

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPRICE MARKETING LLC, a Delaware limited
liability company, *et al.*,

Defendants.

Case No. 13-CIV-6072

Judge John Z. Lee

Magistrate Judge Geraldine Soat Brown

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendants participated in deceptive and unfair acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in the promotion of payday loans.

3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Charge”** (as a noun or verb) means any claimed obligation to pay against a Financial Account, any debit, or any other withdrawal from a Financial Account.

B. **“Corporate Defendants”** means Caprice Marketing LLC (“Caprice”), NuVue Partners LLC (“NuVue”), Capital Advance LLC (“Capital Advance”), Loan Assistance Company LLC (“Loan Assistance”), and ILife Funding, LLC (“ILife”), by whatever other names each may be known, and their successors and assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

C. **“Credit-Related Product or Service”** means a product or service that is

represented, expressly or by implication, to (a) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving credit in any form; (b) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving debit or prepaid or stored value cards; (c) improve, or arrange to improve, any consumer's credit record, credit history, or credit rating; (d) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any advice or assistance with regard to payday loans or any other form of credit; or (e) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any service represented, expressly or by implication, to renegotiate, settle, in any way alter the terms of payment or other terms of, or otherwise manage the debt between a consumer and one or more creditors, servicers, or debt collectors.

D. **"Defendants"** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination, and by whatever other names each may be known, including, but not limited to, Vantage Funding, Ideal Advance, Capital Advance Capitol, Palm Loan Advances, Loan Tree Advances, Your Loan Funding, Pacific Advances, and Mulrooney-London, Inc.

E. **"Financial Account"** means a credit card, debit card, pre-paid or stored value card, bank account, or other account through which a consumer can be Charged.

F. **"Financial Institution"** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

G. **“Individual Defendants”** means Sean C. Mulrooney, also doing business as Mulrooney-London, Inc., and Odafe Stephen Ogaga, also doing business as Mulrooney-London, Inc., and by whatever other names each may be known.

H. **“Remotely Created Check”** means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank. For purposes of this definition, a Remotely Created Check originates as a paper-based transaction, but can be processed subsequently through electronic means (such as through check imaging or scanning) or through non-electronic means. A Remotely Created Check is often also referred to as a “RCC,” “demand draft,” “bank draft,” “bank check,” or “preauthorized draft.”

I. **“Remotely Created Payment Order”** (“RCPO”) means a payment instruction or order drawn on a person’s account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank. For purposes of this definition, unlike a Remotely Created Check, a Remotely Created Payment Order does not originate as a paper-based transaction. A Remotely Created Payment Order is created when a seller, merchant, payment processor, or other entity

directly or indirectly enters Financial Account and routing numbers into an electronic check template that is converted into an electronic file for deposit into the check clearing system.

ORDER

I. BAN ON COLLECTION AND SALE OF FINANCIAL ACCOUNT INFORMATION

IT IS ORDERED that Defendants are permanently restrained and enjoined from collecting, selling, renting, brokering, purchasing, transferring, or otherwise disclosing, a consumer's Financial Account number or similar identifier, or assisting others in collecting, selling, renting, brokering, purchasing, transferring, or disclosing a Financial Account number or similar identifier, in any form, including but not limited to lists, computer media, to, from, for, or with any unaffiliated third party. Notwithstanding the foregoing, Defendants may disclose a Financial Account number or other identifier that a consumer directly gives to Defendants, provided that (a) Defendants' disclosure is for the sole purpose of permitting Defendants to process and complete a specific transaction expressly authorized by the consumer, and such transaction is otherwise permitted by this Order; and (b) Defendants destroy Financial Account information within 30 days of processing a transaction for that consumer, except as necessary to comply with Sections VI and IX of this Order.

II. BAN ON REMOTELY CREATED CHECKS AND PAYMENT ORDERS

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from creating or causing to be created, directly or indirectly, or assisting others in creating or causing to be created, directly or indirectly, a Remotely Created Check or a Remotely Created Payment Order as payment for products or services.

