

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Collection Agency License
3 of:

No. 16F-BD066-SBD

4 **FOCUS RECEIVABLES MANAGEMENT,
5 LLC**

CONSENT ORDER

6 1130 Northchase Parkway, STE 150
7 Marietta, GA 30067

8 Respondent.

9 On February 25, 2016, the Arizona Department of Financial Institutions (“Department”)
10 issued an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order,
11 alleging that Focus Receivables Management, LLC (“Respondent Company”) has violated Arizona
12 law. Wishing to resolve this matter in lieu of an administrative hearing, and without admitting any
13 wrongdoing, Respondent consents to the entry of the following Order.

14 **FINDINGS OF FACT**

15 1. Focus Receivables Management, LLC (“Respondent”) is a Georgia corporation.
16 Arthur P. Hendricks is the CEO of Respondent.

17 2. The nature of Respondent’s business is that of soliciting claims for collection or in
18 collection of claims owed, due, or asserted to be owed or due, within the meaning of A.R.S. § 32-
19 1001(2)(a).

20 3. Respondent is authorized to transact business in Arizona as a collection agency,
21 license number 0904307, within the meaning of A.R.S. § 32-1001, *et seq.*

22 4. Respondent is not exempt from licensure as a collection agency within the meaning
23 of A.R.S. § 32-1004.

24 5. The Department conducted an examination of Respondent beginning on July 22, 2015
25 and found the following deficiencies:

26 a. For a period of twelve (12) months, Respondent’s trust accounts had trust shortages in

1 both its general trust account and a client specific trust account. Respondent
 2 continued to collect its commission fees from the client specific trust account despite
 3 a continuous shortage in the account. As of the last reconciliation, Respondent could
 4 not provide financial evidence that its trust accounts were in good standing.

5 Below is a 12-month review of the Respondent's general trust account xxxxxxxxx9:

General Trust xxxxxxxxx9	Statement Ending Balance	Outstanding Transactions	Pending Deposits	Overage or Shortage
Apr-15	\$99,147.42	\$ (72,888.07)	\$275.15	\$26,534.50
Mar-15	\$129,725.78	\$ (84,774.72)	\$275.15	\$45,226.21
Feb-15	\$40,030.46	\$ (42,181.56)	\$275.15	\$(1,875.95)
Jan-15	\$17,737.81	\$ (62,515.76)	\$275.15	\$(44,502.80)
Dec-14	\$ (12,039.69)	\$ (41,396.23)	\$275.15	\$(53,160.77)
Nov-14	\$8,835.17	\$ (41,180.70)	\$275.15	\$(32,070.38)
Oct-14	\$10,134.80	\$ (43,241.36)	\$275.15	\$(32,831.41)
Sep-14	\$83,127.04	\$ (39,263.48)	\$275.15	\$44,138.71
Aug-14	\$72,469.30	\$ (44,754.87)	\$275.15	\$27,989.58
Jul-14	\$57,832.15	\$ (41,268.61)	\$275.15	\$16,838.69
Jun-14	\$16,179.19	\$ (64,136.41)	\$275.15	\$(47,682.07)
May-14	\$2,231.58	\$ (52,476.85)	\$275.15	\$(49,970.12)
Apr-14	\$4,386.20	\$ (54,825.93)	\$275.15	\$(50,164.58)

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Below is a 12-month review of the Respondent's client specific trust account xxxxxxxx6:

Client Trust xxxxxxx6	Statement Ending Balance	Outstanding Transactions	Pending Deposits	Shortage
Apr-15	\$ (24,660.92)	\$ (33,498.59)	\$66.28	\$(58,093.23)
Mar-15	\$ (50,484.84)	\$ (55,611.96)	\$66.28	\$(106,030.52)
Feb-15	\$ (46,943.72)	\$(184,194.34)	\$ 66.28	\$(231,071.78)
Jan-15	\$3,320.04	\$ (189,023.35)	\$3,387.40	\$(182,315.91)
Dec-14	\$59,079.81	\$ (204,363.02)	\$66.28	\$(145,216.93)
Nov-14	\$10,170.18	\$ (176,282.96)	\$66.28	\$(166,046.50)
Oct-14	\$68,433.10	\$ (127,892.93)	\$66.28	\$ (59,393.55)
Sep-14	\$50,060.28	\$ (87,685.04)	\$8,066.28	\$ (29,558.48)
Aug-14	\$50,564.39	\$ (74,255.58)	\$66.28	\$ (23,624.91)
Jul-14	\$39,291.00	\$(42,728.21)	\$66.28	\$ (3,370.93)
Jun-14	\$28,491.84	\$ (38,859.01)	\$66.28	\$ (10,300.89)
May-14	\$16,347.11	\$ (49,464.04)	\$66.28	\$ (33,050.65)
Apr-14	\$(9,060.36)	\$ (39,935.13)	\$66.28	\$ (48,929.21)

b. Respondent commingled client funds with its own operating funds. The following are examples of, but not limited to, instances where Respondent inappropriately transferred funds from its general operating account xxxxxxx6 to its main client trust account xxxxxxx9.

