
IN THE MATTER OF:
TOP NOTCH MOTORS, LLC
("Respondent")

**NOTICE OF INTENT TO ISSUE
ORDER OF CEASE AND DESIST**

**NOTICE OF INTENT TO
IMPOSE CIVIL PENALTY**

AND

NOTICE OF RIGHT TO HEARING

I. LEGAL AUTHORITY AND JURISDICTION

The Banking Commissioner ("Commissioner") is charged with the administration of Sections 36a-770 to 36a-788, inclusive, of the Connecticut General Statutes, "Retail Installment Sales Financing".

Pursuant to the authority granted by Section 36a-17 of the Connecticut General Statutes, as amended by Public Act 18-173, the Commissioner, through the Consumer Credit Division ("Division") of the Department of Banking, has investigated the activities of Respondent to determine if it has violated, is violating or is about to violate the provisions of the Connecticut General Statutes within the jurisdiction of the Commissioner.

Section 36a-17(a) of the Connecticut General Statutes, as amended, provides, in pertinent part, that:

The commissioner, in the commissioner's discretion and as often as the commissioner deems necessary to carry out the purposes of applicable law and the duties of the commissioner, may, subject to the provisions of section 36a-21 and the Freedom of Information Act, as defined in section 1-200: (1) Make, within or outside this state, such public or private investigations or examinations concerning any person subject to the jurisdiction of the commissioner

Section 36a-52(a) of the 2018 Supplement to the General Statutes provides, in pertinent part, that:

Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any provision of the general statutes within the jurisdiction of the commissioner, . . . the commissioner may send a notice to such person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt The notice shall be deemed received by the person on the earlier of the date of actual receipt, or seven days after mailing or sending Any such notice shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the general statutes . . . alleged to have been violated; (4) a short and plain statement of the matters asserted; and (5) a statement indicating that such person may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice. If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice, unless the person fails to appear at the hearing. After the hearing, the commissioner shall determine whether an order to cease and desist should be issued against the person named in the notice. If the person does not request a hearing within the time specified in the notice or fails to appear at the hearing, the commissioner shall issue an order to cease and desist against the person. No such order shall be issued except in accordance with the provisions of chapter 54.

Section 36a-50 of the 2018 Supplement to the General Statutes provides, in pertinent part, that:

(a)(1) Whenever the commissioner finds as the result of an investigation that any person has violated any provision of the general statutes within the jurisdiction of the commissioner, . . . the commissioner may send a notice to such person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt The notice shall be deemed received by the person on the earlier of the date of actual receipt or seven days after mailing or sending Any such notice shall include: (A) A statement of the time, place, and nature of the hearing; (B) a statement of the legal authority and jurisdiction under which the hearing is to be held; (C) a reference to the particular sections of the general statutes . . . alleged to have been violated; (D) a short and plain statement of the matters asserted; (E) the maximum penalty that may be imposed for such violation; and (F) a statement indicating that such person may file a written request for a hearing on the matters asserted not later than fourteen days of receipt of the notice.

(2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice unless such person fails to appear at the hearing. After the hearing, if the commissioner finds that the person has violated any such

provision . . . the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by law, order that a civil penalty not exceeding one hundred thousand dollars per violation be imposed upon such person. If such person does not request a hearing within the time specified in the notice or fails to appear at the hearing, the commissioner may, as the facts require, order that a civil penalty not exceeding one hundred thousand dollars per violation be imposed upon such person.

(3) Each action undertaken by the commissioner under this subsection shall be in accordance with the provisions of chapter 54.

Section 36a-788 of the Connecticut General Statutes states, in relevant part, that:

Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any provision of sections 36a-770 to 36a-788, inclusive . . . the commissioner may take action against such person in accordance with section 36a-50 and 36a-52.

II. MATTERS ASSERTED

1. During all times relevant to this matter, Respondent was a limited liability company located at 456 Derby Avenue, West Haven, Connecticut.
2. On or about September 28, 2015, Respondent entered into a Retail Installment Contract and Security Agreement ("Contract") with a retail buyer for the financing and purchase of a vehicle, namely a 2008 Mercedes-Benz, E-Class.
3. The Contract provided for a principal amount financed of \$12,439.64 at an annual percentage rate of 18.99% with payments in the amount of \$410.91 per month beginning November 12, 2015. Further, the Contract provided that the retail buyer paid a deposit in the amount of \$3,200.00 at the time of the Contract.
4. The Contract was thereafter assigned to Westlake Financial Services ("Westlake") and the retail buyer made one payment over the telephone directly to Westlake using a MasterCard.
5. On or about December 12, 2015, Westlake cancelled the Contract due to non-payment and re-assigned the Contract back to Respondent.

