

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Consumer Financial Protection
Bureau,

Plaintiff,

v.

Top Notch Funding II, LLC, Rory
Donadio, and John “Gene” Cavalli,

Defendants.

Case No.

COMPLAINT

Plaintiff, the Consumer Financial Protection Bureau, alleges as follows:

INTRODUCTION

1. The Bureau brings this action against Top Notch Funding II, LLC, Rory Donadio, and John “Gene” Cavalli under § 1054 of the Consumer Financial Protection Act of 2010 (“CFPA”) to address deceptive practices in connection with their offering credit to consumers who have been awarded payouts from a settlement or a statutory-compensation fund, but who are awaiting payment from the defendant in the underlying suit or the claims administrator.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction because this action is “brought under Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

3. This Court has personal jurisdiction over Defendants because the causes of action arise from Defendants' conduct of business in this district. 12 U.S.C. § 5564(f).

4. Venue is proper in this district because Defendants do business in this district. *Id.*

PARTIES

5. The Bureau is an agency of the United States charged with regulating the offering and providing of consumer-financial products and services under "Federal consumer financial laws," 12 U.S.C. § 5491(a), including the CFPA. 12 U.S.C. § 5481(14). The Bureau has independent litigating authority, including the authority to enforce the CFPA. 12 U.S.C. § 5564(a)-(b).

6. Top Notch Funding II, LLC, is a limited-liability company. Its principal place of business is at 450 Bloomfield Ave., 2nd Floor, Verona, NJ 07044.

7. Donadio is the owner and CEO of Top Notch. He has substantial control over and involvement in the establishment of Top Notch's business policies and practices.

8. Cavalli worked with Donadio to provide marketing services for Top Notch, and to broker loans for its customers. His principal place of business is at 201 East 87th Street, Suite 17K, New York, NY 10128.

9. Donadio authorized Cavalli to provide marketing services and to run a website for Top Notch.

10. As described below, Defendants offer loans to consumers that are to be repaid from settlement proceeds or statutory-compensation funds once the consumers receive payouts from those sources. These are offers to extend credit to consumers for

purposes of the Consumer Financial Protection Act of 2010. Defendants therefore offer or provide consumer-financial products or services under § 1002 of the CFPA. 12 U.S.C. §§ 5481(5), 5481(15)(A)(i) and Defendants are therefore “covered persons” under § 1002 of the CFPA. 12 U.S.C. § 5481(6). Additionally, given his status as an officer or managerial employee, Donadio is a “related person” to Top Notch under the CFPA, 12 U.S.C. §5481(25), and is therefore a “covered person.”

FACTS

A. Background

11. Defendants purport to offer loans to consumers who have been awarded payouts from a settlement or a statutory-compensation fund, but who are awaiting payment from the defendant in the underlying suit or the claims administrator.

12. Donadio is Top Notch’s owner and CEO. He is responsible for all of its decisions and operations.

13. Donadio authorized Cavalli to recruit consumers on Top Notch’s behalf, including through websites and on social media. Cavalli did so by offering consumers loans on websites that he owned and operated, but that were presented as websites of the company, Top Notch. Cavalli also recruited customers for Top Notch through phone calls and social media.

14. Cavalli operated a number of websites, including topnotchlawsuitloans.com, to recruit consumers. The websites marketed loans to consumers entitled to payouts from legal settlements or victim-compensation funds. These consumers included former NFL players entitled to payments from the concussion settlement with the league, consumers entitled to payments under

settlements related to the Deepwater Horizon disaster, and 9/11 first responders entitled to payouts from the Zadroga Fund, established by Congress through the James Zadroga 9/11 Health and Compensation Act Of 2010.

15. Cavalli also created videos touting Top Notch's loan offers. These videos were hosted on YouTube and were shared with consumers through social-media accounts controlled by Cavalli.

16. Many of the consumers to whom Defendants offered loans have severe injuries, including neurological disorders.

17. Defendants offered loans to consumers who are beneficiaries of settlements or funds after the settlements or funds had been finally approved, including through final judgment in the case of settlements, and after the consumers had been formally approved to receive payment.

18. Defendants offered to provide consumers advances equal to a small portion of their expected payouts, with a larger amount to be repaid once the consumers received full payment of their awards.

19. Although Defendants held out Top Notch as the "Direct Lender" – i.e., the entity that would make the loans— Top Notch did not actually make loans. Rather, it acted only as a broker of transactions executed and funded by other entities.

