IN THE MATTER OF:	*	
TOP NOTCH MOTORS, LLC ("Top Notch")	*	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**
GABRIEL BORDOY ("Bordoy")	*	
(Collectively, "Respondents")	*	

FINDINGS OF FACT

1. On November 15, 2018, the Banking Commissioner ("Commissioner") issued a Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing against Top Notch (collectively, "Notice"). The Notice is incorporated by reference herein. (Tr. at 7; Hearing Officer's Ex. 3.)

2. The Notice was issued pursuant to Section 36a-788 of the General Statutes of Connecticut and Sections 36a-52(a) and 36a-50(a) of the 2018 Supplement to the General Statutes. (Hearing Officer's Ex. 3.)

3. On November 16, 2018, the Notice was sent by certified mail, return receipt requested, to Top Notch. (Hearing Officer's Ex. 3.)

4. On December 3, 2018, Bordoy requested a hearing on the Notice on behalf of Top Notch. (Tr. at 8; Hearing Officer's Ex. 4.)

5. On December 3, 2018, Bordoy was not an owner or operating manager of Top Notch, did not have any legal affiliation with Top Notch and did not have the legal authority to request a hearing on behalf of Top Notch. (Tr. at 8-13, 55-56, 60-64 and 67-68; Hearing Officer's Ex. 5.)

6. On December 17, 2018, the Commissioner issued a Notification of Hearing and Designation of Hearing Officer stating that the hearing would be held on January 8, 2019, at 10 a.m., at the Department of Banking ("Department") and appointing Attorney Paul A. Bobruff as Hearing Officer. The Notification of Hearing and Designation of Hearing Officer also stated that the

attorney representing the Department is Jeffrey T. Schuyler, Staff Attorney. (Hearing Officer's Ex. 3.)

7. On October 25, 2019, the Commissioner issued an Amended and Restated Notice of Intent to Issue Order to Cease and Desist, Amended and Restated Notice of Intent to Impose Civil Penalty and Amended and Restated Notice of Right to Hearing against Respondents (collectively, "Amended Notice"). The Amended Notice is incorporated by reference herein. (Tr. at 7; Hearing Officer's Ex. 2.)

8. The Amended Notice was issued pursuant to Sections 36a-788, 36a-52(a) and 36a-50(a) and of the General Statutes of Connecticut and Section 36a-1-22 of the Regulations of Connecticut State Agencies ("Regulations"). (Hearing Officer's Ex. 2.)

9. The Amended Notice alleges that Top Notch's failure to provide the retail buyer with written notice of the repossession of the motor vehicle constitutes a violation of Section 36a-785(c) of the General Statutes of Connecticut. Such violation forms the basis to issue an order to cease and desist against Top Notch pursuant to Sections 36a-788 and 36a-52(a) of the General Statutes of Connecticut, and to impose a civil penalty upon Top Notch pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut. (Hearing Officer's Ex. 2.)

10. The Amended Notice also alleges Bordoy's failure to provide the retail buyer with written notice of the repossession of the motor vehicle, constitutes a violation of Section 36a-785(c) of the General Statutes of Connecticut. Such violation forms the basis to issue an order to cease and desist against Bordoy pursuant to Sections 36a-788 and 36a-52(a) of the General Statutes of Connecticut, and to impose a civil penalty upon Bordoy pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut. (Hearing Officer's Ex. 2.)

11. On October 28, 2019, the Amended Notice was sent by certified mail, return receipt requested, to Respondents. (Tr. at 7; Hearing Officer's Ex. 2.)

12. On December 3, 2019, Bordoy requested a hearing on the Amended Notice on behalf of himself. (Tr. at 6 and 8-9; Hearing Officer's Exs 1 and 5.)

13. On December 5, 2019, the Commissioner issued a Notification of Hearing and Designation of Hearing Officer concerning the Amended Notice stating that the hearing would be held on December 11, 2019, at 10 a.m. ("Hearing"), at the Department of Banking ("Department") and appointing Attorney Paul A. Bobruff as Hearing Officer. The Notification of Hearing and Designation of Hearing Officer also stated that the attorney representing the Department is Jeffrey T. Schuyler, Staff Attorney. (Hearing Officer's Ex. 1.)

14. The Hearing was continued from December 11, 2019 to January 28, 2020, at 10 a.m. (Tr. at 8-9; Hearing Officer's Ex 5.)

15. On January 28, 2020, the Hearing was held at the Department. Attorney Schuyler represented the Department. (Tr. at 3.)

16. Bordoy appeared at the Hearing and represented himself. (Tr. at 4, 12-13, 54-56 and 60-62.)

17. No one appeared at the Hearing on behalf of Top Notch and the Department did not receive any communications from Top Notch regarding the Hearing. (Tr. at 4-6, 9-10, 17 and 63-64; Hearing Officer's Exs. 3 and 4.)

18. After Bordoy filed an appearance for Top Notch, counsel for the Department ascertained that Bordoy was no longer the owner, operating manager of Top Notch and had no legal affiliation with Top Notch and therefore did not have the legal authority to request a hearing on behalf of Top Notch. (Tr. at 4-6, 8-10 and 55-56.)

