

In the Matter of

Assurance No. 21-076

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Andrew David Casper-Fanelli, Northwood
Asset Management Group LLC,
Pinnacle Asset Recovery Group LLC,
and Koalaty Pay LLC

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12), General Business Law (“GBL”) Articles 22-A and 29-H, the Fair Debt Collection Practices Act, 15 USC § 1692 et seq. (“FDCPA”), and the Consumer Financial Protection Act, Pub.L. 111–203, Title X, 12 U.S.C. § 5552 (“CFPA”) into the debt collection and debt broker activities of Northwood Asset Management Group LLC, the debt collection activities of Pinnacle Asset Recovery LLC, and the payment processing activities of Koalaty Pay LLC, and the owner of the aforesaid companies, Andrew David Casper-Fanelli. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

OAG's FINDINGS

1. Andrew David Casper-Fanelli ("Fanelli") is a debt collector and has worked in the consumer debt collection industry for approximately the past decade.

Debt Collection Call Center

2. On August 20, 2012, Fanelli formed Fanelli and Associates LLC, a New York limited liability company that collected on consumer debts. Fanelli and Associates LLC primarily collected on debt placed by Douglas MacKinnon and his affiliated companies through approximately December 2013.

3. Douglas MacKinnon and his affiliated companies were sued and shut down due to their illegal debt collection tactics. *CFPB v. MacKinnon*, 16-880 (W.D.N.Y.)

4. On May 24, 2013, Fanelli formed Pinnacle Asset Recovery LLC ("Pinnacle"), a New York limited liability company that purchased consumer debts.

5. On July 17, 2015, Fanelli and Associates LLC changed its name to Northwood Asset Management Group LLC ("NAMG"). Fanelli is the sole member of NAMG.

6. Fanelli hired Jason Collins and later Kelly Kennuth to be NAMG's Director of Operations.

7. Kennuth served in a similar role for Vantage Point Services LLC and Collins (operating as Northeast Capital) collected on that company's debt. Vantage Point Services LLC was run by Gregory MacKinnon and was sued, placed into receivership and shut down due to its illegal debt collection tactics. *FTC v. Vantage Point*, 15-cv-6 (W.D.N.Y.)

8. Over the preceding six years, NAMG has varied in size from approximately two dozen collectors to nearly sixty collectors.

9. Call recordings maintained by NAMG establish that collectors working for NAMG routinely used illegal tactics to collect consumer debts, such as: threatening legal action the company did not intend to take; falsely threatening to garnish consumers' wages; falsely threatening to suspend consumers' driver's licenses; implying that the collector is an attorney, arbitration firm, law enforcement officer or court employee; and threatening to file charges and implying that criminal action would be taken against consumers if they failed to pay.

10. Fanelli has represented and warranted that Pinnacle is dormant and has not conducted any business in several years.

11. NAMG has been sued a dozen times by consumers alleging violations of the FDCPA and other consumer protection laws. NAMG has paid many pre-suit demands making similar allegations.

12. Fanelli is and was aware of the illegal tactics used by collectors working for NAMG. Fanelli permitted and encouraged these tactics because they increased his profits.

Debt Brokering

13. In addition to operating NAMG as a debt collection call center, Fanelli engages in a substantial debt brokering business. He buys and sells consumers debts and places consumer debts for collection with other call center offices. Fanelli and NAMG primarily deal in high interest rate consumer debt such as payday loans and term installment loans.

14. One of the businesses with whom Fanelli placed consumer debt was Midway Resolution Services LLC, a company owned and operated by Kenneth Thomas, the nephew of Douglas and Gregory MacKinnon. Collectors working for Thomas used a spoof service to disguise their telephone numbers to appear to be from consumers' local courthouse. Collectors would pretend to be process servers and court employees and would threaten consumers with

arrest, bench warrants and pickup orders to coerce them to pay. The OAG sued Thomas and obtained permanent injunctive relief stopping these illegal activities. *People v. Thomas*, 810231/2020 (Erie Cnty. Sup. Ct.)

15. Fanelli has placed debt with and sold debt to a number of other debt collection companies in the Buffalo area that routinely and egregiously violate applicable laws including Executive Law § 63(12), GBL Articles 22-A and 29-H, the FDCPA and the CFPA. Fanelli is and was aware of these violations but has not taken sufficient steps to stop them and has continued to place debts with and sell debts to such companies.

