

**2019 SURVEY OF ACTIVITIES IDENTIFIED AS UNFAIR, DECEPTIVE, OR
ABUSIVE UNDER THE DODD-FRANK ACT,
PART TWO**

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I. INTRODUCTION

This is our latest article in a series that surveys activities identified as unfair, deceptive, or abusive acts or practices (“UDAAPs”) by the Consumer Financial Protection Bureau (“CFPB”), state attorneys general, and consumer financial services regulators using federal UDAAP powers created by the Dodd-Frank Act.¹ This article covers relevant UDAAP activity that occurred between January 1, 2020, and June 30, 2020, and it surveys enforcement actions and other statements by the CFPB in reports that discuss UDAAP violations.² These activities provide insight into the specific types of practices that could be considered UDAAP violations in the future.³

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301, *et seq.* (the “Dodd-Frank Act”); *see, e.g.*, 12 U.S.C. § 5552 (2012).

² We have attempted to make this survey as comprehensive as possible; however, it is not exhaustive and other relevant actions may not be discussed in this survey.

³ The term “unfair” is defined in the Dodd-Frank Act as an act or practice that “causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by

We intend to publish periodic updates to this article cataloging new UDAAP activity based upon the federal UDAAP powers contained in the Dodd-Frank Act as the use of this enforcement authority continues to evolve.

II. OVERVIEW: IDENTIFICATION OF UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES

Between January 1, 2020, and June 30, 2020, the CFPB engaged in seven⁴ public enforcement actions involving alleged UDAAP violations. Past UDAAP actions can provide a road map for industry participants to identify and better understand acts or practices considered problematic by law enforcement authorities. UDAAP enforcement actions during the period of this summary involved debt collection, student loan relief services, Truth in Lending, Truth in Savings, credit repair services, small dollar loans, and credit reporting.

Summaries of the UDAAP actions below appear in chronological order and are intended to provide a straightforward identification of the specific acts or practices that were alleged to be unfair, deceptive, or abusive under the Dodd-Frank Act.

consumers [and the] injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1) (2012). The term “deceptive” is not statutorily defined, but it is defined in the CFPB’s examination manual as when the material “representation, omission, act, or practice misleads or is likely to mislead the consumer,” provided “the consumer’s interpretation is reasonable under the circumstances.” CONSUMER FIN. PROTECTION BUREAU, CFPB SUPERVISION AND EXAMINATION MANUAL V.2 9 (2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf. The Dodd-Frank Act introduced the term “abusive” and defined it as an act or practice that either:

- [1] materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- [2] takes unreasonable advantage of [either]:
 - (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
 - (C) the reasonable reliance by the consumer on a covered person [such as a bank or other financial institution] to act in the interests of the consumer. 12 U.S.C. § 5531(d) (2012).

⁴ One matter was brought by the CFPB, the South Carolina Department of Consumer Affairs and the Arkansas Attorney General; and one matter was brought by the CFPB and the Massachusetts Attorney General.

III. CFPB ENFORCEMENT ACTIONS

A. *Chou Team Realty, LLC d/b/a MonsterLoans* — Jan. 2020 (Student Loan Debt Relief Services).⁵

The CFPB filed a complaint against Chou Team Realty, LLC f/k/a Chou Team Realty, Inc., d/b/a Monster Loans, d/b/a MonsterLoans; Lend Tech Loans, Inc.; Docu Prep Center, Inc., d/b/a DocuPrep Center, d/b/a Certified Document Center; Document Preparation Services, LP, d/b/a DocuPrep Center, d/b/a Certified Document Center; Certified Doc Prep, Inc.; Certified Doc Prep Services, LP; Assure Direct Services, Inc.; Assure Direct Services, LP; Direct Document Solutions, Inc.; Direct Document Solution, LP; Secure Preparation Services, LP; Doc Done Right, Inc.; Docs Done Right, LP; Bilal Abdelfattah, a/k/a Belal Abdelfattah, a/k/a Bill Abdel; Robert Hoose; Eduardo “Ed” Martinez; Jawad Nesheiwat; Frank Anthony Sebreros; David Sklar; Thomas “Tom” Chou; Sean Cowell; Kenneth Lawson; Cre8Lab, Inc.; XO Media, LLC; and TDK Enterprises, LLC (collectively the “company”) concerning the company’s marketing and sale of student loan debt relief services to consumers. The CFPB alleged that certain defendants unlawfully obtained roughly 7 million prescreened consumer credit reports, which they then sold to other defendants who used those lists to market their student loan debt relief services. The student debt relief defendants offered to assist consumers with consolidating their federal student loans and enrolling them in a repayment or forgiveness plan.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers that consolidating their federal student loans would result in a lower interest rate and that consolidation was required to obtain a rate deduction;
- Misrepresenting to consumers that a student loan consolidation would improve their credit scores; and
- Misrepresenting to consumers that a student loan consolidation would result in the U.S. Department of Education becoming the consumer’s “new servicer”.