III. BAN ON CREDIT-RELATED PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from marketing, providing, or assisting others in marketing or providing any Credit-Related Product or Service, or from attempting to collect, sell, or assign a right to collect money from a consumer who purportedly agreed to purchase a Credit-Related Product or Service.

IV. PROHIBITED BUSINESS ACTIVITIES RELATING TO ANY PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the marketing, advertising, promotion, offering for sale, or sale of any product or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

1. the total cost to purchase, receive, or use, or the quantity of, the product or service;
2. any material restriction, limitation, or condition on purchasing, receiving, or using the product or service;
3. any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the product or service; and
4. any material aspect of the performance, efficacy, nature, or central

characteristics of the product or service.

B. Charging, causing to be charged, or assisting others in charging any consumer's credit card, or debiting, causing to be debited, or assisting others in debiting any Financial Account without the consumer's express informed consent for such charge or debit.

V. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Six Million One Hundred Ninety Two Thousand Three Hundred Sixty One Dollars (\$6,192,361.00) is entered in favor of the Commission against the Individual and Corporate Defendants, jointly and severally, as equitable monetary relief.

B. Defendants are ordered to pay to the Commission Fifty Thousand Dollars (\$50,000.00). Such payment must be made within 7 days of entry of this Order by electronic funds transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment and Defendant Ogaga's satisfaction of all obligations imposed under Subsection C of this Section, the remainder of the judgment is suspended as to all Defendants, subject to the subsections below.

C. Defendant Ogaga shall immediately take specific steps, as set forth below, to sell all interests in the 2011 Rolls Royce Ghost (VIN SCA664S5XBUX49674), 2007 Lexus LS460 (VIN JTHBL46F275051577), and 2006 Ferrari 430 (VIN ZFFEW59AX60150303) (hereinafter, "Vehicles") identified in the September 10, 2013 financial statement provided by Defendant Ogaga to the FTC:

1. Defendant Ogaga shall immediately sell the Vehicles at fair market value (based on their Kelley Blue Book values) by advertising them for sale through an online auction service and selling them to the highest bidder, or by placing the Vehicles for sale through an appropriate broker or automobile listing service;
2. Before placing an ad or otherwise listing the Vehicles for sale, and before accepting a bid or offer, Defendant Ogaga shall provide to Commission counsel documentation for the proposed sale price and for any and all bids or offers received;
3. Defendant Ogaga shall in no way profit directly or indirectly from the sale of the Vehicles, including by sharing in any sales commission or fee, or by receiving anything of value of any kind;
4. Pending sale of the Vehicles, Defendant Ogaga shall: a) maintain the Vehicles in good working order and in the same condition as of September 10, 2013, the date Defendant signed his sworn financial statement; b) take no action to encumber or diminish their value; maintain existing insurance coverage for the Vehicles; c) and remain current on any tax, registration, maintenance costs, and other fees and expenses related to the Vehicles; and
5. Within three (3) business days of receipt of the net proceeds from the sale of all interests in each of the Vehicles, Defendant Ogaga shall cause to be

wired to the Commission the net proceeds from each sale in accordance with instructions provided by the Commission, and shall identify the name, address and telephone number of the purchaser of each Vehicle.

D. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents submitted to the Commission, as well as Defendants' deposition testimony (collectively, "financial representations"), namely:

1. The Financial Statement of Individual Defendant Sean C. Mulrooney signed on September 9, 2013, including the attachments;
2. The Financial Statement of Individual Defendant Odafe Stephen Ogaga signed on September 9, 2013, including the attachments;
3. The Financial Statements of each of the Corporate Defendants signed by Defendant Mulrooney and Defendant Ogaga, on December 5, 2013, including the attachments;
4. The deposition of Defendant Mulrooney conducted on January 27, 2014;
and
5. The deposition of Defendant Ogaga conducted on January 27, 2014.

E. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above, which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

I. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

K. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a

representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited into the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

L. The freeze on Defendants' assets pursuant to Section III of the Stipulated Preliminary Injunction entered in this action is modified to permit the transfers specified above in Subsections B and C of this Section. Upon completion of the payment specified by Subsection B, the asset freeze as to Defendant Mulrooney is dissolved. Upon completion of the payments specified by Subsections B and C, the asset freeze as to Defendant Ogaga is dissolved. A financial institution shall be entitled to rely upon a letter from the Commission stating that the freeze on a defendant's assets has been lifted.

VI. PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, selling, renting, leasing, transferring, using, or benefitting from customer information, including the name, address, birth date, telephone number, email address,

social security number, other identifying information, or any data that enables access to a Financial Account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the promotion of payday loans; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. ORDER ACKNOWLEDGEMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and the Corporate Defendants, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled

Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone

numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Caprice Marketing LLC*, FTC Matter No. X130057.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each unique advertisement or other marketing material.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission to

interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 30 day of June, 2014.



Judge John Z. Lee
United States District Judge

SO STIPULATED AND AGREED:

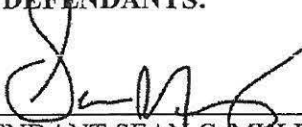
FOR PLAINTIFF FEDERAL TRADE COMMISSION:



Date: 06/19/14

James Davis, Attorney
Elizabeth Scott, Attorney
55 West Monroe, Suite 1825
Chicago, IL 60603
312-960-5634 [voice]
312-960-5600 [fax]
jdavis@ftc.gov
escott@ftc.gov

FOR DEFENDANTS:



Date: 5-8-14

DEFENDANT SEAN C. MULROONEY,
individually and as an officer and owner of
the Corporate Defendants

DEFENDANT ODAFE STEPHEN OGAGA,
individually and as an officer and owner of
the Corporate Defendants

Date: _____

APPROVED AS TO FORM:

Jonathan N. Rosen
Polsinelli
1152 15th Street, N.W., Suite 800
Washington, DC 20005
202-626-8359 [voice]
202-478-1747 [fax]
jnrosen@polsinelli.com

Date: _____

ATTORNEY FOR DEFENDANTS

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:


James Davis, Attorney
Elizabeth Scott, Attorney
55 West Monroe, Suite 1825
Chicago, IL 60603
312-960-5634 [voice]
312-960-5600 [fax]
jdavis@ftc.gov
escott@ftc.gov

Date: _____

FOR DEFENDANTS:

DEFENDANT SEAN C. MULROONEY,
individually and as an officer and owner of
the Corporate Defendants

Date: _____



DEFENDANT ~~OF~~ STEPHEN OGAGA,
individually and as an officer and owner of
the Corporate Defendants

Date: 5/8/2014

APPROVED AS TO FORM:

Jonathan N. Rosen
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1152 15th Street, N.W., Suite 800
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202-478-1747 [fax]
jnrosen@polsinelli.com

Date: _____

ATTORNEY FOR DEFENDANTS

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

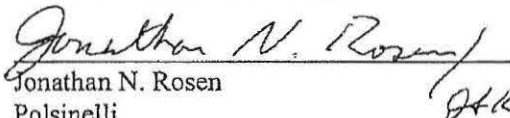
_____ Date: _____
 James Davis, Attorney
 Elizabeth Scott, Attorney
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FOR DEFENDANTS:

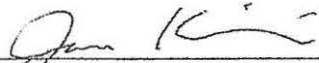
_____ Date: _____
 DEFENDANT SEAN C. MULROONEY,
 individually and as an officer and owner of
 the Corporate Defendants

_____ Date: _____
 DEFENDANT ODAFE STEPHEN OGAGA,
 individually and as an officer and owner of
 the Corporate Defendants

APPROVED AS TO FORM:


 _____ Date: 5/14/14
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ATTORNEY FOR DEFENDANTS



Date: 4/14/14

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