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ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

JUN 9 2017

Division of Consumer Affairs

By: Jeffrey Koziar  
Deputy Attorney General  
(973) 648-7819

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

GREENSKY SERVICING, LLC,

Respondent.

Administrative Action

**ASSURANCE OF VOLUNTARY  
COMPLIANCE**

**WHEREAS** this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”) have been or are being committed by GreenSky Servicing, LLC, as well as by its owners, officers, directors, members, managers, employees, representatives, and agents (collectively “GreenSky” or “Respondent”) in connection with a lending program that is marketed and administered by GreenSky (the “GreenSky<sup>®</sup> Program”) on behalf of certain federally insured banks that make consumer loans to Borrowers to pay for Home Improvements (hereinafter referred to as the “Investigation”);

**WHEREAS** Respondent has fully and willingly cooperated with the Division in connection with the Investigation and has voluntarily implemented certain changes to the GreenSky® Program in furtherance of the protection of Consumers and Borrowers (it being noted that the Division has not received a complaint about GreenSky from any Consumer since April 2015);

**WHEREAS** the Division and Respondent (collectively, “Parties”) have reached an amicable agreement with respect to the Investigation thereby resolving all issues in controversy and concluding the Investigation without the need for further action, and Respondent has consented to the entry of this Assurance of Voluntary Compliance (“AVC”), without having admitted any violation of law, and without any judgment or finding of fact and for good cause shown;

**1. EFFECTIVE DATE**

1.1 This AVC shall be effective on the date that it is filed with the Division (“Effective Date”).

**2. DEFINITIONS**

As used in this AVC, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this AVC:

2.1 “Account” has the meaning set forth in Section 3.6.1.

2.2 “Activate” has the meaning set forth in Section 3.7

2.3 “Additional Consumer[s]” shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Respondent’s business practices occurring after the Effective Date.

2.4 “Affected Consumer[s]” shall refer to any Consumer who submitted to the Division directly or through another agency a complaint concerning Respondent’s business practices occurring prior to the Effective Date.

2.5 “Affiliate” of any Person shall mean any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such first Person. For purposes of this definition, “control” of a Person means the power to, directly or indirectly, direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, by contract or otherwise.

2.6 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.7 “Borrower” shall refer to a Consumer who has been approved for a loan pursuant to the terms of the GreenSky® Program and who, in connection with applying for such loan, did so using a New Jersey address.

2.8 “Business Day” means any day, other than Saturday, Sunday or any other day on which banks located in the State are authorized or required to close.

2.9 “CFA” shall refer to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

2.10 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.11 “Compliance Coordinator” has the meaning set forth in Section 4.1.

2.12 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e).

2.13 “Contractor” shall be defined in accordance with N.J.S.A. 56:8-137.

2.14 “Contractors’ Registration Act” shall refer to N.J.S.A. 56:8-136 et seq.

2.15 “Contractor Registration Regulations” shall refer to the Regulations Governing Contractor Registration, N.J.A.C. 13:45A-17.1 et seq.

2.16 “Home Improvement[s]” shall be defined: (a) for purposes of the Contractors’ Registration Act in accordance with N.J.S.A. 56:8-137; (b) for purposes of the Home Improvement Regulations in accordance with N.J.A.C. 13:45A-16.1; and (c) for purposes of the Contractor Registration Regulations in accordance with N.J.A.C. 13:45A-17.2.

2.17 “Home Improvement Regulations” shall refer to the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq.

2.18 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.19 “Loan Agreement” shall refer to the Installment Loan Agreement used in connection with the GreenSky® Program.

2.20 “Merchant” shall refer to a Contractor doing business in the State enrolled in the GreenSky® Program that, in connection with applying for such enrollment, identified New Jersey as the state in which its principal place of business is located. For the avoidance of doubt, it is hereby acknowledged that neither The Home Depot, Inc. nor any of its Affiliates are enrolled in the GreenSky® Program.

