

EXHIBIT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Plaintiff,

v.

ACCESS FUNDING, LLC,
ACCESS HOLDING, LLC,
RELIANCE FUNDING, LLC,
LEE JUNDANIAN,
RAFFI BOGHOSIAN,
MICHAEL BORKOWSKI, and
CHARLES SMITH,

Defendants.

Case No. 1-16-cv-03759-JFM

AMDENDED COMPLAINT

Plaintiff, the Consumer Financial Protection Bureau (“Bureau”), alleges as follows:

INTRODUCTION

1. The Bureau brings this action against Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, Lee Jundanian, Raffi Boghosian, Michael Borkowski, and Charles Smith to address Defendants’ unfair, abusive, and deceptive practices related to Access Funding’s purchase of structured settlements, in violation of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531, 5536(a).

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction because the 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 in this district, and Defendants reside here. 12 U.S.C. § 5564(f).

4. Venue is proper in this district because Defendants are located, reside, and 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. Access Funding is a limited-liability company that operated in all 50 states. Its principal place of business is at 6900 Wisconsin Ave, Suite 700, Chevy Chase, Maryland. From December 2012 through November 2015, Access Funding purchased payment streams from structured-settlement holders, a practice referred to as "structured-settlement factoring." Access Funding conducted business under two alter-ego names, Assoc LLC, and En Cor LLC.

7. As described below, Access Funding provided advances to consumers that were to be repaid through a deduction from the proceeds of structured-settlement transfers once those transactions were completed. These advances were extensions of credit to consumers and were therefore consumer-financial products or services under

§ 1002 of the CFPA. 12 U.S.C. §§ 5481(5), 5481(15)(A)(i). Access Funding is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6).

8. Access Holding is a limited-liability company organized under the laws of Delaware and headquartered at 6900 Wisconsin Avenue, Suite 700, Chevy Chase, Maryland. Access Holding is the sole and managing member of Access Funding and is legally responsible for the liabilities of Access Funding.

9. Reliance Funding is a limited-liability company engaged in structured-settlement factoring and is the successor company to Access Funding. Reliance Funding’s principal place of business is at 6900 Wisconsin Ave, Suite 700, Chevy Chase, Maryland. On October 17, 2015, after being notified of the Bureau’s investigation through service of a Civil Investigative Demand, Access Funding, through its affiliate Access Holding, sold its assets to Reliance Funding. Reliance Funding is a successor in interest to Access Funding.

10. Lee Jundanian served as CEO of Access Funding from February 2013 to May 2014. After May 2014, Jundanian was an advisor to Access Funding. Jundanian has an ownership interest in Access Funding and helped develop Access Funding’s business model and manage its business. Under the CFPA, Jundanian is a “related person” to Access Funding because he was a director, officer, or employee charged with managerial responsibility for the company and a shareholder who materially participated in the conduct of its affairs. 12 U.S.C. § 5481(25)(C)(i), (ii). As a result, he is a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

11. Raffi Boghosian has served as COO of Access Funding since May 2014, with responsibilities including managing marketing and sales activities. Boghosian has

an ownership interest in Access Funding and helped develop Access Funding's business model and manage its business. Under the CFPA, Boghosian is a "related person" to Access Funding because he was a director, officer, or employee charged with managerial responsibility for the company and a shareholder who materially participated in the conduct of its affairs. 12 U.S.C. § 5481(25)(C)(i), (ii). As a result, he is a "covered person" under the CFPA. 12 U.S.C. § 5481(25)(B).

12. Michael Borkowski has served as CEO of Access Funding since May 2014. Before May 2014, he served as CFO and COO of Access Funding. Borkowski has an ownership interest in Access Funding and helped develop Access Funding's business model and manage its business. Under the CFPA, Borkowski is a "related person" to Access Funding because he was a director, officer, or employee charged with managerial responsibility for the company and a shareholder who materially participated in the conduct of its affairs. 12 U.S.C. § 5481(25)(C)(i), (ii). As a result, he is a "covered person" under the CFPA. 12 U.S.C. § 5481(25)(B).