19. Counsel for the Department noted that Top Notch was given notice of the hearing, did not request a hearing, was not present at the Hearing and requested pursuant to Section 36a-1-31 of the Regulations that a default for failure to request and/or appear at the Hearing be entered against Top Notch and that the allegations as stated in the Amended Notice as to Top Notch be deemed admitted. (Tr. at 9-11.)

20. The Hearing was conducted in accordance with Chapter 54 of the General Statutes of Connecticut, the "Uniform Administrative Procedure Act", and the Department's "Rules of Practice in Contested Cases", Sections 36a-1-19 to 36a-1-57, inclusive, of the Regulations. (Tr. at 4-9.)

21. During all times relevant to this matter, Top Notch was a limited liability company located at 456 Derby Avenue, West Haven, Connecticut. (Tr. at 13, 23 and 62; Division's Exs. 1, 2, 3, 4, 5 and 7.)

22. From at least 2015 until the spring of 2018, Bordoy was the owner and registered operating manager of Top Notch. During the spring of 2018, Bordoy sold Top Notch. (Tr. at 55-56 and 60-62.)

23. On September 28, 2015, Top Notch entered into a Retail Installment Contract and Security Agreement ("Contract") with a retail buyer living in Connecticut, for the financing and purchase of a vehicle, namely a 2008 Mercedes-Benz, E-Class. The Contract identifies the Seller as Top Notch and the parties to the Contract are Top Notch and a retail buyer. Bordoy is not named as a party to the Contract. Bordoy executed the Contract on behalf of Top Notch. (Tr. at 21-27 and 49-50; Division's Exs. 1, 2 and 7.)

24. 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. (Tr. at 19-20 and 25; Division's. Ex. 1.)

25. On September 28, 2015, the Contract was assigned to Westlake Financial Services ("Westlake"). (Tr. at 27-28 and 50; Division's Exs. 1 and 2.)

26. On or about December 22, 2015, Westlake cancelled the Contract due to non-payment and re-assigned the Contract back to Top Notch and Top Notch became the holder of the Contract. (Tr. at 30-31, 50-52 and 59; Division's Ex. 2.)

27. On December 22, 2015, Westlake advised the retail buyer that the Contract was re-assigned to Top Notch. (Tr. at 28-30; Division's Ex. 2.)

28. The Contract provided that in the case of a default by the retail buyer, the holder of the Contract could repossess the vehicle. (Tr. at 26-27, 52 and 58-59; Division's Ex. 1.)

29. The retail buyer defaulted under the Contract. (Tr. at 27 and 52.)

30. On or about January 30, 2016, the vehicle was taken back to Top Notch and Top Notch maintained possession of the vehicle at its business location. (Tr. at 33 and 45-46; Division's Exs. 3, 4, 5 and 7.)
31. On or about February 5, 2016, Bordoy executed an Affidavit of Repossession, on behalf of Top Notch, which states, in pertinent part, that: "The undersigned lienholder [Top Notch] 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." (Tr. at 34-36, 38 and 57-58; Division's Ex. 4.)

32. In addition to the Affidavit of Repossession, Bordoy completed a Voluntary Surrender Form which listed the legal owner of the motor vehicle as Top Notch and the date of repossession as May 5, 2016. (Tr. at 37 and 42; Division's Ex. 5.)

33. Top Notch was the holder of the Contract as of December 22, 2015 and at the time of Top Notch's retaking/repossession of the retail buyer's vehicle. (Tr. at 27, 30, 48-52 and 65; Division's Exs. 2, 3, 4, 5 and 7.)

34. Bordoy was the individual primarily representing Top Notch, the holder of the Contract, in the repossession of the retail customer's vehicle. (Tr. at 47.)

35. Respondents did not send a written statement to the retail buyer indicating the unaccelerated sum due under the Contract and the actual and reasonable expense of any retaking and storing, or any correspondence regarding the repossession, amounts due, possession retrieval or any other requirements in connection with the retaking of the vehicle prior to or following Top Notch's taking possession of the retail buyer's vehicle in February 2016. (Tr. at 41-44, 46-47, 53-55, and 118-9; Division Ex. 7.)

36. Bordoy sold Top Notch Motors in the spring of 2018. (Tr. at 55-56 and 60-62.)

37. During the Hearing, the Department requested pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut that a civil penalty of One Hundred Thousand Dollars ($100,000 be imposed on each Respondent based on the violation of Section 36a-785(c) of the General Statutes of Connecticut for failure to provide the retail buyer with written notice of the repossession of the motor vehicle. (Tr. at 66-67.)

CONCLUSIONS OF LAW

Jurisdiction and Procedure

The Commissioner has jurisdiction over of Sections 36a-770 to 36a-788, inclusive, of the General Statutes of Connecticut, "Retail Installment Sales Financing". The Notice issued by the Commissioner comported with the requirements of Section 4-177(b) of the General Statutes of Connecticut. The Notice complied with the notice requirements of Sections 36a-50(a) [civil penalty] and 36a-52(a) [cease and desist order] of the General Statutes of Connecticut. Respondents received notice that the Hearing was scheduled for January 28, 2020.

