentiary hearing in this matter, present evidence, examine witnesses, and appeal from any adverse action and waive those rights.

32. Tempoe agrees that this Order contains the entire agreement between the Administrator.

33. This Order shall be disclosed in any application to the Administrator and in response to any question regarding state disciplinary or administrative action.

34. Colorado law governs this Order. Any claims or causes of action arising out of or based upon this Order shall be commenced before the Colorado Office of Administrative Courts or in Denver District Court for the State of Colorado, as appropriate. Tempoe hereby consents to the jurisdiction, venue and process of the Colorado Office of Administrative Courts and the Denver District Court. In the event of any action or proceeding alleging or asserting a violation of or failure to comply with this Order, this Order shall be admissible in full and shall be evidence that prior to this Order, Tempoe engaged in the acts and practices described herein.

EXECUTED AND SO ORDERED by the Administrator this _____ day of September, 2023.

/s/ Martha Fulford

Martha Fulford

Administrator

Uniform Consumer Credit Code

[SIGNATURE PAGE TO FOLLOW]

AGREED TO AND STIPULATED BY:

TEMPOE, LLC

BY: 

CHRIS SWARTZ

President

7755 Montgomery Rd. #400

Cincinnati, Ohio, 45236

Date: 9/5/2023

APPROVED AS TO FORM:

TEMPOE, LLC

BY: 

ERIC HAIL

Partner

Katten Muchin Rosenman LLP

2121 N. Pearl St.

Suite 1100

Dallas, TX 75201

Date: 9/7/2023

ADMINISTRATOR

BY: 

PHILIP SPARR

Assistant Attorney General

Consumer Protection Section

Consumer Credit Enforcement Unit

Ralph L. Carr Colorado Judicial Ctr.

1300 Broadway, 6th Floor

Denver, CO 80203

Date: 9/8/2023