13. Charles Smith provided purportedly independent professional advice for almost all Maryland consumers who made structured-settlement transfers to Access Funding. Under the CFPA, Smith is a "covered person" because he provided "financial advisory services" in the form of advice to consumers regarding these transactions. 12 U.S.C. § 5481(6), (15)(A)(viii). Further, although he is a Maryland-based attorney, Smith did not have an attorney-client relationship with the Maryland consumers he spoke to about structured-settlement transfers to Access Funding. Smith is therefore not protected by the "practice of law" exclusion in the CFPA. 12 U.S.C. 5517(e).

FACTS

14. Defendants Lee Jundanian, Raffi Boghosian, and Michael Borkowski (together with Access Funding and Access Holding, the “Access Funding Defendants”) founded Access Funding on or around December 1, 2012.

15. As CEO and part owner of Access Funding, Jundanian was responsible for managing all operations of the company.

16. As COO and part owner of Access Funding, Boghosian was responsible for managing Access Funding’s marketing and sales activities.

17. As CFO, COO, and, after May 2014, CEO of Access Funding, Borkowski was responsible for managing all operations of the company.

18. From its founding through November 2015, Access Funding’s principal business was to acquire future structured-settlement-payment streams and transfer those payment streams to third-party investors.

19. Structured settlements are established by legal judgments or settlements of tort claims to provide recipients with an arrangement for periodic payment of damages for personal injuries. Structured settlements are often used to ensure the financial well-being of victims who have suffered long-term physical or cognitive harm.

20. Structured-settlement-factoring companies like Access Funding offer recipients of structured settlements the opportunity to transfer a portion of their future payment streams in exchange for a discounted immediate lump sum.

21. Forty-nine states have enacted Structured Settlement Protection Acts (“SSPAs”) that set forth requirements for structured-settlement transfers.

22. Under state SSPAs and federal tax law, 26 U.S.C. § 5891, a structured-settlement-factoring company that wishes to purchase all or a portion of a structured settlement from a structured-settlement holder and avoid certain taxes must, among other things, petition for and receive court approval for the sale.

23. Access Funding searched court records for approved transfers to identify consumers who had previously transferred a portion of their structured settlements.

24. Access Funding also searched court records for pending filings by other structured-settlement-factoring companies and contacted the consumers involved before the courts approved the transfers to attempt to convince the consumers to back out of the pending transfers and enter transactions with Access Funding instead.

25. Access Funding continued to pressure structured-settlement holders to enter additional transactions with it until all of their remaining expected payments were transferred.

26. Access Funding conducted aggressive outreach to structured-settlement holders by phone and through targeted direct mail.

27. Consumers received a steeply discounted lump sum in return for signing away their future payment streams. The lump sums Access Funding provided consumers typically represented only about 30% of the present value of those future payments.

28. Many of the consumers from whom Access Funding purchased settlements were lead-poisoning victims with cognitive impairments. Structured settlements had been deemed to be the most appropriate settlements for these individuals. The Access Funding Defendants were aware of these facts.

29. Many SSPAs, including Maryland's, require the court to find that the consumer has consulted with an independent professional advisor ("IPA") before it can approve a structured-settlement transfer.

30. In order to finalize transfers of structured settlements, Jundanian, Boghosian, and Borkowski each had responsibility for ensuring that Access Funding's transferors had consulted an IPA in states where the SSPA required it.

31. Access Funding conducted approximately 70% of its transfers in Maryland. The company sought court approval for about 200 transfers in Maryland from 2013 to 2015, of which at least 158 have been approved.

32. During the relevant period, Maryland's SSPA required that an IPA advise on the financial, legal, and tax implications of a transfer. Md. Cts. & Jud. Proc. §§ 5-1102(b)(3) (2000).

33. Access Funding steered nearly all its Maryland consumers to a single individual, Charles Smith, who acted as the IPA for almost all of its Maryland transactions.

34. Smith had both personal and professional ties to the Access Funding Defendants.

35. Access Funding typically paid Smith \$250 for each IPA letter he provided. The company paid him directly.

36. Access Funding initiated Smith's contact with consumers by sending him a copy of the consumer's structured-settlement-transfer-disclosure statement, along with the consumer's phone number.