The CFPB also alleged additional violations of the Fair Credit Reporting Act (“FCRA”) and the Telemarketing Sales Rule (“TSR”). The complaint seeks to permanently enjoin the company from engaging in further violations of the FCRA and TSR. The complaint also seeks

⁵ Complaint, [*Bureau of Consumer Financial Protection Bureau v. Chou Team Realty, LLC, et al.*, No. 8:20-cv-00043-TWT \(C.D. Cal. January 9, 2020\)](#).

restitution, disgorgement, rescission or reformation of contracts, and civil money penalties.

On May 14, 2020, the court entered a stipulated final judgment in favor of the CFPB and against certain defendants with respect to the CFPB's FCRA and TSR violation claims, and the CFPB's substantial assistance claims against certain individual defendants. The judgment bans these defendants from providing debt relief services, obtaining prescreened consumer reports, and using consumer reports for anything other than mortgage underwriting. The judgment also imposes an \$18 million redress judgment and a \$450,001 civil money penalty. The case remains pending against the other defendants, including the student loan debt relief defendants.

B. *Upstate Law Group LLC* — Feb. 2020 (Small Dollar Loans).⁶

The CFPB, the South Carolina Department of Consumer Affairs, and the Arkansas Attorney General filed a complaint against Upstate Law Group LLC (the “company”) and related principals Candy Kern-Fuller and Howard Suter III. The complaint involves the company's substantial assistance to aid others in providing high-interest loans to consumers. The company and its principals worked with certain third-party broker companies operating out of Arkansas, Mississippi, and South Carolina. The third-party broker companies (Voyager Financial Group, LLC; BAIC, Inc.; SoBell Corp.; Performance Arbitrage Company, Inc.; and Life Funding Options, Inc.) promoted a program whereby consumers were solicited to sell future pension or disability payments for an upfront lump sum payment, when in fact the resulting transaction was a high-interest loan with an assignment of consumer pension or disability payments as security for repayment of the loan. A majority of the consumers involved were veterans receiving disability or pension benefits from the U.S. Department of Veterans Affairs. Federal law prohibits the assignment of a veteran's pension or disability benefits. We previously reported on the CFPB's action against the third-party broker companies providing the underlying loans.⁷

⁶ Complaint, [*Bureau of Consumer Financial Protection; South Carolina Department of Consumer Affairs; and the State of Arkansas ex rel. Leslie Rutledge, Attorney General v. Candy Kern-Fuller; Howard Sutter III; and Upstate Law Group LLC*](#), No. 6:20-cv-00786-DCC (D.S.C. Feb. 20, 2020).

⁷ Stipulated Final Judgment and Order, [*Bureau of Consumer Financial Protection v. Andrew Gamber, Voyager Financial Group, LLC, BAIC, Inc., and SoBell Corp.*](#), No. 4:19-cv-00565-BSM (Sept. 4, 2019).

The company assisted the third-party broker companies by developing risk-assessment tools and underwriting particular transactions before they were consummated. The third-party broker companies would not complete a transaction with a particular consumer until the company approved it. The company also received payments from consumers, sent payments to investors, distributed commissions to the third-party broker companies, and collected on defaulted loan transactions.

The CFPB alleged the following practices were deceptive:

- Providing substantial assistance to the third-party broker companies to further the deceptive marketing practices of such third-party broker companies by serving as the underwriter and payment processor for the third-party broker companies; and
- Collecting loan transactions that were void at inception because federal pension and disability benefits were not subject to assignment.

The CFPB alleged the following practices were unfair:

- Providing substantial assistance to the third-party broker companies to further unfair marketing practices in misrepresenting offerings to consumers as the sale of future pension or disability benefits through the company's approval, servicing, and collection of the resulting high-interest loan transactions.

The complaint seeks injunctive relief to stop the company's assistance to the third-party broker companies and others and to stop the company from servicing and/or collecting any high-interest loan transactions initiated by the third-party broker companies. The complaint also seeks restitution for impacted consumers, disgorgement, damages, civil money penalties, and the prosecuting parties' costs of bringing the complaint.

