

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

**DUVERA BILLING SERVICES, LLC**

Assurance No.: 13-499

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**ASSURANCE  
PURSUANT TO EXECUTIVE LAW  
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of the New York State Executive Law § 63(12), General Business Law § 349, Banking Law §§ 14-a, 491(6-a) & 492, Personal Property Law § 401, Penal Law § 190.40, General Obligations Law §§ 5-501(2) & 5-511(2), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Duvera Billing Services, LLC ("Duvera"), relating to its financing of retail installment obligations. Based upon that inquiry, the Office of the Attorney General ("OAG") has made the following findings, and Duvera has agreed to modify its practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

**I. BACKGROUND**

1. Duvera is a California limited liability company whose principal offices are located at 1010 Palomar Point Way, Suite 101, Carlsbad, California 92008.
2. Duvera conducts business in New York and across the United States operating as a: (i) sales finance company in its purchase of retail installment obligations<sup>1</sup>

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<sup>1</sup> A retail installment obligation (contract/agreement) is slightly different from a loan. Both are ways for one to obtain goods or services by agreeing to make payments over time. However, a loan is a transaction between a consumer and a bank or other lender for money, where one uses the money to purchase the goods (such as a car) or services and agrees to repay the loan balance plus interest. A retail installment obligation, on the other hand, is a transaction between the purchaser and seller of a good (such as a car

(sometimes referred to as "RIOs"); and (ii) lender to corporations that purchase retail installment obligations that become collateral for the Duvera loans.

3. As a sales finance company, Duvera markets its business through independent brokers and entities that solicit and/or acquire retail installment obligations specifically from medical/surgical providers and merchants. One such entity is MyMedicalLoan.com, LLC, d/b/a SurgeryLoans.com, a California corporation that, as a broker, acquirer or purchaser of RIOs, conducts business as a sales finance company ("SurgeryLoan").

4. Under New York law, entities that engage in the business of a "sales finance company," such as Duvera, must be licensed as either a lender or a sales finance company. Duvera, while doing business in New York through its purchases of RIOs, did not hold a license as either a lender or a sales finance company.

5. In many instances, Duvera was charging New York consumers interest rates above 25%, and in some instances over 50%. While licensed lenders and sales finance companies are excepted from New York's civil usury law and permitted to assess annual percentage rates ("APR/s") of up to 25%, unlicensed entities, like Duvera, remain subject to New York's civil usury limit of 16%.

## **II. OAG INVESTIGATION AND FINDINGS**

### **SurgeryLoan - Agent for Financing Medical Procedures**

6. SurgeryLoan contracts with doctors who agree to: (i) enter into retail installment obligations with patients who are unable (or choose not) to pay in advance for

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dealer) or service, where one agrees to pay the seller for the good or service over time, paying both the value of the good or service plus interest. See <http://www.consumerfinance.gov/askcfpb/817/what-retail-installment-sales-contract-or-agreement-loan.html>. It is not unusual for these obligations to be "purchased" through a financing entity. Such a "purchase" actually funds the transaction, much like a loan.

their elective medical/surgical procedures; and (ii) sell such retail installment obligations to SurgeryLoan at a discount in exchange for up-front payments.

7. SurgeryLoan provides a web-based application platform that patients and providers may access. The application requests information regarding the patient's employment and credit history. SurgeryLoan's, web-based platform, automatically sets the APR and RIO terms and submits the completed application to other sales finance companies, such as Duvera.

8. Duvera, as the sales finance company, determines whether and at what discounted amount and APR it is willing to purchase the retail installment obligation from SurgeryLoan. For example, if a doctor charges \$8,000 for a procedure, Duvera may only want to pay \$6,000 for the retail installment obligation. The doctor may accept the lower payment of \$6,000 (minus the "broker" fee paid to SurgeryLoan), but the consumer will still be borrowing and repaying the doctor's full charge of \$8,000 ("Amount Financed").<sup>2</sup>

9. If Duvera agrees to purchase the retail installment obligation, it sends the agreed upon sum of money to SurgeryLoan. SurgeryLoan deducts its "broker" fee, which ranges from 5 - 12 % of the doctor's payment, before sending the balance to the doctor.

10. Upon receipt of payment from SurgeryLoan, the doctor assigns the retail installment obligation he/she has entered into with the consumer to SurgeryLoan.

SurgeryLoan in turn assigns the retail installment obligation to Duvera.