2.21 “Merchant Agreement” shall refer to the program agreement entered into by a Merchant.

2.22 “New Jersey” and “State” shall refer to the State of New Jersey.

2.23 “Objection” has the meaning set forth in Section 3.9.

2.24 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.25 “Released Claims” has the meaning set forth in Section 8.1.

2.26 “Restitution” shall refer to all methods undertaken by Respondent to resolve Affected Consumer complaints and Additional Consumer Complaints, including the issuance of credits or refunds, loan forgiveness and/or credit repair.

2.27 “Tradeline” shall mean the entry by a credit grantor to a Consumer’s credit history maintained by a credit reporting agency which describes the Consumer’s account status and activity.

### **3. BUSINESS PRACTICES**

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State consumer protection laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA.

3.2 Respondent shall exercise due diligence with respect to all prospective Merchants, which shall hereafter include: (a) verifying active registration or licensing of such Merchant in the State; (b) (i) ascertaining the number of consumer complaints, if any, filed against such Merchant with the Division (which the Division shall provide promptly upon request) by contacting one of the Division’s representatives whose name and contact information shall be provided to Respondent by the Division on or before the Effective Date and (ii) reviewing any Better Business

Bureau (“BBB”) information about such Merchant that is publicly available on the BBB website and (c) conducting a judgment, lien and bankruptcy filing search in the State with respect to such Merchant. It shall not be deemed a breach of part (b) or (c) of the first sentence of this Section 3.2 if Respondent undertakes reasonable steps to conduct such searches (including the engagement of a third party search firm) and such search fails to discover relevant negative information, through no fault of Respondent. The discovery of negative information about a Contractor under part (b) or (c) of the first sentence of this Section 3.2 shall not be deemed to disqualify such Contractor from becoming a Merchant (it being understood, however, that Respondent shall take such information into account in making a decision whether to enroll such Contractor in the GreenSky® Program).

3.3 Respondent shall not hereafter execute a Merchant Agreement with a Merchant unless such Merchant agrees to comply with the CFA, the Contractors’ Registration Act, the Contractor Registration Regulations and the Home Improvement Regulations. If Respondent hereafter becomes aware that any court or administrative body has found a Merchant to have violated the CFA, the Contractors’ Registration Act, the Contractor Registration Regulations or the Home Improvement Regulations, Respondent shall promptly terminate such Merchant from the GreenSky® Program.

3.4 Respondent shall hereafter ensure that all materials that it uses in connection with marketing the GreenSky® Program to Consumers Clearly and Conspicuously convey that the GreenSky® Program is a loan program.

3.5 Respondent shall hereinafter ensure that the purpose of what it refers to as the “Shopping Pass” is Clearly and Conspicuously disclosed to all Borrowers.

3.6. No later than one hundred thirty five (135) days after the Effective Date, Respondent shall ensure that no Borrower can be charged by a Merchant for a transaction with such Merchant unless and until Respondent has confirmed electronically, via telephone or in writing, that such Borrower has received his or her Loan Agreement.

3.6.1 With respect to a Borrower who has provided Respondent with an email address and/or a mobile telephone number, no later than one hundred thirty five (135) days after the Effective Date, Respondent shall, at its option, send either a text message to such mobile telephone number if such Borrower has opted into the receipt of text messages or an email to such email address if such Borrower has not opted out of the receipt of emails, notifying such Borrower how he or she can access his or her Loan Agreement and how such Borrower's GreenSky® Program account (the "Account") can be Activated (as defined in Section 3.7).

3.6.2 Respondent shall mail to each Borrower such Borrower's Loan Agreement at such Borrower's verified postal address within two (2) Business Days following creation of such Borrower's Account.