C. *Fifth Third Bank, National Association* — March 2020 (Truth in Lending/Truth in Savings).⁸

The CFPB filed a complaint against Fifth Third Bank, National Association (the "company") concerning alleged misconduct arising from the company's cross-selling strategy and aggressive sales targets. The

⁸ Complaint, [*Bureau of Consumer Financial Protection v. Fifth Third Bank, National Association*, No. 1:20-cv-01683 \(N.D. Ill. March 9, 2020\)](#).

CFPB alleged that the company set aggressive sales goals and performance metrics, which caused employees to open deposit accounts, credit cards, and lines of credit in customers' names without their knowledge or consent. The CFPB also alleged that the company's employees transferred funds between consumers' existing accounts and the unauthorized accounts without their knowledge or consent as a part of the employees' efforts to meet the company's aggressive sales goals and performance metrics. The CFPB alleged that the company was aware of its employees' misconduct for years but failed to prevent the conduct or revise the sales goals and performance metrics that gave rise to the misconduct.

The CFPB alleged that the following practices were unfair:

- Opening deposit accounts, transferring funds between accounts, and issuing credit cards without consumers' knowledge or consent; and
- Failing to change the company's sales practices and performance metrics or take appropriate preventative measures despite knowledge of employees' misconduct.

The CFPB alleged that the following practices were abusive:

- Enrolling consumers in online banking services without their knowledge and consent; and
- Opening lines of credit for consumers without their knowledge or consent.

The CFPB also alleged additional violations of the Truth in Lending Act ("TILA"), Regulation Z ("Reg. Z"), the Truth in Savings Act, and Regulation DD. The complaint seeks to permanently enjoin the company from opening deposit accounts, issuing credit cards, enrolling consumers in online banking, or opening a line of credit without a consumer's knowledge and consent. The complaint also seeks restitution, disgorgement, rescission, or reformation of contracts, correction of harmful consumer reporting information, and civil money penalties.

D. *Cottonwood Financial, Ltd. d/b/a Cash Store* — April 2020 (Truth in Lending).⁹

⁹ Consent Order, [*In re Cottonwood Financial Ltd., d/b/a Cash Store*, CFPB No. 2020-BCFP-0001 \(April 1, 2020\)](#). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

Cottonwood Financial, Ltd. d/b/a Cash Store (the “company”) operates numerous retail lending locations in seven states. The company makes short-term, high-interest, small dollar loans to consumers, including loans secured by motor vehicle titles. The company markets loans through telemarketing and television advertising. The CFPB alleged that the company deceptively marketed its loan products and violated provisions of federal law in connection with its servicing and collections practices.

The CFPB alleged the following practices were deceptive:

- Misrepresenting to consumers in telemarketing calls and through television advertisements that a loan finance charge discount was available, when in fact the applicable discount applied only to a consumer’s first loan payment; and
- Failing to direct consumers to review complete loan terms before entering into loan transactions.

The CFPB alleged the following practices were unfair:

- Making excessive and harassing collection calls to friends, family, and employers of consumer borrowers; and
- Failing to cease contacting a consumer’s employer even after being instructed that a consumer was prohibited from receiving such calls at the consumer’s place of employment.

The CFPB also alleged violations of TILA, Reg. Z, FCRA, and Regulation V (“Reg. V) concerning improper oral Annual Percentage Rate disclosures and credit reporting policy deficiencies. The order requires the company to change its collection practices, so it no longer makes an excessive number of collection calls and no longer makes harassing collection calls. The order also requires the company to stop contacting a consumer’s employer and/or stop contacting a consumer at a specific telephone number after the consumer provides notice to the company. The order also requires the company to changes its marketing practices to clearly disclose applicable loan terms, including any loan finance charge discount. The order further requires the company to adopt certain credit reporting policies, compliance programs, and training programs. The order requires the company to make restitution to impacted consumers by contributing \$286,675.64 to a “redress fund” and imposes a \$1.1 million civil money penalty.

E. *Commonwealth Equity Group, LLC d/b/a Key Credit Repair* — May 2020 (Credit Repair Services).¹⁰

The CFPB and the Massachusetts Attorney General filed a complaint against Commonwealth Equity Group, LLC d/b/a Key Credit Repair (the “company”) and the sole owner of the company in connection with the nationwide sale of credit repair services. The company marketed services that it represented would remove derogatory credit information from consumer credit reports. The company charged consumers upfront fees and ongoing monthly fees and promised customers that credit scores would increase by specified amounts and that an “unlimited” number of negative credit items could be removed through the company’s program.