11. Beginning in October 2010, SurgeryLoan resold or assigned at least 200 retail installment obligations for New York consumers to sales finance companies, such

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<sup>2</sup> The definition of Amount Financed is set forth in the Retail Installment Agreement as "[t]he amount of credit provided to you or on your behalf." However, the sales finance company finances the RIO below that of the Amount Financed.

as Duvera. Many of such retail installment obligations were financed at APRs in excess of NY's civil and penal usury laws, some as high as 55%. Duvera funded almost half of SurgeryLoan's 200 retail installment obligations, for a total of \$566,906.76.

**Duvera - Sales Finance Company**

12. While Duvera has been purchasing New York RIOs since January 18, 2010, Duvera neither holds the required New York State-issued license as a lender nor as a sales finance company.

13. Duvera entered into a Master Purchase Agreement with SurgeryLoan, effective September 27, 2010. The agreement allows Duvera the option to purchase any retail installment obligation that is offered for sale by SurgeryLoan.

14. Duvera analyzes each retail installment obligation application that is offered by SurgeryLoan against its own underwriting matrix prior to any purchase. Such analysis includes a review of the applicant's credit scores, borrowing history, loan repayments, employment history, and current income.

15. Duvera then rates each application with either an "A," "B," or "C" following its review. According to Duvera, a lower letter grade corresponds to a higher likelihood that a consumer will default on the retail installment obligation. As a result, Duvera requires that RIOs for these consumers have a higher APR and that Duvera pay less of the procedure price than it does for applications with higher letter grades.

16. Duvera provided the OAG with information pertaining to its purchase of 97 retail installment obligations for NY consumers that were assigned by SurgeryLoan in the period November 16, 2010 through April 28, 2013. The Amount Financed ranged from \$2,000 to \$12,900 with APRs greater than New York's usury ceiling of 16% (APRs

ranged from 17.99% to 55.86%). The majority of such APRs, approximately 58%, were in excess of NY's criminal usury limit of 25%.

17. Duvera provided the OAG information pertaining to its purchase of 104 additional medically-related retail installment obligations for New York consumers that were either resold by entities other than SurgeryLoan or purchased directly from medical providers in the period December 10, 2010 to April 25, 2013. The Amount Financed and APRs ranged from \$500 to \$7,612.50 and 13.99% to 37.47% respectively, with 99.1% of the APRs in excess of 16% and 29.8% greater than 25%.

18. In addition to the Amount Financed for RIOs acquired by Duvera from SurgeryLoan, New York consumers in some cases were responsible for a "prepaid finance charge" that was included in the "Finance Charge." The Finance Charge is defined in the Retail Installment Obligation as "the dollar amount the credit will cost you."

19. Some New York consumers were also required to make an upfront, non-interest bearing security deposit in the form of a money order or credit card payment in cash to Duvera upon executing the RIO. Such security deposit was to be applied to any deficiency in payments due on the RIO and held until the end of the RIO term.

20. Duvera also provided the OAG information pertaining to its purchase of 20 non-medical retail installment obligations for NY consumers (involving specialty beds and legal services) in the period January 18, 2010 to April 23, 2013. The Amount Financed ranged from \$1,114.25 to \$6,120.91 with APRs greater than 16% (APRs ranged from 19.99% to 21.99%).

21. Duvera conducted business as a sales finance company in violation of NY

laws. N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law § 349; and N.Y. Bank. Law §§ 491(6-a) & 492(1).

22. Duvera charged APRs in excess of 16% in violation of New York law. N.Y. Bank. Law § 14-a; N.Y. Penal Law § 190.40; and N.Y. Gen. Oblig. Law §§ 5-501(2) & 5-511(1).

**WHEREAS**, OAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation;

**WHEREAS**, Duvera is willing to accept the obligations imposed by this Assurance;

**WHEREAS**, the Attorney General has determined that this Assurance is in the public interest.

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between the parties that:

### **III. PROSPECTIVE RELIEF**

23. Duvera shall not engage in whole or in part, directly or indirectly, in the business of purchasing or otherwise acquiring retail installment obligations made by and between other parties, or any interest therein, with consumers in New York State without first complying with N.Y. Bank. Law § 492 (requiring licensing of sales finance companies).

24. Duvera, as an unlicensed sales finance company, shall not take or continue any legal action against, and will not refer or report to any credit rating agency, a New York consumer's failure to make payment under any retail installment obligation purchased or acquired and currently maintained by it.

25. Within 30 days of the Effective Date (as defined in paragraph 45 below) of this Assurance, Duvera shall take all necessary steps to remove negative information entered against New York consumers on their credit records, based upon its attempted collection on retail installment obligations on or after January 1, 2010. Such steps shall include, and not be limited to, notifying all applicable consumer reporting agencies to delete all related references from their credit records.