3.7 No later than one hundred thirty five (135) days after the Effective Date, Respondent shall ensure that a Borrower's Account can be activated by such Borrower acknowledging receipt of the Loan Agreement and instructing Respondent to activate his or her Account ("Activate") by one or more of the following means: (i) electronically by verifying personal information with Respondent, including information provided by Borrower to Respondent (or by Respondent to Borrower) for verification purposes (e.g., a password, identification number or security question); (ii) electronically by Respondent providing Borrower an activation link that is provided only to Borrower; (iii) via telephone by verifying personal information with Respondent, including information provided by Borrower to Respondent (or by

Respondent to Borrower) for verification purposes (e.g., a password, identification number or security question); or (iv) via telephone by verifying that the activation phone call is placed from Borrower's verified phone number.

3.8 Respondent shall require each Merchant to obtain a Borrower's written (or electronic) authorization to process a transaction on such Borrower's Account with such Merchant.

3.9 With respect to a Borrower who has provided Respondent with an email address and/or mobile telephone number, Respondent shall send a transaction alert either by a text message to such telephone number if such Borrower has opted into the receipt of text messages or by email to such email address if such Borrower has not opted out of the receipt of emails notifying such Borrower each time that a transaction is charged to his or her Account and providing such Borrower with a means to timely file an objection thereto (the "Objection"). Respondent shall also send monthly billing statements either by U.S. mail to such Borrower's verified postal address, or if such Borrower has provided Respondent with an email address and not opted out of the receipt of emails, by email to such email address, showing each transaction charged to such Borrower's Account during the immediately preceding month and providing a toll-free telephone number and email address for such Borrower to use to file an Objection.

3.10 In connection with any transaction on a Borrower's Account that is subject to an Objection, Respondent shall place a provisional credit on such Account by the end of the second (2<sup>nd</sup>) Business Day after receipt of such Objection, which will suspend all of such Borrower's obligations with respect to the payment of the amount in question and which will remain on the Account pending the outcome of a comprehensive investigation of the matter by Respondent. If Respondent determines that the Objection is justified, then, with respect to such transaction, Respondent shall, as appropriate, secure a refund from the Merchant, file a



chargeback on behalf of such Borrower through the appropriate payment card network, or directly provide a refund to such Borrower and correct any Tradeline in connection with such Objection. Notwithstanding the foregoing, this Section 3.10 shall not apply to any Borrower who has filed a petition under any federal or state bankruptcy, insolvency or similar law (or against whom such a petition has been filed).

#### **4. COMPLIANCE COORDINATOR**

4.1 Within thirty (30) days of the Effective Date, Respondent shall designate one of its employees as its Compliance Coordinator (the "Compliance Coordinator"). The Compliance Coordinator will perform the functions set forth in Section 4.2 for a period of two (2) years immediately following the Effective Date, after which Respondent shall immediately designate one of its employees to liaise with the Division in connection with any questions or concerns the Division may thereafter have with respect to this AVC. Respondent shall provide the Division with the liaison's name, business address (street and mailing), the telephone number and electronic mail address within seven (7) days of his or her designation.

4.2 The Compliance Coordinator shall perform the following functions: (a) use his or her reasonable efforts to ensure Respondent's compliance with the terms of this AVC as well as with the CFA; (b) use his or her reasonable efforts to facilitate the resolution of Additional Consumer complaints of which the Compliance Coordinator is aware; and (c) provide to the Division written quarterly reports.

4.3 The Compliance Coordinator's quarterly reports referenced in Section 4.2 shall include the following: (a) information of which the Compliance Coordinator is aware with respect to Respondent's compliance with this AVC and the CFA; (b) a summary report with respect to all Additional Consumer complaints, of which the Compliance Coordinator becomes aware that sets

forth the basis of such Additional Consumer Complaints and the disposition thereof; and (c) any other relevant information concerning any material changes in Respondent's business practices that are referenced in Section 3.

4.4 The Compliance Coordinator shall serve as a neutral facilitator and his or her efforts to carry out the functions set forth in Section 4.2 shall not be supervised or controlled by the Division nor shall his or her quarterly reports be subject to prior review by Respondent. The Compliance Coordinator shall have no personal liability for any action or inaction hereunder or otherwise in respect of this AVC.