The CFPB alleged the following practice was deceptive:

- Misrepresenting to consumers that credit scores would substantially increase through use of the company’s service when the company’s service failed to provide the promised results.

The CFPB also alleged violations of the TSR and the Massachusetts Attorney General alleged violations of Massachusetts law. The complaint seeks injunctive relief to stop the company from continuing to offer credit repair services in violation of federal and state law. The complaint also seeks consumer redress, civil money penalties, and costs of the action.

F. *Main Street Personal Finance, Inc./ACAC, Inc. d/b/a Approved Cash Advance* — June 2020 (Payday Loans/Small Dollar Loans).¹¹

Main Street Personal Finance, Inc., ACAC, Inc. d/b/a Approved Cash Advance, and Quik Lend, Inc. (collectively, the “company”) operate nearly 200 retail storefronts in which the company offers payday loans, check cashing services, and title loans in eight states. Under Mississippi law, an auto title loan must be payable in a single payment within 30 days, but the parties may agree to subsequent 30-day extensions during which the principal balance used to calculate the applicable finance charge is reduced

¹⁰ Complaint, [*Bureau of Consumer Financial Protection and the Commonwealth of Massachusetts ex rel. Maura Healey, Attorney General v. Commonwealth Equity Group, LLC \(d/b/a Key Credit Repair\); Nikitas Tsoukaless \(a/k/a Nikitas Tsoukalis\)*](#), No. 1:20-cv-10991 (D. Mass. May 22, 2020).

¹¹ Consent Order, [*In re Main Street Personal Finance, Inc.; ACAC Inc. d/b/a Approved Cash Advance; and Quik Lend, Inc.*](#), CFPB No. 2020-BCFP-0003 (June 2, 2020). A separate stipulation was filed on the same date in which the parties agreed to certain facts cited in the consent order.

by 10% for each extension (though the actual principal balance is not reduced). The CFPB alleged that the company's auto title loans in Mississippi disclosed financing charges that assumed a single repayment in full within 30 days; however, this disclosure was not consistent with an amortization schedule that the company attached to its contract and which showed repayment during a 10-month period (and which would result in far greater finance charges). The CFPB further alleged that the company failed to refund consumers for overpayments. The CFPB also alleged that the company urged its employees to make frequent calls to consumers' workplaces and references in an attempt to collect debts owed to the company.

The CFPB alleged the following practice was deceptive:

- Misleading consumers by disclosing finance charges for certain auto title loans that were substantially lower than the finance charges that consumers would incur if they repaid the loan pursuant to the amortization schedule with a longer repayment term that the company simultaneously provided to consumers.

The CFPB alleged the following practices were unfair:

- Failing to refund overpayments by consumers; and
- Making repeated collection calls to third parties, such as consumers' employers and references, despite requests to cease such calls and despite knowing direct contact information for consumers.

The CFPB also alleged violations of TILA. The CFPB and the company entered into a consent order concerning the CFPB's claims. Under the terms of the order, the company is banned from misrepresenting its finance charges for auto title loans and continuing to engage in unlawful debt collection practices. The order also requires that the company refund consumers with credit balances of more than \$1.00 within six months. The CFPB also entered a \$3,540,517.10 redress judgment, which is suspended upon payment of \$2 million and a \$1.00 civil money penalty.

G. Harbour Portfolio Advisors, LLC — June 2020 (Mortgage Origination).¹²

¹² Consent Order, [*In re Harbour Portfolio Advisors, LLC, National Asset Advisors, LLC, and National Asset Mortgage, LLC*](#), CFPB No. 2020-BCFP-0004 (June 23, 2020). Separate

Harbour Portfolio Advisors, LLC; National Asset Advisors, LLC; and National Asset Mortgage, LLC (collectively, the “company”) acquired foreclosed properties in bulk and then resold those properties to third parties, most commonly through seller financing in the form of contracts for deed. The CFPB alleged that the company erroneously told consumers that they could only address possible errors in their credit reports by filing a dispute with the consumer reporting agency. In truth, this response is inaccurate as a matter of law, because furnishers of credit information must investigate written disputes by consumers and may investigate disputes raised by phone calls.

The CFPB alleged the following practice was deceptive:

- Misrepresenting to consumers that their only recourse to address possible consumer reporting errors was to file a dispute with the consumer reporting agency.