16. Fanelli sold debts to Regency One Capital LLC, an entity that has been sued by the OAG and the Consumer Financial Protection Bureau for illegal debt collection activities. *CFPB v. JPL Recovery Solutions*, 20-cv-1217 (W.D.N.Y.).

17. Fanelli is an active buyer and broker of tribal consumer loans, high interest loans purportedly issued by Native American tribes intended to avoid state law usury caps.

18. NAMG has routinely collected on tribal originated high interest loans, and Fanelli has brokered the sale and placement for collection of such debts, including debts originated by companies purportedly owned by the Lac du Flambeau Band of Lake Superior Chippewa Indians, doing business under names such as Evergreen Services, and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, doing business under names such as Plain Green, among other tribal based high interest consumer lenders.

Payment Processing

19. Fanelli, through Koalaty Pay LLC (“Koalaty”) provides referrals for payment processing services to NAMG and other debt collection companies.

20. Koalaty assisted debt collection companies, which it knew did not comply with the FDCPA and other applicable laws when collecting from consumers, with obtaining payment processing services.

Conclusion

21. The OAG finds that Respondents actions are in violation of Executive Law § 63(12), GBL Articles 22-A and 29-H, the FDCPA and the CFPA.

22. Respondents do not contest the OAG's assertion that their actions violated the statutory provisions cited above and neither admit nor deny the OAG's Findings, paragraphs 1-20 above.

23. Respondent Fanelli submitted Personal Financial Statements dated May 10, 2021 and November 12, 2021 and Respondent NAMG submitted Corporate Financial Statement dated May 10, 2021 and November 12, 2021 to the OAG documenting and certifying their financial circumstances under penalty of perjury.

24. Respondents NAMG, Pinnacle, and Koalaty are collectively referred to as the "Corporate Respondents."

25. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL Articles 22-A and 29-H, the FDCPA and the CFPA based on the conduct described above during the preceding six years.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

26. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Executive Law § 63(12), GBL Articles 22-A and 29-H, the FDCPA and the CFPA.

27. Specific Injunctions:

- a. *Ban from Consumer Debt Collection*: Respondents shall not engage in, or attempt to engage in, the collection of any obligation or alleged obligation of a natural person to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment (“Consumer Debt”), or any business or activity relating to the collection of Consumer Debt (“Consumer Debt Collection”).
- b. *Ban from Consumer Debt Brokering*: Respondents shall not engage in, or attempt to engage in, the purchase, sale, placement, leasing, assignment or brokering of Consumer Debt, or any business relating thereto (“Debt Brokering”).
- c. *Ban from Consumer Lending*: Respondents shall not engage in, or attempt to engage in, the lending of money, extension of credit, or servicing of loans made to any natural person, and any business relating thereto (“Consumer Lending”).
Provided, however, that Fanelli may make personal loans to friends and family members at an interest rate of no more than double the then prevailing Applicable Federal Rate specified by the Internal Revenue Service, and Fanelli may engage in the sale of used or new vehicles and facilitate the extension of credit with

relation to such sales, as long as Fanelli is not personally, or through a company in which he has an ownership interest, lending money or extending credit with relation to such sales.

- d. *Ban from Debt Settlement*: Respondents shall not engage in, or attempt to engage in, the business of debt settlement, budget planning, debt negotiation or debt reduction for Consumer Debts, and any business relating thereto (“Debt Settlement”).
- e. *Ban from Credit Services*: Respondents shall not engage in, or attempt to engage in, any business or provision of a service for the express or implied purpose of improving a consumer's credit record, history, or rating or providing advice or assistance to a consumer with regard to the consumer's credit record history or rating in return for the payment of a fee, and any business relating thereto (“Credit Repair”).
- f. *Ban from Payment Processing*: Respondents shall not engage in, or attempt to engage in, the business of processing payments, facilitating relationships with merchant banks (including member service providers and independent sales organizations for merchant banks), or otherwise providing any assistance regarding the processing of payments for companies involved in Consumer Debt Collection, Debt Brokering, Debt Settlement and Credit Repair, and any business relating thereto (“Payment Processing”).
- g. *Ban from All Involvement in Prohibited Industries*: For the avoidance of doubt, Respondents are permanently prohibited from engaging in the aforementioned industries, including Consumer Debt Collection, Debt Brokering, Consumer

Lending, Payment Processing, Debt Settlement and Credit Repair (“Prohibited Industries”), in any capacity, including as an owner, employee, manager, member, independent contractor, agent, consultant, service provider, investor, security holder, creditor or otherwise. Provided however, that Fanelli may invest, as a minority passive investor, in the publicly traded securities, listed on a U.S. national securities exchange, of companies that engage in the foregoing businesses.