#### **5. SETTLEMENT PAYMENT**

5.1 The Parties have agreed to a settlement of the Investigation in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) ("Settlement Payment"), pursuant to N.J.S.A. 56:8-1 et seq., which shall be applied to reimburse the Division for its counsel fees and investigative costs and to fund the Division's empowerment education and outreach efforts.

5.2 The Settlement Payment shall be made as promptly as practicable after June 30, 2017 (but in no event later than July 10, 2017) by certified or cashier's check, money order, wire transfer or credit card payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jeffrey Koziar, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street-5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

5.3 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **6. AFFECTED CONSUMER COMPLAINTS**

6.1 Attached as Exhibit A is a list prepared by the Division that identifies each Affected Consumer and the Restitution which Respondent has agreed to provide (refunds, loan forgiveness and/or correction to an Affected Consumer's Tradeline).

6.2 Within thirty (30) days of the Effective Date, Respondent shall notify the Division whether any of the Affected Consumers have received Restitution. Such notification shall also include the following:

- (a) The name and address of the Affected Consumer;
- (b) Identification of the Restitution provided to the Affected Consumer;
- (c) Copies of all documents evidencing the Restitution; and
- (d) In the event that the Restitution was returned as undeliverable, the efforts that Respondent has undertaken to locate the Affected Consumer.

6.3 For those Affected Consumers whose Restitution includes corrections to the Tradeline with Respondent, Respondent will forward, on the Affected Consumer's behalf, a corrective letter (on Respondent's official letterhead) to the following three (3) credit reporting agencies at the following addresses by Certified Mail, Return Receipt Requested:

Equifax  
P.O. Box 740241  
Atlanta, GA 30374

Experian  
P.O. Box 4500  
Allen, TX 75013

Trans Union  
P.O. Box 2000  
Chester, PA 19022

6.4 In such corrective letters, Respondent shall include the following:

- (a) The name, address and account number of the Affected Consumer; and
- (b) A statement that (i) the Tradeline was subject to dispute, (ii) the dispute was resolved in favor of the Affected Consumer, (iii) no funds were or are due to Respondent and (iv) the Tradeline should be removed from the Affected Consumer's credit history.

6.5 Respondent shall send a copy of the corrective letter to the applicable Affected Consumer, by Certified Mail, Return Receipt Requested.

6.6 Respondent shall not be responsible for any failure by any credit reporting agency to act in accordance with Respondent's corrective letter.

## **7. GENERAL PROVISIONS**

7.1 This AVC is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this AVC.

7.2 This AVC shall be governed by, and construed and enforced in accordance with, the laws of the State.

7.3 The Parties have fully reviewed the terms of this AVC and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this AVC.

7.4 This AVC contains the entire agreement between the Parties. Except as otherwise provided herein, this AVC shall be modified only by a written instrument signed by or on behalf of the Parties.

7.5 Except as otherwise explicitly provided in this AVC, nothing in this AVC shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

7.6 If any portion of this AVC is held invalid or unenforceable by operation of law, the remaining terms of this AVC shall not be affected.

7.7 This AVC shall be binding upon the Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

7.8 This AVC shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this AVC be used to avoid compliance with this AVC.

7.9 This AVC is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this AVC shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission, judgment or administrative determination that any of Respondent's acts or practices described in or prohibited by this AVC are unfair or deceptive or violate the CFA. Neither the existence of, nor the terms of this AVC, shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.10 Each of the Parties represents and warrants that an authorized representative of such Party has signed this AVC with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind such Party.

7.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this AVC may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same AVC.

7.12 This AVC is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The Division agrees to provide Respondent with the name and contact information of one of its representatives with whom Respondent can hereafter communicate seeking information regarding any lawful demand the Division may hereafter receive for access to documents or information that the Division obtained from GreenSky in connection with the Investigation.