The CFPB also alleged violations of the FCRA, Reg. V, and TILA. The CFPB and the company entered into a consent order concerning the CFPB’s claims. Under the terms of the order, the company is banned from misrepresenting how consumers can resolve errors in their consumer reports. The company also must establish a compliance plan to prevent future violations of the FCRA and Reg. V. The CFPB also imposed \$35 thousand in civil money penalties.

IV. UPDATES ON PAST CASES

Think Finance, LLC — February 2020 (Small Dollar Loans).¹³

We previously reported about the CFPB’s complaint against Think Finance, LLC; f/k/a Think Finance, Inc.; Think Finance SPV, LLC; Financial U, LLC; TC Loan Service, LLC; Tailwind Marketing, LLC; TC Administrative Services, LLC; and TC Decision Sciences, LLC (collectively, the “company”). In November 2017, the CFPB filed a complaint (later amended in March 2018), alleging deceptive, unfair, and abusive acts and practices in connection with the company’s offering of

stipulations were filed on the same date in which the parties agreed to certain facts cited in the consent order.

¹³ Stipulated Final Consent Order, [Consumer Financial Protection Bureau v. Think Finance, LLC, f/k/a Think Finance, Inc. et al](#), No. 4:17-cv-00127-BMM (D. Mon. Feb. 6, 2020).

small dollar loans purporting to be governed by tribal law, but which violated state usury laws. The CFPB alleged that the tribal governments' involvement with the company's loans was illusory and simply a mechanism for the company to avoid state lending and licensing laws. The company later filed a Chapter 11 bankruptcy petition. A stipulated final judgment filed in connection with the matter obligates the company to refrain from offering or collecting loans to consumers in 17 subject states if such loan would violate state lending laws.

As part of the proceeding, the company also imposed civil money penalties of \$7.00 (\$1.00 for each entity).

V. CFPB Rules Updates and Additional Guidance

Statement of Policy:

*Statement of Policy Regarding Prohibition on Abusive Acts and Practices.*¹⁴ Released in January 2020, the CFPB issued its long-awaited policy statement concerning the scope and meaning of the abusiveness standard. The CFPB intends to apply the following principles to its enforcement and supervision efforts:

- The CFPB will cite or challenge conduct as abusive in its supervision and enforcement efforts only if it determines that the harm to consumers from the conduct outweighs its benefits to consumers.
- The CFPB will try to avoid the vexing issue of “dual pleading” in abusiveness violations and unfair or deceptive violations arising from the same set of facts. Whether alleged as a standalone violation or alleged together with an unfair or deceptive violation, the CFPB intends to allege the abusiveness violation with sufficient detail to set the bounds of the abusiveness claim apart from other allegations.
- The CFPB will only seek monetary relief for violations of the abusiveness standard when the company failed to make a good faith attempt to comply with the law. The CFPB will still seek restitution for injured consumers even if the company acted in good faith.

¹⁴ CONSUMER FIN. PROT. BUREAU, STATEMENT OF POLICY REGARDING PROHIBITION ON ABUSIVE ACTS AND PRACTICES (Jan. 24, 2020), https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.

Supervisory Highlights:

*CFPB Winter 2020 Supervisory Highlights Issue.*¹⁵

Released in February 2020, the highlights note continued UDAAP concerns in several areas, including:

- **Payday Lending.** (1) Payment Processing. The CFPB noted instances where payday lenders processed consumers' payments, but failed to apply those payments to consumers' loan balances in the lenders' systems, leading to the unfair result of consumers overpaying on their loans due to the lenders' inaccurate calculation of accrued interest. (2) Unauthorized Fees. The CFPB noted instances where lenders charged consumers a fee for paying or settling a delinquent account when the fee was not authorized under the loan agreement. Lenders would unfairly describe the fee as a court cost or fail to disclose the fee.
- **Student Loan Servicing.** The CFPB noted instances where data mapping errors occurred during the transfer of private loans between servicing systems, which resulted in servicers sending periodic statements to consumers with inaccurate calculations of the monthly payment amount. These errors unfairly resulted in: (i) consumers overpaying based on the inaccurate monthly statements, (ii) the servicer making automated debits in the incorrect amounts, or (iii) the servicer assessing late fees where consumers failed to pay the inaccurate monthly payment.

¹⁵ CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISORY HIGHLIGHTS (Issue 21, Winter 2020), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-21_2020-02.pdf.