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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 Consumer Financial Protection Bureau,
16 Plaintiff,
17 v.
18 LendUp Loans, LLC,
19 Defendant.

20 Case No. 3:21-cv-6945

21 COMPLAINT

22 The Consumer Financial Protection Bureau files this Complaint against LendUp
23 Loans, LLC (LendUp) and alleges as follows.

24 **Introduction**

25 1. LendUp claimed to offer larger loans at lower rates to repeat borrowers who
26 ascend its “LendUp Ladder.” But many borrowers who reached higher LendUp Ladder
27 levels did not, in fact, receive these promised benefits.

28 2. LendUp made these unfulfilled marketing claims despite a 2016 Bureau
Consent Order prohibiting it from making misrepresentations about the benefits of
borrowing from LendUp.

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Parties

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2 9. The Bureau is an agency of the United States created by the CFPB and charged
3 with regulating the offering and providing of consumer-financial products and services
4 under federal consumer-financial laws. 12 U.S.C. § 5491(a). The Bureau has independent
5 litigating authority and may initiate civil actions in federal district court to address violations
6 of “Federal consumer financial law.” 12 U.S.C. § 5564(a)–(b).

7 10. LendUp is a limited-liability company headquartered in Oakland, California.
8 LendUp offers and provides loans online to consumers primarily for personal, family, or
9 household purposes. LendUp’s loans are “consumer financial product[s] or service[s],” and
10 LendUp is a “covered person” under the CFPB. 12 U.S.C. § 5481(5)(A), (6)(A), (15)(A)(i).

Facts

11
12 11. Central to LendUp’s marketing and brand identity is the so-called “LendUp
13 Ladder.” LendUp’s website explained: “Traditionally, payday lenders treat all their customers
14 the same: Repeat borrowers with perfect repayment records are charged the same interest
15 and fees as unproven first-time borrowers. We think that’s wrong. So we built the LendUp
16 Ladder to incentivize responsible actions and enable borrowers to earn access to apply for
17 larger loans at lower interest rates over time.”

18 12. According to LendUp’s marketing, borrowers who repaid loans on time and
19 took free courses offered through LendUp’s website would earn “points” that would allow
20 them to “climb” to higher Ladder levels, where they could access lower interest rates and
21 larger loan amounts. Under the tagline “Climb to a brighter financial future,” LendUp stated
22 on its website, “Over time, you can earn points to climb the LendUp Ladder to apply for
23 larger loans at lower rates. . . . Earning points is as simple as making on-time loan payments
24 and taking our free financial education courses.”

25 13. In fact, many repeat borrowers who ascended to higher Ladder levels did not
26 receive lower interest rates; they received the same or higher rates compared to their
27 previous loans.

- 1 (a) Between October 2016 and January 2020, LendUp extended over 340,000
2 single-payment loans to over 80,000 borrowers where LendUp charged the
3 same interest rate as it had charged the borrower for an identical loan at a
4 lower Ladder level.
- 5 (b) Between October 2016 and January 2020, LendUp extended over 30,000
6 single-payment loans to over 15,000 borrowers where LendUp charged the
7 same interest rate on a larger loan compared to a loan of the same duration
8 that it had extended to the borrower at a lower Ladder level.
- 9 (c) Between October 2016 and January 2020, LendUp extended about 150,000
10 single-payment loans to over 30,000 borrowers where LendUp charged a
11 higher interest rate than it had charged the borrower for an otherwise
12 identical loan at a lower Ladder level.
- 13 (d) Between October 2016 and January 2020, LendUp extended over 30,000
14 single-payment loans to over 15,000 borrowers where LendUp charged a
15 higher interest rate on a larger loan compared to a loan of the same duration
16 that it had extended to the borrower at a lower Ladder level.

17 14. And many borrowers did not in fact gain access to larger loans as they moved
18 up the LendUp Ladder. LendUp offered “Silver,” “Gold,” “Platinum,” and “Prime” Ladder
19 levels. (It did not, however, offer all Ladder levels in every state.) In some states, LendUp
20 offered the same maximum-available loan amount at both the Silver and Gold Levels; a
21 borrower who ascended from Silver to Gold could not access a larger loan. And in some
22 states, Silver and Gold were the only available Ladder levels.

23 15. In some instances, LendUp unilaterally reduced the maximum loan amount
24 available to borrowers who had maintained their Ladder level. Between October 2016 and
25 January 2020, over 10,000 repeat borrowers saw their maximum available loan amount
26 decrease, despite having continued to accrue Ladder points. Many of these affected
27 borrowers had reached the highest Ladder level, Prime.

1 16. On September 27, 2016, the Bureau issued an administrative consent order
2 against LendUp under the caption *Flurish, Inc. d/b/a LendUp*, 2016-CFPB-0023 (the 2016
3 Consent Order). The 2016 Consent Order went into effect on its issuance date and remains
4 in effect. The 2016 Consent Order prohibited LendUp from “misrepresent[ing] . . . expressly
5 or impliedly[,] [t]he benefits of borrowing from [LendUp], including access to and availability
6 of loan products.”

7 17. Since October 2016, LendUp has failed to provide timely and accurate adverse-
8 action notices after declining credit applications. In over 7,400 instances, LendUp failed to
9 provide adverse-action notices within 30 days after receiving a completed application. And in
10 over 71,800 instances, LendUp’s adverse-action notices misstated the principle reasons why
11 it declined the credit application.

12 Count I

13 *Violation of the CFPA*

14 *(Deceiving Consumers Regarding Benefits of Repeat Borrowing)*

15 18. The Bureau realleges and incorporates by reference paragraphs 1–16.

