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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 JAMES “GENE” CAVALLI,

Defendants.

Case No. 1:17-cv-7114-GHW

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 § 1036(a)(1)(B) of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. § 5536(a)(1)(B).

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

Introduction

1. The Bureau and Defendants consent that this Court has jurisdiction over the parties and the subject matter of this action.
2. The Bureau 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.

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. The Bureau and Defendants waive findings of fact and conclusions of law.

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 \$12,500 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 \$62,500 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 \$42,500 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.

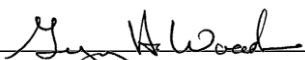
28. Nothing in this Order may be construed as allowing Defendants or their officers or employees to violate any law, rule, or regulation.

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: January 30, 2018
New York, New York



GREGORY H. WOODS
United States District Judge



**United States District Court
Southern District of New York**

Ruby J. Krajick
Clerk of Court

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____CV____ () ()

-against-

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☐ order entered on: _____
(date that judgment or order was entered on docket)

that: _____

(If the appeal is from an order, provide a brief description above of the decision in the order.)

Dated _____

Signature* _____

Name (Last, First, MI) _____

Address _____

City _____

State _____

Zip Code _____

Telephone Number _____

E-mail Address (if available) _____

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

____ CV _____ ()()

**MOTION FOR EXTENSION
OF TIME TO FILE NOTICE
OF APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on _____ but did not file a notice of appeal within the required
date
time period because:

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

Dated:

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

(List the full name(s) of the defendant(s)/respondent(s).)

____CV____ () ()

**MOTION FOR LEAVE TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

Dated

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

Application to Appeal In Forma Pauperis

_____ v. _____ Appeal No. _____
 District Court or Agency No. _____

<p>Affidavit in Support of Motion</p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
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My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. *How much cash do you and your spouse have? \$_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [] Yes [] No Is property insurance included? [] Yes [] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
Total monthly expenses:	\$	\$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

☐ Yes ☐ No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* ☐ Yes ☐ No

If yes, how much? \$ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City _____ State _____

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____