37. In some instances, Access Funding couriered to consumers prepaid cell phones that Smith used to contact the consumers. Other times, Access Funding's salespeople initiated a three-way call with Smith and a consumer. Access Funding took these steps to ensure the calls with Smith were completed.

38. Access Funding had consumers sign statements indicating that they had received IPA services from Smith even before Smith had spoken to the consumers.

39. Access Funding salespeople instructed consumers intending to complete structured-settlement transfers that speaking with Smith was one of the steps the consumers were required to complete. But neither Access Funding nor Smith typically informed consumers that Smith was an attorney, and consumers typically did not know that Smith was an attorney.

40. Consumers did not believe that Smith was acting as their attorney, and they did nothing to indicate that they intended to have an attorney-client relationship with him.

41. Before speaking with a consumer, Smith typically spent ten to fifteen minutes reviewing the settlement-transfer-disclosure statement and any other documents provided by Access Funding.

42. Smith did not ask consumers for any additional information beyond the documents Access Funding provided.

43. Smith's phone calls with consumers typically lasted between five and ten minutes. During the calls, Smith merely recited the terms from the structured-settlement-transfer-disclosure statement provided by Access Funding and asked whether the consumers understood them.

44. Smith did not tell consumers he was acting as their attorney on these calls or at any other time.

45. In some instances, Access Funding's salespeople were on these calls along with Smith and the consumer.

46. Smith did not explain to consumers that he represented them, as opposed to Access Funding, or that their interests might be different from Access Funding's.

47. Apart from this single, brief phone call, Smith typically had no other contact with the consumer.

48. After speaking with a consumer, Smith spent about ten minutes drafting and sending a letter and invoice to Access Funding. The letter was substantially the same for every consumer to whom Smith purportedly provided IPA services, stating that the consumer had received "independent professional advice." Access Funding later submitted the IPA letters to the court for approval of the transfer.

49. Consumers did not receive or approve the letters Smith prepared for Access Funding. Smith provided the letters directly to Access Funding, which submitted them to the court.

50. Smith never met with a consumer in person.

51. Consumers never received anything in writing or signed any document that evidenced an attorney-client relationship with Smith.

52. Smith did not provide consumers advice about their structured-settlement transfers apart from his recitation of the terms from the document Access Funding provided him.

53. Smith did not analyze whether structured-settlement transfers would be in consumers' best interest and did not offer consumers advice about whether the transactions would be in their best interest.

54. Smith never advised a consumer not to enter into a structured-settlement-transfer contract.

55. Smith never advised a consumer to seek additional money from Access Funding.

56. Smith never advised a consumer to sell fewer payments, or a different duration of payments, to Access Funding.

57. Smith did not disclose to consumers his personal and professional ties to the Access Funding Defendants, and he did not obtain written informed consent from consumers regarding any potential conflicts of interest.

58. Jundanian, Boghosian, and Borkowski were aware that Access Funding was steering nearly all of its Maryland customers to Smith, that Smith had ties to the Access Funding Defendants, and that Smith was compensated directly by Access Funding for his purported services.

59. Access Funding provided advances to many consumers, both in Maryland and elsewhere, while the consumers waited to complete their paperwork and finalize their transfers. These advances often consisted of \$500 for signing a contract, \$1000 when a court date was set, and another \$1000 when a judge approved the sale.

60. Jundanian, Boghosian, and Borkowski each participated in establishing Access Funding's policies related to advances, including the terms of the advances and

how they were presented to consumers, and dictated when Access Funding would issue advances to consumers.

61. Access Funding's advance agreements stated that consumers were required to cooperate fully with the company in obtaining court approval for the contemplated transfer and that consumers would be liable for the advance if the transaction was not completed.

CAUSES OF ACTION

Count I (Against Smith) Unfair Acts and Practices Under the CFPA

62. The allegations in paragraphs 1-61 are incorporated by reference.

63. Under § 1031(c) of the CFPA, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers, and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. §§ 5531(c), 5536(a)(1)(B).

64. Smith held himself out as an "independent professional advisor," and by purporting to provide IPA services for purposes of the structured-settlement transactions, was therefore obligated to explain the financial, legal, and tax implications of the transfers consumers made to Access Funding.