From Operating account	To Trust account	Deposited Amount	Date
xxxxxxx6	xxxxxxx9	\$41,000.00	Mar-15
xxxxxxx6	xxxxxxx9	\$40,000.00	Feb-15
xxxxxxx6	xxxxxxx9	\$23,500.00	Jan- 15

xxxxxxx6	xxxxxxxxx9	\$231,808.32	Dec-14
xxxxxxx6	xxxxxxxxx9	\$30,300.96	Aug-14

c. Respondent has made unauthorized disbursements in excess of commissions earned. The following are examples of, but not limited to, inappropriate transfers from Respondent's general trust account xxxxxxxx9 to its main operating account xxxxxxxx6:

Date	From trust	To operating	Amount
12/11/2014	xxxxxxxxx9	xxxxxxx6	\$46,000.00
12/24/2014	xxxxxxxxx9	xxxxxxx6	\$121,000.00
11/03/2014	xxxxxxxxx9	xxxxxxx6	\$28,000.00
11/26/2014	xxxxxxxxx9	xxxxxxx6	\$75,000.00
08/25/2014	xxxxxxxxx9	xxxxxxx6	\$41,966.93

d. Respondent was notified on June 29, 2015 of the examination scheduled for July 22, 2015. At the examination, Respondent requested additional time to obtain its financial records, stating they were in its archives. The Department made concessions to accommodate this request and followed up with Respondent for these records by e-mail on July 30, 2015, August 3, 2015, August 5, 2015 and August 13, 2015. Respondent did not provide the requested information until August 14, 2015.

CONCLUSIONS OF LAW

1. Pursuant to Title 6 and Title 32, Chapter 9 of the A.R.S., the Superintendent is charged with the duty to regulate all persons engaged in the collection agency business and with the enforcement of statutes, rules, and regulations relating to collection agencies.

2. Respondent's conduct constitutes the following violations of Arizona's statutes and rules governing collection agencies and their agents:

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- a. A.R.S. § 32-1055(D)(1)(2) which states: “It is unlawful for a person conducting a collection agency in this state to: 1. Fail to render an account of and pay to the client for whom collection has been made the proceeds collected, less collection charges as agreed to by the person and the client, within thirty days from the last day of the month in which the proceeds were collected. If the amount due the client is less than five dollars, payment may be deferred for an additional thirty days. 2. Fail to deposit with a local depository all monies collected by the person and due to the person's clients, and to fail to keep these monies deposited until these monies or equivalent amounts are remitted to the person's clients. Notwithstanding this paragraph, if a person conducting a collection agency does not maintain an office in this state, the person may deposit and keep these monies in a depository in a state where the person maintains the person's principal office.”
- b. A.A.C. R20-4-1505(C) which states, in part: “A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, its own funds with client funds...”
- c. A.A.C. R20-4-1505 (E) which states: “A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly in to its own operating account.” A.A.C. R20-4-1505(F) further states: “A licensee shall not pay funds from its trust account except as 1. Provided in this Section [R20-4-1505], 2. Expressly authorized in its contract with a client, or 3. Authorized in writing by the Superintendent.”
- d. A.R.S. § 6-124(C) which states: “All financial institutions and enterprises shall, upon request of the superintendent, make its books and records available for inspection and examination by the superintendent or the superintendent's examiners. A.A.C. R20-4-1504(D) further states: “A licensee shall maintain all records required under this

1 Section and shall make them available for examination, investigation, or audit in
2 Arizona within three working days after the Superintendent demands the records.”

3 3. According to A.R.S. § 32-1021(D), Respondent has transacted business as a collection
4 agency in Arizona through the collection of debts for creditors and from debtors who reside in
5 Arizona.

6 4. Respondent does not meet any of the exemptions to the licensing requirements as a
7 collection agency set forth in A.R.S. § 32-1004.