28. Violation of Injunctive Relief: Respondents expressly agree and acknowledge that any conduct that violates the foregoing General Injunction or Specific Injunctions (paragraphs 26-27) is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 25, *supra*, in addition to any other appropriate investigation, action, or proceeding.

29. Dissolution of Corporate Respondents: Fanelli agrees to wind down and dissolve each of the Corporate Respondents within six months of the effective date of this Assurance (the “Wind Down Period”). Fanelli shall not sell the Corporate Respondents and shall not sell the assets of the Corporate Respondents in a manner intended to permit them to operate as a going concern under new ownership.

30. Destruction of Consumer Debt Portfolios: Respondents shall not sell, place, assign or otherwise transfer any Consumer Debts after the effective date of this Assurance. After the Wind Down Period, Respondents shall destroy all Consumer Debts that they own and shall refrain from disclosing, using or benefitting from any consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer’s account; provided, however, that Respondents

shall provide to the OAG such records and documents as are necessary for the OAG to effectuate consumer restitution and redress as the OAG determines appropriate.

31. Non-Dischargeable Judgment: In the event of bankruptcy, Respondents expressly agree not to seek to discharge or extinguish any amounts owed as part of this Assurance and any judgment issued as a result of breach of this Assurance.

32. Damages for Breach: The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this paragraph, and therefore agree that Respondents shall pay to the State of New York a stipulated penalty of \$100,000.00 for each and every such default in the performance of any obligation under this Assurance occurring after the effective date. If a Respondent engages in any Prohibited Industries, such damages shall be assessed for each day such Respondent engages in such Prohibited Industry. Such damages shall be joint and several as to all Respondents. Such damages shall be in addition to, and not exclusive of, any other relief sought by the OAG.

33. Oversight/Monitoring:

- a. *Periodic Compliance Reports*: Fanelli shall provide the OAG with a report detailing his compliance with the requirements set forth in this Assurance, including the dissolution of the Corporate Respondents, to be submitted to the OAG within seven months after the effective date of this Assurance. This report shall be in writing and shall enclose certified articles of dissolution for each of the Corporate Respondents. This report shall be signed by Fanelli. In any case where

the circumstances warrant, the OAG may require Fanelli to file an interim report of compliance upon thirty (30) days notice.

- b. *Employment Reporting*: For ten years following the effective date of this AOD, Fanelli shall inform the OAG in writing whenever his employment changes, within fifteen (15) days of such change.
 - c. *Entity Reporting*: Fanelli shall inform the OAG in writing whenever he creates, or receives a beneficial interest in, a business, company, corporation, partnership or any other legal entity. Such notice shall be provided within fifteen (15) days of the creation or receipt of such interest. This subparagraph shall not apply to Fanelli's ownership or a beneficial interest in a publicly traded security.
 - d. *Effect of Violation*: Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 25, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 21, pursuant to Executive Law § 63(15).
34. Monetary Relief
- a. *Monetary Relief Amount*: Respondents shall pay to the State of New York \$1,200,000.00 as and for costs, penalties, restitution, damages, and disgorgement (the "Monetary Relief Amount").
 - b. The OAG may, in its sole discretion, use all or a portion of the Monetary Relief Amount for consumer restitution.

- c. Payment of the Monetary Relief Amount by Respondents shall be made in full no later than November 30, 2021.
- d. Payment of the Monetary Relief Amount shall be made by wire transfer pursuant to instructions provided by the OAG.

COOPERATION

35. Respondents agree to fully cooperate with the OAG and its representatives in any investigation or matter as the OAG may request. Respondents agree to provide truthful and complete information, evidence, and testimony, including in person or by way of affidavit or declaration. Fanelli agrees to appear for interviews, discovery, hearings, trials, and any other proceedings that a representative of the OAG may reasonably request upon five (5) days written notice, or other reasonable notice, at such places and times as a representative of the OAG may designate, without the service of a subpoena. Respondents agree to promptly provide documents and things requested by the OAG to assist their investigation of any matters or persons, without the service of a subpoena or discovery request.