65. Smith did not tell consumers about his relationship with Access Funding. He provided virtually no advice to these consumers, and did not take the consumers' personal circumstances, including other debt obligations, into consideration. Smith was compensated directly by Access Funding for his services.

66. Smith's conduct caused or was likely to cause substantial injury to consumers because he did not actually provide "independent" professional advice and did not disclose his lack of independence to consumers. Consumers who otherwise could have availed themselves of truly independent advice, which might have dissuaded them from moving forward with transactions that were not in their best interests or permitted them to evaluate alternatives, were not aware that the advice they were receiving was not independent.

67. The injury to consumers was not reasonably avoidable by consumers because Smith failed to disclose that the advice he purported to give was not independent.

68. The injury was not outweighed by countervailing benefits to consumers or to competition.

69. Smith therefore engaged in unfair acts or practices, in violation of §§ 1031 and 1036 of the CFPA. 12 U.S.C. § 5531(a), 5536(a)(1)(B).

Count II
(Against Smith)
Deceptive Acts and Practices Under the CFPA

70. The allegations in paragraphs 1-61 are incorporated by reference.

71. 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).

72. Smith represented to consumers that he provided "independent" professional advice. Smith knew that the Maryland SSPA required independent

professional advice before a transaction could be approved, and that consumers signed affidavits for Access Funding stating “I have been advised to seek independent professional advice in connection with the transfer. I have received independent professional advice and desire to go forward with the transaction.”

73. In fact, Smith misrepresented his independence from Access Funding. He had personal and professional ties to the Access Funding Defendants and was paid directly by Access Funding. Smith’s lack of independence was material to consumers, who, had they known Smith was not independent, likely would have known that his advice was insufficient to move forward with the transaction. Consumers were reasonable in believing that the person purporting to provide independent professional advice to them was independent.

74. Smith therefore engaged in deceptive acts or practices, in violation of §§ 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**Count III
(Against Smith)
Abusive Acts and Practices Under the CFPA**

75. The allegations in paragraphs 1-61 are incorporated by reference.

76. Under § 1031(d)(2)(C) of the CFPA, a practice is abusive if it takes unreasonable advantage of “the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.” 12 U.S.C. § 5531(d)(2)(C).

77. Under § 1031(d)(2)(A) of the CFPA, a practice is abusive if it takes unreasonable advantage of “a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.” 12 U.S.C. § 5531(d)(2)(A).

78. Consumers were told they needed independent advice and were directed by Access Funding to Smith for IPA services. Smith held himself out as providing independent professional advice on the implications of consumers' contemplated transfers. Consumers reasonably relied on Smith to provide independent professional advice that took their best interests into account.

79. Smith was not independent; rather, he had personal and professional ties to the Access Funding Defendants. Smith did not seek out or consider information about the consumers' best interests; rather, he advised consumers without having any information about the consumers' financial situations. Smith was paid by Access Funding for the IPA services he provided to Access Funding consumers.

80. Consumers did not understand that Smith was not providing independent professional advice or that he did not take their individual circumstances or interests into account. They also did not understand that their interests would likely be better served by a truly independent advisor.

81. The cursory interactions Smith had with consumers implied to consumers that they did not need to understand anything else about the transfers they were contemplating.

82. Smith took unreasonable advantage of consumers' reliance on him to act in their best interests, in violation of §§ 1031(d)(2)(C) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(c), 5536(a)(1)(B).

83. Smith took unreasonable advantage of consumers' lack of understanding of the material risks, costs, and conditions of the advice he purported to provide about

structured-settlement transfers, in violation of §§ 1031(d)(2)(A) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(A), 5536(a)(1)(B).

Count IV
(Against the Access Funding Defendants)
Substantial Assistance to Smith's Unfair, Deceptive, and Abusive Acts

84. The allegations in paragraphs 1-61 are incorporated by reference.

85. It is unlawful to knowingly or recklessly provide substantial assistance to a covered person in violation of the provisions of § 1031 of the CFPA. 12 U.S.C. § 5536(a)(3).