8 5. The violations, set forth above, constitute grounds for: (1) the issuance of an order under
9 A.R.S. § 6-137 directing Respondent to cease and desist from the violative conduct and to take the
10 appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent,
11 to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the
12 imposition of a civil monetary penalty under A.R.S. § 6-132; (3) the suspension or revocation of
13 Respondent’s license under A.R.S. § 32-1053; and (4) an order or any other remedy necessary or
14 proper for the enforcement of statutes and rules regulating collection agencies under A.R.S. §§ 6-123
15 and 6-131.

16 **ORDER**

17 1. Respondent shall immediately cease and desist from committing the violations set forth
18 in the Findings of Fact and Conclusions of Law.

19 2. Respondent shall immediately pay to the Department a civil money penalty in the amount
20 of **twenty thousand dollars (\$20,000.00)**.

21 3. Respondent shall comply with all Arizona statutes and rules regulating Arizona collection
22 agencies, namely A.R.S. §§ 32-1001, *et seq.* and A.A.C. Title 20, Article 15, respectively.

23 4. The provisions of this Order shall be binding upon Respondent, its employees, agents,
24 and other persons participating in the conduct of the affairs of Respondent.

25 5. This Order shall become effective upon service, and shall remain effective and
26 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,

1 or set aside.

2 SO ORDERED this 27th day of October, 2016.

3 Robert D. Charlton, Superintendent
4 Department of Financial Institutions

5 By: Tammy Seto
6 Tammy Seto, Division Manager
7 Consumer Affairs & MSBs
8 Department of Financial Institutions

8 **CONSENT TO ENTRY OF ORDER**

9 A. Respondent acknowledges that it has been served with a copy of the foregoing Findings
10 of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware
11 of its right to an administrative hearing in this matter, and has waived the same.

12 B. Respondent accepts the jurisdiction of the Superintendent and consents to the entry of the
13 foregoing Findings of Fact, Conclusions of Law, and Order.

14 C. Respondent states that no promise of any kind or nature has been made to induce it to
15 consent to the entry of this Order, and that it has done so knowingly, willfully, and voluntarily.

16 D. Respondent agrees to immediately cease from engaging in the violative conduct set forth
17 in the Findings of Fact and Conclusions of Law.

18 E. Respondent acknowledges that the acceptance of this Consent to Entry of Order by the
19 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
20 or officer of this state or subdivision thereof from instituting other proceedings as may be
21 appropriate now or in the future.

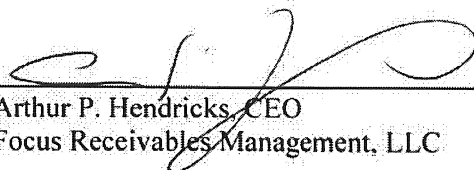
22 F. Failure to correct the violations set forth above in this Order or any future findings of
23 repeat violations may result in disciplinary action that may include a greater civil money penalty.

24 G. Arthur P. Hendricks represents that he is the CEO of Respondent and is authorized to
25 consent to the entry of this Order on its behalf.

26 H. Respondent waives all rights to seek judicial review or otherwise to challenge or contest

1 the validity of this Order.

2 DATED this 10TH day of October, 2016.

3
4 By: 
5 Arthur P. Hendricks, CEO
6 Focus Receivables Management, LLC

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8 **ORIGINAL** of the foregoing filed this 27th
9 day of October, 2016, in the office of:

10 Robert D. Charlton, Superintendent
11 Arizona Department of Financial Institutions
12 Attn: June Beckwith
13 2910 N. 44th Street, Suite 310
14 Phoenix, AZ 85018
15 jbeckwith@azdfi.gov

16 **COPY** emailed/mailed/delivered same date to:

17 Shane Foster, Assistant Attorney General
18 Office of the Attorney General
19 1275 West Washington
20 Phoenix, AZ 85007
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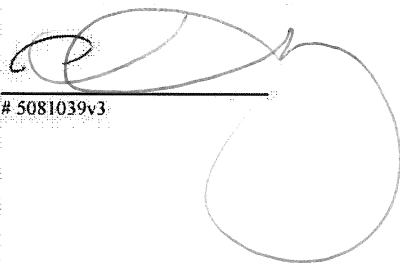
22 Tammy Seto, MSB & Consumer Affairs Division Manager
23 Steven McElwain, Examiner in Charge
24 Arizona Department of Financial Institutions
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4 Marietta, GA 30067
5 Respondents

6 Corporation Service Company
7 2338 West Royal Palm Rd., Suite J
8 Phoenix, AZ 85021
9 Statutory Agent for Respondent Company

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