6. On or about January 30, 2016, the retail buyer made arrangements to bring the car back to Respondent in order to have repairs done and the vehicle returned to her upon completion.
7. The vehicle remained at Respondent's business location.
8. Respondent, by and through its agent, executed an Affidavit of Repossession dated February 5, 2016, which stated, in pertinent part, that: "The undersigned lienholder hereby certifies that the motor vehicle described herein was lawfully Repossessed under the terms of a valid security agreement and in full accord with the pertinent sections of the General Statutes of the State of Connecticut as amended."
9. However, a Voluntary Surrender Form signed by Respondent only and not the retail buyer designates a repossession date of May 5, 2016.
10. At no time following February 5, 2016 and/or May 5, 2016, did Respondent send any written correspondence to the retail buyer regarding the repossession, amounts due, possession retrieval or any other requirements in connection with the retaking of the vehicle by Respondent.

III. STATUTORY BASIS FOR ORDER TO CEASE AND DESIST AND IMPOSITION OF CIVIL PENALTY

Section 36a-785(a) of the Connecticut General Statutes states, in pertinent part, that:

When the retail buyer is in default in the payment of any sum due under the retail installment contract or installment loan contract, . . . the holder of the contract may retake possession of such goods Unless the goods can be retaken without breach of the peace, the goods shall be retaken by legal process, provided nothing contained in this section shall be construed to authorize a violation of the criminal law.

Section 36a-785(c) of the Connecticut General Statutes states, in pertinent part, that:

If the holder of such contract does not give the notice of intention to retake, described in subsection (b) of this section, the holder shall retain such goods for fifteen days after the retaking within the state in which such goods were located when retaken. During such period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time of retaking and interest . . . may redeem such goods The holder of such contract shall, not later than three days after the date of the retaking, furnish or mail, by registered or certified mail, to the last known address of the retail buyer, a written statement indicating (1) the unaccelerated sum due under such contract and the

actual and reasonable expense of any retaking and storing, and (2) in the case of repossession of any motor vehicle, the holder of such contract shall also, not later than three days after the date of the retaking, and without regard to whether notice of intention to retake was given to the buyer, send a written notice (A) that the buyer is responsible for retrieving items of personal property that may have been left in the motor vehicle, . . . (B) that such property, if any, will be available for retrieval for at least sixty days after the date on which the motor vehicle was repossessed, . . . and (C) the contact and business hours information that the buyer can use to make arrangements for retrieval of the property. . . . Failure to furnish or mail such statement as required by this section shall result in forfeiture of the holder's right to claim payment for the actual and reasonable expenses of retaking and storage, and the holder shall be liable for the actual damages suffered because of such failure. . . .

Section 36a-53b of the Connecticut General Statutes states, in pertinent part, that:

No person shall, in connection with any activity subject to the jurisdiction of the commissioner: . . . (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading

1. Respondent's failing to retake possession of the motor vehicle by legal process, as more fully described in paragraphs 2 through 10, inclusive, of the Matters Asserted, constitutes a violation of Section 36a-785(a) of the Connecticut General Statutes. Such violation forms the basis to issue an order to cease and desist against Respondent pursuant to Section 36a-788 of the Connecticut General Statutes and Section 36a-52(a) of the 2018 Supplement to the General Statutes, and impose a civil penalty upon Respondent pursuant to Section 36a-788 of the Connecticut General Statutes and Section 36a-50(a) of the 2018 Supplement to the General Statutes. Section 36a-50(a) of the 2018 Supplement to the General Statutes authorizes the Commissioner to impose a civil penalty in an amount not to exceed One Hundred Thousand Dollars (\$100,000) per violation.

2. Respondent's failing to provide the retail buyer with written notice of the repossession of the motor vehicle, as more fully described in paragraphs 2 through 10, inclusive, of the Matters Asserted, constitutes a violation of Section 36a-785(c) of the Connecticut General Statutes. Such violation forms the basis to issue an order to cease and desist against Respondent pursuant to Section 36a-788 of the

Connecticut General Statutes and Section 36a-52(a) of the 2018 Supplement to the General Statutes, and impose a civil penalty upon Respondent pursuant to Section 36a-788 of the Connecticut General Statutes and Section 36a-50(a) of the 2018 Supplement to the General Statutes. Section 36a-50(a) of the 2018 Supplement to the General Statutes authorizes the Commissioner to impose a civil penalty in an amount not to exceed One Hundred Thousand Dollars (\$100,000) per violation.