20. When consumers expressed interest in a loan offer, Cavalli, Donadio, or both followed up with the consumer to provide more information, sign him up as a customer of Top Notch, and to broker a transaction from a third party.

21. In the instances in which Top Notch successfully brokered a transaction, Donadio and Cavalli typically split the commission.

22. Defendants stated in their marketing materials that they provided “loans.” In fact, Defendants did not intend to directly provide to consumers either a loan or an assignment.

23. The annual percentage rate (“APR”) is a measure of the cost of credit, expressed as a yearly rate.

24. Defendants represented in their marketing materials and in other communications with consumers that they offered loans with “2% APR,” and a “1%” interest rate.

25. In reality, the transactions brokered by Defendants (but provided by others) were in all cases more expensive for the consumers than a 2% APR or 1% interest rate loan would have been.

26. Defendants also represented in their marketing materials and in other communications with consumers that consumers could receive transaction proceeds in as little as 1 hour.

27. In reality, consumers would not, and could not, receive funds that quickly. Indeed, when Defendants successfully brokered a transaction, it often took weeks for the consumer to receive the proceeds.

28. Top Notch’s website claimed that Top Notch had offices in all 50 states, and that it had a staff of accounting, financial, and legal professionals.

29. In actuality, Top Notch had no offices and employed no accounting, financial, or legal professionals. Defendants simply copied these statements from the websites of other companies in the industry.

30. Top Notch's website, which Defendants operated and from which they benefitted, contained statements indicating that Top Notch was a direct lender, including explicit statements that it was a lender, as well as claims that it had an underwriting department that approved loan applications.

31. Donadio also directly represented to consumers that Top Notch was a direct lender.

32. In reality, Top Notch was not a lender and did not have an underwriting department. Consumers who dealt with Defendants to obtain an advance on their settlement proceeds were obligated to enter into a contract with a third party on terms that Defendants did not control or have knowledge of.

CAUSE OF ACTION—DECEPTION UNDER THE CFPA

33. Under the CFPA, a practice is deceptive if (1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

34. Defendants represented Top Notch as a direct lender—that is, an entity that would provide loans to consumers.

35. In fact, Top Notch did not provide loans to consumers; rather, it brokered transactions, connecting consumers with third parties and charging a commission for its service.

36. Defendants' misrepresentations that Top Notch was a direct lender are material because that misrepresentation would influence a consumer acting reasonably in deciding whether to deal with Top Notch at all. After consumers interact with Top

Notch, they must enter into separate contractual agreements with third parties to obtain their funds, and they must do so on terms that Top Notch does not control.

37. Defendants represented in numerous instances that the APR or interest rates on the loans it offered were as little as 1-2%.

38. In fact, the transactions consumers actually received from third parties were far more expensive than a loan with an APR or interest rate of 1-2% would have been.

39. Defendants' misrepresentations about the APR and interest rate are material because the APR and interest rate are central characteristics of a loan that consumers use to evaluate the costs of the transaction, and to compare those costs to potential alternatives.

40. Defendants represented in Top Notch's marketing materials that it was a business with offices in all 50 states and that it employed accounting, financial, and legal professionals.

41. In fact, Top Notch had only two employees, one of whom was Donadio, and its website and social-media marketing were conducted primarily by Cavalli. Top Notch did not have offices, and did not employ any professional staff.

42. Defendants' misrepresentations regarding the scope of their business and its professional staff are material because they would influence a consumer acting reasonably in deciding whether to do business with Top Notch and Defendants.

43. Defendants represented in their marketing materials that consumers could receive cash proceeds from Top Notch's loans within as little as one hour.

44. In fact, there was no reasonable prospect that consumers would or could receive funds that fast through a transaction brokered by Defendants.

45. Theses misrepresentations were material. A reasonable consumer might well consider when he or she would receive funds in determining whether to pursue or use the credit product Defendants offered.

46. Indeed, consumers considering transactions with Defendants were those with more immediate needs for cash than could be met by the payouts they were eventually due.

47. Defendants therefore engaged in deceptive acts and practices, in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

DEMAND FOR RELIEF

Plaintiff requests that the Court:

- a. enjoin Defendants from committing future violations of the CFPA;
- b. award damages or other monetary relief against Defendants;
- c. order Defendants to pay redress to consumers;
- d. offer disgorgement of ill-gotten revenues by Defendants;
- e. impose civil money penalties on Defendants under the CFPA;
- f. order Defendants to pay the costs incurred in connection with prosecuting this action; and
- g. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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