16 19. Section 1036(a)(1)(B) of the CFPA prohibits covered persons, such as LendUp, from
17 engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is
18 deceptive if it involves a material misrepresentation or omission that is likely to mislead
19 consumers acting reasonably under the circumstances. Information is material to consumers
20 if it is likely to affect a consumer’s conduct regarding the product or service.

21 20. LendUp misrepresented the benefits of repeat borrowing from LendUp, including by
22 claiming that borrowers who ascended the LendUp Ladder would gain access to larger loans
23 at lower rates when, in fact, that was not true for tens of thousands of consumers. LendUp’s
24 claims were likely to mislead consumers acting reasonably under the circumstances about the
25 benefits of LendUp’s Ladder program to returning borrowers. And LendUp’s claims were
26 material because they were likely to affect consumers’ decisions to borrow from LendUp in
27 the first instance, take out subsequent loans from LendUp, and repay the loans.

28 Complaint

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1 21. LendUp therefore engaged in deceptive acts or practices that violated §§ 1031(a) and
2 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a); 5536(a)(1)(B).

3 **Count II**

4 *Violation of the CFPA*

5 *(Making Misrepresentations Prohibited by the 2016 Consent Order)*

6 22. The Bureau realleges and incorporates by reference paragraphs 1–16.

7 23. Under § 1036(a)(1)(A) of the CFPA, it is unlawful for covered persons, such as
8 LendUp, to “commit any act or omission in violation of a Federal consumer financial law.”
9 12 U.S.C. § 5536(a)(1)(A).

10 24. The 2016 Consent Order is an “order prescribed by the Bureau” and is therefore a
11 “Federal consumer financial law.” 12 U.S.C. § 5481(14).

12 25. The 2016 Consent Order prohibits LendUp from expressly or impliedly
13 misrepresenting the benefits of borrowing from LendUp, including access to and availability
14 of its loan products.

15 26. Since the 2016 Consent Order took effect, LendUp has misrepresented the benefits of
16 borrowing from LendUp, including by claiming that returning borrowers who climb the
17 LendUp Ladder gain access to larger loans at lower interest rates when, in many instances,
18 such claims were not true.

19 27. LendUp’s misrepresentations violated the 2016 Consent Order and thereby violated a
20 Federal consumer financial law. Accordingly, LendUp violated § 1036(a)(1)(A) of the CFPA.
21 12 U.S.C. § 5536(a)(1)(A).

22 **Count III**

23 *Violation of ECOA and Regulation B*

24 *(Failing to Provide Timely and Accurate Adverse-Action Notifications)*

25 28. The Bureau realleges and incorporates by reference paragraphs 1–17.

26 29. When a consumer applies for and is denied credit, ECOA and its implementing
27 regulation, Regulation B, require creditors, such as LendUp, to explain the principal reasons

1 why adverse action was taken, providing transparency about the underwriting process and
2 helping to protect against potential credit discrimination. *See* 15 U.S.C. §§ 1691–1691f; 12
3 C.F.R. § 1002.9(a)–(b).

4 30. ECOA and Regulation B require a creditor to notify an applicant of the action taken
5 on the credit application within 30 days after receiving a completed application. 12 C.F.R.
6 § 1002.9(a)(1).

7 31. Since October 2016, LendUp has failed to provide notice of adverse action taken
8 within 30 days of receiving a completed application on over 7,400 applications.

9 32. ECOA and Regulation B also specify the content of an adverse-action notice. The
10 creditor must provide either a statement of the specific reasons for the action taken or a
11 disclosure of the applicant’s right to request a statement of specific reasons. 12 C.F.R.
12 § 1002.9(a)(2)(i), (ii). Where the creditor provides a statement of the specific reasons for the
13 action taken, those reasons “must be specific and indicate the principal reason(s) for the
14 adverse action.” 12 C.F.R. § 1002.9(b)(2).

15 33. Since October 2016, LendUp has issued over 71,800 adverse-action notices to credit
16 applicants that failed to accurately describe the principal reasons why LendUp denied the
17 application.

18 34. LendUp thereby violated ECOA and Regulation B. 15 U.S.C. §§ 1691–1691f; 12
19 C.F.R. § 1002.9(a)–(b).

20 **Count IV**

21 *Violation of the CFPA*

22 *(Violating Federal Consumer Financial Law)*

23 35. The Bureau realleges and incorporates by reference paragraphs 1–17.

24 36. Under § 1036(a)(1)(A) of the CFPA, it is unlawful for covered persons, such as
25 LendUp, to “commit any act or omission in violation of a Federal consumer financial law.”
26 12 U.S.C. § 5536(a)(1)(A).

1 37. ECOA and Regulation B are “Federal consumer financial laws.” 12 U.S.C.
2 § 5481(12)(D), (14).

3 38. LendUp’s ECOA and Regulation B violations, described above in Count III,
4 constitute violations of § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

5 **Demand for Relief**

6 The Bureau requests that the Court:

- 7 a. permanently enjoin LendUp from committing future violations of the CFPA,
8 the Bureau’s 2016 Consent Order, ECOA, or any provision of “Federal
9 consumer financial law,” as defined by 12 U.S.C. § 5481(14);
10 b. grant additional injunctive relief as the Court deems just and proper;
11 c. order LendUp to pay damages, restitution, and other monetary relief to
12 consumers;
13 d. order LendUp to pay disgorgement or compensation for unjust enrichment;
14 e. impose on LendUp a civil money penalty;
15 f. award costs against LendUp; and
16 g. award additional relief as the Court deems just and proper.

17 Respectfully submitted,

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