36. Respondents agree to provide the OAG with such information, documents, electronically stored information and assistance to enable the OAG to distribute restitution to consumers.

37. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this section, paragraphs 35-36, is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 25, *supra*, in addition to any other appropriate investigation, action, or proceeding.

MISCELLANEOUS

Subsequent Proceedings.

38. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

39. If a court of competent jurisdiction determines that a Respondent has violated this Assurance, such Respondent(s) shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

40. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer

any of its rights or obligations under this Assurance without the prior written consent of the OAG.

41. Nothing contained herein shall be construed as to deprive any person not a party hereto of any private right under the law.

42. Any failure by the OAG to insist upon the strict performance by a Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

Communications:

43. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-076, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at the address listed below, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondents, to:	Andrew Fanelli afanelli6686@gmail.com. 1 Delaware Road, Apt. 205 Kenmore, NY 14217
with copy to:	Eric Soehnlein, Esq. esoehnlein@lippes.com 50 Fountain Plaza, Suite 1700 Buffalo, NY 14202-2216
If to the OAG, to:	AAG Christopher L. Boyd Christopher.Boyd@ag.ny.gov New York State Office of the Attorney General 350 Main Street, Suite 300A Buffalo, New York 14202

or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office.

Representations and Warranties:

44. Fanelli represents and warrants that he owns no legal or beneficial interest in any corporate entity other than the Corporate Respondents, with the exception of minority interests in publicly traded securities and a minority passive investment in a pre-revenue company as disclosed in his Personal Financial Statements.

45. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondents and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-20 above. The Respondents represent and warrant that neither they nor their counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

47. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Fanelli is a duly authorized officer and sole member of NAMG, Pinnacle, and Koalaty, and is authorized to execute this Assurance on their behalf.

General Principles:

48. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

49. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

50. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that a Respondent violates the Assurance after its effective date.

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

52. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction 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.

53. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

54. This Assurance shall be governed by the laws of the State of New York and applicable federal law without regard to any conflict of laws principles.

55. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

56. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

57. The effective date of this Assurance shall be November 16, 2021

LETITIA JAMES
Attorney General of the State of New York

By: Christopher L Boyd
Christopher L. Boyd, Esq.
Deputy Assistant Attorney General in Charge
Buffalo Regional Office


Eric M. Soehnlein, Esq.
Counsel for Respondents

ANDREW DAVID CASPER-FANELLI

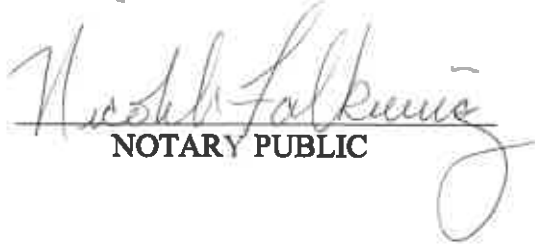
Andrew David Casper-Fanelli
Respondent

STATE OF NEW YORK)
)
COUNTY OF ERIE)

ss.:

On this 16th day of November, 2021, Andrew David Casper-Fanelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this
16th day of November, 2021


NOTARY PUBLIC

NICOLE A. FALKIEWICZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Nov. 16, 2022



By:

Andrew David Casper-Fanelli
*As sole member of Respondents Northwood
Asset Management Group LLC, Pinnacle Asset
Recovery LLC, Koalaty Pay LLC*

STATE OF NEW YORK)
)
COUNTY OF ERIE)

ss.:

On the 11th day of November in the year 2021 before me personally came Andrew David Casper-Fanelli to me known, who, being by me duly sworn, did depose and say that he resides in Kenmore, New York; that he is the sole member of the Respondents Northwood Asset Management Group LLC, Pinnacle Asset Recovery LLC, and Koalaty Pay LLC, the entities described in and which executed the above instrument; and that he signed his name thereto by like authority.

Sworn to before me this
11th day of November, 2021


NOTARY PUBLIC

NICOLE A. FALKIEWICZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Nov. 16, 2022