7.13 Beginning two (2) years after the Effective Date, Respondent may seek the consent of the Division with respect to the modification of Sections 3.6 and 3.7, which consent will not be unreasonably withheld, delayed or conditioned.

## **8. RELEASE**

8.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this AVC and conditioned on Respondent making the Settlement Payment in the manner referenced in Section 5, the Division hereby agrees to release Respondent from any and all civil claims, causes of action or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA arising out of the Investigation, as well as the matters specifically addressed in this AVC ("Released Claims").

8.2 Notwithstanding any term of this AVC, the following do not comprise Released Claims: (a) private rights of action, provided that nothing herein shall prevent Respondent from raising any defense in any such action, including the defense of set-off against a Consumer who has received Restitution; (b) actions to enforce this AVC; and (c) any claims against Respondent by any other agency or subdivision of the State. Nothing contained herein shall be deemed to create any private right of action or other right in favor of any third party in connection with any violation of this AVC by Respondent.

#### **9. FAILURE TO COMPLY**

9.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this AVC or to seek sanctions for violations hereof or both.

#### **10. COMPLIANCE WITH ALL LAWS**

10.1 Except as provided in this AVC, no provision herein shall be construed as:

- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

#### **11. NOTICES UNDER THIS AVC**

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this AVC shall be sent by U. S. mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking

services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Jeffrey Koziar, Deputy Attorney General  
Consumer Fraud Prosecution Section  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
Newark, New Jersey 07101

For Respondent:

GreenSky Servicing, LLC  
5565 Glenridge Connector  
Suite 700  
Atlanta, GA 30342  
Attn: Chief Legal Officer

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:   
STEVE C. LEE, DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

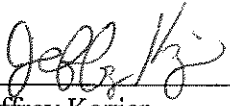
Dated: 6/9/17

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS AVC  
ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.**



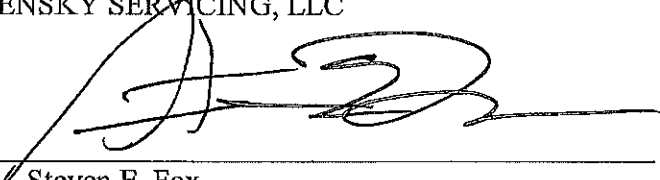
FOR THE DIVISION:

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:  Dated: June 8, 2017  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
124 Halsey Street – 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
(973) 648-7819

FOR RESPONDENT:

GREENSKY SERVICING, LLC

By:  Dated: June 7, 2017  
Steven E. Fox  
Chief Legal Officer  
GreenSky Servicing, LLC  
5565 Glenridge Connector  
Suite 700  
Atlanta, GA 30342  
(404) 537-3168

**EXHIBIT A**

| <b><u>Last Name</u></b> | <b><u>First Name</u></b> | <b><u>Loan Forgiveness</u></b> | <b><u>Refund</u></b> | <b><u>Credit Report Correction</u></b> |
|-------------------------|--------------------------|--------------------------------|----------------------|--|
| Bukhman                 | Yakov                    | No                             | No                   | Yes                                    |
| Du                      | Yi                       | No                             | No                   | Yes                                    |
| Gottesman               | Andrew                   | No                             | \$15,549.00          | No                                     |
| Kuila                   | Arindam                  | No                             | \$15,812.00          | No                                     |
| McGuire                 | James                    | No                             | \$9,000.00           | No                                     |
| Nekkalapudi             | Jyothsna                 | No                             | \$3,383.80           | No                                     |
| Parida                  | Santosh                  | No                             | \$13,169             | No                                     |
| Samaloff                | Reyna                    | \$3,622.00                     | No                   | No                                     |
| Shah                    | Sunil                    | No                             | No                   | Yes                                    |
| Smikovecus              | Milan                    | No                             | No                   | Yes                                    |