86. Access Funding referred nearly all of its Maryland consumers to Smith for IPA services, ensured Smith could contact the consumers, had consumers sign letters saying they had received IPA services before they had spoken with Smith, and paid Smith directly for his services.

87. Access Funding knew or should have known that Smith engaged in only cursory communications with these consumers and did not provide truly independent professional advice, including by failing to consider consumers' individual circumstances. Access Funding knew or should have known that Smith's representations that the consumers he advised had received independent professional advice were inaccurate.

88. As CEO and part owner of Access Funding, Jundanian was responsible for managing the operations of the company, including ensuring that structured-settlement transferors received independent professional advice in states where the SSPA required it so that Access Funding could seek court approval of the transactions.

89. As COO and part owner of Access Funding, Boghosian was responsible for marketing and sales activities, which involved ensuring that structured-settlement transferors received independent professional advice in states where the SSPA required it so that Access Funding could seek court approval of the transactions.

90. As CEO, CFO, and COO and part owner of Access Funding, Borkowski was responsible for managing the operations of the company, including ensuring that structured-settlement transferors received independent professional advice in states where the SSPA required it so that Access Funding could seek court approval of the transactions.

91. Jundanian, Boghosian, and Borkowski were aware that Access Funding referred nearly all of its Maryland consumers to Smith for IPA services, that Smith had personal relationships with individuals at Access Funding, that Smith was paid directly by Access Funding for providing purported IPA services, and that Smith could be relied on to provide IPA letters when asked.

92. The Access Funding Defendants therefore knowingly or recklessly provided substantial assistance to Smith's unfair, deceptive, and abusive acts or practices, in violation of §§ 1031 and 1036(a)(3) of the CFPA. 12 U.S.C. §§ 5531, 5536(a)(3).

Count V
(Against the Access Funding Defendants)
Abusive Acts and Practices Related to Advances to Consumers

93. The allegations in paragraphs 1-61 are incorporated by reference.

94. Under § 1031(d)(2)(A) of the CFPA , a practice is abusive if it takes unreasonable advantage of consumers' lack of understanding of the material risks, costs, or conditions of a financial product or service. 12 U.S.C. § 5531(d)(2)(A).

95. As the Access Funding Defendants knew, Access Funding's consumers frequently had an immediate need for cash, and the company's practice was to encourage consumers to take advances to meet those needs.

96. The Access Funding Defendants represented to the consumers who received advanced, including in the advance agreement Access Funding used, that consumers would be bound to complete the transactions and liable to repay the advance amounts if they did not complete the transaction.

97. Consumers who could not otherwise repay the advances were told that they were obligated to go forward with the transfer even if they realized it was not in their best interest.

98. Consumers did not understand the risks or conditions of the advances, including that the advances did not bind them to complete the transactions.

99. The Access Funding Defendants therefore took unreasonable advantage of consumers' lack of understanding of the material risks, costs, or conditions of the advance loans, in violation of §§ 1031(d)(2)(A) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(A), 5536(a)(1)(B).

DEMAND FOR RELIEF

Plaintiff requests that the Court:

- a. permanently enjoin Defendants from participating in the structured-settlement industry in any way;

- b. award damages or other monetary relief against Defendants;
- c. order Defendants to pay redress to consumers;
- d. order disgorgement of ill-gotten revenues by Defendants;
- e. impose civil money penalties on Defendants under the CFPB;
- f. order Defendants to pay the Bureau's 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,

ANTHONY ALEXIS
Enforcement Director
JEFFREY PAUL EHRlich
Deputy Enforcement Director
JOHN C. WELLS
Assistant Litigation Deputy

/s/ Christina S. Coll
CHRISTINA S. COLL (Fed. Bar No. 806530,
CA Bar No. 250712)
JAMES MEADE (Fed. Bar No.803044,
DC Bar No. 414732)
Enforcement Attorneys
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552
Telephone (Coll): 202-435-7843
Telephone (Meade): 414-645-6616
Facsimile: 202-435-7722
e-mail: christina.coll@cfpb.gov
e-mail: james.meade@cfpb.gov
Attorneys for Plaintiff
Consumer Financial Protection Bureau