

**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. 1:17-cv-07114

Stipulated Final Judgment and Order

The Consumer Financial Protection Bureau (“Bureau”) commenced this civil action against Defendants on September 19, 2017, to obtain injunctive and other relief.

The Complaint alleges deceptive acts and practices in violation of § 1054 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

The Plaintiff and Defendants Top Notch Funding II, LLC, Rory Donadio, and John “Gene” Cavalli have requested that the Court enter this Stipulated Final Judgment and Order (“Order”).

Findings

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Plaintiffs and Defendants agree to entry of this Order, without

adjudication of any issue of fact or law, to settle and resolve all matters in this dispute arising from the conduct alleged in the Complaint to the date this Order is entered.

3. Defendants neither admit nor deny any allegations in the Complaint, except as specifically stated in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court's jurisdiction over Defendants and the subject matter of this action.

4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party will bear its own costs and expenses, including without limitation attorneys' fees.

5. Entry of this Order is in the public interest.

Definitions

6. The following definitions apply to this Order:

a. "Complaint" means the complaint filed in this action.

b. "Defendants" means Donadio, Cavalli, and Top Notch Funding II, LLC, or any of them individually or together.

c. "Effective Date" means the date on which the Order is entered on the docket.

d. "Post-Settlement Litigation Funding" means advancing funds to consumers who are awaiting payment from settled litigation.

e. "Victim Compensation Fund Funding" means advancing funds to consumers who are awaiting payment from a governmentally created victim-compensation fund.

f. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendants based on substantially the same facts as described in this Order or the Complaint.

Order

I. Conduct Prohibition

7. Defendants and their officers, agents, servants, and employees who have actual notice of this Order, whether acting directly or indirectly, may not violate §§ 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1)(B).

8. Defendants shall be permanently banned from any participation, whether direct or indirect, in Post-Settlement Litigation Funding and Victim Compensation Fund Funding, including but not limited to, offering, brokering, or providing credit or advances of funds to consumers entitled to payments from settlements or victim-compensation funds that forbid assignments of proceeds.

II. Monetary Provisions

9. Defendant Cavalli must pay a civil money penalty of \$10,000 by wire transfer to the Bureau or the Bureau’s agent in compliance with the Bureau’s wiring instructions within 30 days of the Effective Date.

10. Defendants Donadio and Top Notch Funding II, LLC, jointly and severally, must pay a civil money penalty of \$60,000 by wire transfer to the Bureau or the Bureau’s agent in compliance with the Bureau’s wiring instructions. Of this amount, Defendants Donadio and Top Notch Funding II, LLC, must pay \$20,000 within 30 days of the Effective Date and the remaining \$40,000 within 120 days of the Effective Date.

11. The penalties imposed in this Order take into account Defendants’ limited

financial resources, which is a mitigating factor under § 1055(c)(3)(A) of the CFPA.

12. Defendants must treat the civil money penalties paid under this Order as penalties paid to the government for all purposes. Defendants may not:

a. claim, assert or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or

b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

III. Additional Monetary Provisions

13. In the event of any default on Defendants' obligations to make payments under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

14. Defendants must relinquish all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendants.

15. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Defendants must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

IV. Reporting Requirements

16. Defendants must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to the filing of any bankruptcy or insolvency proceeding by or against Defendants; or a change in Defendants' name or address. Defendants must provide this notice, if practicable, before the development, but in any event no later than 14 days after the development.

17. Within 10 days of the Effective Date, each Defendant shall notify the Bureau of Defendant's: (a) current residence, postal address, email address, and telephone number; and (b) current role in any business activity, including any business for which they provide services, whether as an employee, officer, or otherwise, and any entity in which Defendant has any ownership interest, identifying for each its name, physical address, and internet address.

18. For 2 years from the Effective Date, each Defendant shall notify the Bureau of (a) any change in name, including aliases or fictitious names; (b) any change in residence, postal address, email address, or telephone number; or (c) any change in title or role in any business activity, including any business for which Defendant provides services, whether as an employee, officer, or any otherwise, and (d) any entity in which Defendant has any ownership interest, identifying for each its name, physical address, and internet address.

V. Notices

19. Unless otherwise directed in writing by the Bureau, respectively, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "In re Top Notch Funding II, LLC" and send them to the following address:

- a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTN: Office of Enforcement
1700 G St., NW
Washington, D.C. 20552

- b. By first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTN: Office of Enforcement
1700 G St., NW
Washington, D.C. 20552

VI. Cooperation with the Bureau

20. Defendants must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in the Complaint. Defendants must provide to the Bureau truthful and complete information, evidence, and testimony. Defendants must appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

VII. Compliance Monitoring

21. Within 14 days of receipt of a written request from the Bureau, Defendants must submit compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

22. Nothing in this Order will limit the Bureau's lawful use of compulsory process under 12 C.F.R. § 1080.6.

VIII. Administrative Provisions

23. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Defendants, except as described in Paragraph 24.

24. The Bureau releases and discharges Defendants from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in the Complaint, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in the Complaint in future enforcement actions against Defendants, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with this Order, or to seek penalties for any violations of this Order.

25. Calculation of time limitations will run from the Effective Date and will be based on calendar days, unless otherwise noted.

26. Should Defendants seek to transfer or assign all or part of their operations that are subject to this Order, Defendants must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Order.

27. This Order contains the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Order. This Order supersedes any prior oral or written

communications, discussions, or understandings.

28. Nothing in this Order may be construed as allowing Defendants or their officers or employees to violate any law, rule, or regulation.

IX. Retention of Jurisdiction

29. The Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

Dated: September ____, 2017

United States District Judge