26. Within thirty days of the Effective Date of this Assurance, Duvera shall:
- a) identify all NY retail installment obligations executed in the period beginning January 1, 2010 to date with APRs in excess of 16% ("Usurious RIOs");
  - b) determine the credits, restitution and modifications to all Usurious RIOs required to reduce the APR to 16%; and
  - c) provide the OAG with a chart of Usurious RIOs, showing: (i) names of obligors; (ii) dates; (iii) Amounts Financed; and (iv) credits, restitution and modifications required to effect the APR reduction to 16%.

#### **IV. MONETARY RELIEF**

27. Within 7 days of receiving OAG approval of the notice set forth in paragraph 28 below, Duvera shall send a notice ("Notice"), approved by the OAG, to all obligors of Usurious RIOs: (i) explaining that the APRs of the retail installment obligation has been reduced to 16% in accordance with this OAG settlement; (ii) describing the credits and modifications to the Usurious RIO required to effect the APR reduction; and (iii) including restitution for the RIO that is paid in full and a refund of the security deposit that has not been applied towards delinquent payments.

28. Within 15 days of the Effective Date of this Assurance, Duvera shall submit to the OAG a form of Notice. The Notice's content, form and delivery mechanisms shall be subject to OAG approval.

#### **V. REPORTS TO THE OAG**

29. Within three months of the Effective Date of this Assurance, Duvera shall submit to the OAG a report documenting:

- a) all of the NY consumers to whom the Notice was sent, including name, address, and the adjusted terms of each retail installment obligation (as set forth under paragraph 27 above);
- b) all of the NY consumers to whom restitution was credited or paid, including restitution amounts and dates paid; and
- c) all NY consumers for whom negative credit reports have been filed and all necessary steps taken to remove such negative credit reports (as set forth under paragraph 25 above).

#### **VI. AFFIDAVITS OF COMPLIANCE**

30. Duvera shall submit to the OAG, within 3 months after the execution of this Assurance an affidavit, subscribed to by an officer of Duvera authorized to bind Duvera, setting forth Duvera's compliance with the provisions of this Assurance.

#### **VII. PENALTIES**

31. Duvera shall pay \$10,000 to the New York State Department of Law, within 30 days of the Effective Date of this Assurance.

#### **VIII. MISCELLANEOUS**

32. The OAG has agreed to the terms of this Assurance based on, among other

things, the representations made to the OAG by Duvera and their counsel and the OAG's own factual investigation as set forth in the Findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

33. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Duvera in agreeing to this Assurance.

34. Notwithstanding any provision of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Duvera to comply with any provision of this Assurance.

35. Duvera represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Duvera shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Duvera's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission by Duvera of any: (i) liability or (ii) finding set forth herein.

36. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

37. This Assurance shall be binding on and inure to the benefit of the parties

to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

38. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

39. To the extent not already provided under this Assurance, Duvera shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. All notices, reports, requests, and other communications to any party pursuant to this Assurance must reference “**AOD # 13-499**”, shall be in writing and shall be directed as follows:

If to Duvera to:	Duvera Billing Svices, LLC 1910 Palomar Point Way, Suite 101 Carlsbad, California 92008 Attn: Chief Executive Officer
With a copy to:	Jeremy T. Rosenblum, Esq. Ballard Spahr LLP 1735 Market Street, 51 <sup>st</sup> Floor Philadelphia, PA 19103
If to the OAG to:	Dorothea Caldwell-Brown Assistant Attorney General Office of the Attorney General Health Care Bureau 120 Broadway New York, New York 10271

40. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Duvera shall make no representation to the contrary.

41. Pursuant to EL § 63(15), evidence of a violation of this Assurance of Discontinuance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

42. If a court of competent jurisdiction determines that Duvera has breached this Assurance, Duvera shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

43. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to N.Y. Exec. Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

44. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

45. This Assurance shall be effective on the date that it is signed by an authorized representative of the OAG (“Effective Date”).

46. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG’s right to enforce other deadlines and provisions of this Assurance.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Philadelphia, PA  
*April 2*, 2014

**DUVERA BILLING SERVICES, LLC**

By:   
Name: JEREMY T. ROSENBLUM  
Title: Counsel

Dated: New York, New York  
*April 18,* 2014

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

LISA LANDAU  
Health Care Bureau Chief

By:   
DOROTHEA CALDWELL-BROWN  
Assistant Attorney General  
Health Care Bureau