3. Respondent's repossession without providing the required written notice and, further, by executing an Affidavit of Repossession which contains false statements of material facts, as more fully described in paragraphs 8 and 9 of the Matters Asserted constitutes making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 36a-53b of the Connecticut General Statutes, which forms the basis to issue an order to cease and desist pursuant to Section 36a-52(a) of the 2018 Supplement to the General Statutes, and impose a civil penalty upon Respondent pursuant to Section 36a-50(a) of the 2018 Supplement to the General Statutes. Section 36a-50(a) of the 2018 Supplement to the General Statutes authorizes the Commissioner to impose a civil penalty upon Respondent in an amount not to exceed One Hundred Thousand Dollars (\$100,000) per violation.

IV. NOTICE OF INTENT TO ISSUE ORDER TO CEASE AND DESIST AND NOTICE OF INTENT TO IMPOSE CIVIL PENALTY

WHEREAS, the Commissioner has reason to believe that Respondent has engaged in acts or conduct which forms a basis to issue an order to cease and desist pursuant to Section 36a-788 of the Connecticut General Statutes and Section 36a-52(a) of the 2018 Supplement to the General Statutes, and to impose a civil penalty pursuant to Section 36a-788 of the Connecticut General Statutes and Section 36a-50(a) of the 2018 Supplement to the General Statutes.

NOW THEREFORE, notice is hereby given to Respondent that the Commissioner intends to issue an order requiring Respondent to **CEASE AND DESIST** from violating subsections (a) and (c) of

Section 36a-785 of the Connecticut General Statutes and Section 36a-53b of the Connecticut General Statutes, and impose a **CIVIL PENALTY** upon Respondent in an amount not to exceed One Hundred Thousand Dollars (\$100,000), subject to its right to a hearing on the allegations set forth above.

A hearing will be granted to Respondent if a written request for a hearing is received by the Department of Banking, Consumer Credit Division, 260 Constitution Plaza, Hartford, Connecticut 06103-1800 within fourteen (14) days following Respondent's receipt of this Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing, as set forth in Sections 36a-52(a) and 36a-50(a) of the 2018 Supplement to the General Statutes. This Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing shall be deemed received on the earlier of the date of actual receipt or seven days after mailing. To request a hearing, complete and return the enclosed Appearance and Request for Hearing Form to the above address. If Respondent will not be represented by an attorney at the hearing, please complete the Appearance and Request for Hearing Form as "pro se". Once a written request for a hearing is received, the Commissioner may issue a notification of hearing and designation of hearing officer that acknowledges receipt of a request for a hearing, designates a hearing officer and sets the date of the hearing in accordance with Section 4-177 of the Connecticut General Statutes and Section 36a-1-21 of the Regulations of Connecticut State Agencies. If a hearing is requested, the hearing will be held on January 8, 2019, at 10 a.m., at the Department of Banking, 260 Constitution Plaza, Hartford, Connecticut.

If a hearing is requested, it will be held in accordance with the provisions of Chapter 54 of the Connecticut General Statutes, unless Respondent fails to appear at the requested hearing. At such hearing, Respondent will have the right to appear and present evidence, rebuttal evidence and argument on all issues of fact and law to be considered by the Commissioner.

If Respondent does not request a hearing within the time prescribed or fails to appear at any such hearing, the allegations herein will be deemed admitted. Accordingly, the Commissioner will issue an order that Respondent cease and desist from violating subsections (a) and (c) of Section 36a-785 of the

Connecticut General Statutes and Section 36a-53b of the Connecticut General Statutes, and may order that the maximum civil penalty in an amount not to exceed One Hundred Thousand Dollars (\$100,000) per violation be imposed upon Respondent.

Dated at Hartford, Connecticut,
this 15th day of November 2018.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 16th day of November 2018, I caused to be mailed by certified mail, return receipt requested, the foregoing Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing to Top Notch Motors, LLC, Attention: Pasquale Civitella, Agent for Service of Process, 456 Derby Avenue, West Haven, Connecticut 06516, Certified Mail No. 7016 2710 0000 5896 9254; and to Peter D. Herger, Attorney at Law and General Counsel, Top Notch Motors, LLC, 5 Lake Avenue, Danbury, Connecticut 06516, Certified Mail No. 7016 2710 0000 5896 9261.

_____/s/_____
Tina M. Daigle
Paralegal