The Commissioner's broad regulatory authority includes the power to impose civil penalties pursuant to Section 36a-50(a) of the General Statutes of Connecticut, and to issue orders to cease and desist pursuant to Section 36a-52(a) of the General Statutes of Connecticut.

Section 36a-50(a) of the General Statutes of Connecticut provides, in pertinent part, that:

> (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 . . . certified mail, return receipt requested . . . . 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 after receipt of the notice.
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> (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.
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> (3) Each action undertaken by the commissioner under this subsection shall be in accordance with the provisions of chapter 54.

Section 36a-52(a) of the General Statutes of Connecticut 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 . . . certified mail, return receipt requested . . . . 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-788 of the Connecticut 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 sections 36a-770 to 36a-788, inclusive . . . the commissioner may take action against such person in accordance with section 36a-50 and 36a-52.

Section 4-177(c) of the General Statutes of Connecticut provides, in pertinent part, that "[u]nless precluded by law, a contested case may be resolved . . . by the default of a party."

Section 36a-1-31 of the Regulations provides, in pertinent part, that:

> (a) When a party fails to request a hearing within the time specified in the notice, the allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the commissioner shall issue a final decision in accordance with section 4-180 of the Connecticut General Statutes and section 36a-1-52 of the Regulations of Connecticut State Agencies, provided the commissioner may, if deemed necessary, receive evidence from the department, as part of the record, concerning the appropriateness of the amount of any civil penalty . . . sought in the notice.
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> (b) When a party fails to appear at a scheduled hearing, the allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the presiding officer shall submit to the commissioner a proposed final decision containing the relief sought in the notice, provided the presiding officer may, if deemed necessary, receive evidence from the department, as part of the record, concerning the appropriateness of the amount of any civil penalty . . . sought in the notice. The commissioner shall issue a final decision in accordance with section 4-180 of the Connecticut General Statutes and section 36a-1-52 of the Regulations of Connecticut State Agencies.

Pursuant to Section 36a-1-31 of the Regulations, the allegations made in the Notice against Top Notch are deemed admitted.

The express terms of Section 36a-52(a) of the General Statutes of Connecticut require that the Commissioner issue a cease and desist order against Top Notch given Top Notch's failure to request or appear at the Hearing.

Pursuant to Section 36a-1-31 of the Regulations, the Hearing Officer, deeming it necessary, received evidence from the Department as part of the record solely concerning the appropriateness of the

amount of the civil penalty against Top Notch sought in the Notice pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut.

Violation of Section 36a-785(c) of the Connecticut General Statutes

Section 36a-785(c) of the General Statutes of Connecticut provides, 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. . . .

The evidence establishes that Top Notch did not send a written statement to the retail buyer indicating the unaccelerated sum due under the Contract and the actual and reasonable expense of any retaking and storing, or any correspondence regarding the repossession, amounts due, possession retrieval or any other requirements in connection with the retaking of the vehicle prior to or following Top Notch's taking possession of the retail buyer's vehicle in February 2016. Top Notch's failure to provide the retail buyer with such written statement violated Section 36a-785(c) of the General Statutes of Connecticut. Such violation forms the basis to issue an order to cease and desist against Top Notch pursuant to Sections 36a-788 and 36a-52(a) of the General Statutes of Connecticut, and to impose a civil penalty upon Top Notch pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut.

The sole violation alleged against both Respondents is a "failure to provide the retail buyer with written notice of the repossession of the motor vehicle constitutes a violation of Section 36a-785(c) of the Connecticut General Statutes." The Contract was re-assigned to Top Notch by Westlake in December 2015. The evidence establishes that Top Notch was the holder of the Contract at the time of the repossession of the motor vehicle by Top Notch. The Division's witness also testified that Top Notch was the holder of the Contract. As the holder of the Contract at the time of the repossession, it was Top Notch and not Bordoy that was required to provide the statutorily required written statement pursuant to Section 36a-785(c) of the General Statutes of Connecticut. Top Notch failed to provide the retail buyer

with the written statement in violation of Section 36a-785(c) of the General Statutes of Connecticut. Since Bordoy was not a holder of the Contract, he was not subject to the requirement to provide the written statement to the retail buyer. The Amended Notice and the record do not assert a legal or factual basis for finding that Bordoy violated Section 36a-785(c) of the General Statutes of Connecticut for failing to provide the retail buyer with the written statement since he was not the holder of the Contract.

Piercing the corporate veil

Although not raised during the Hearing as a legal basis for finding Bordoy personally liable for Top Notch's actions, this proposed decision will consider whether an appropriate basis exists to "pierce the corporate veil" of Respondent Top Notch a limited liability company.

Disregard of a corporate entity or limited liability company for the purpose of imposing liability upon individual shareholders or members for acts of the corporation or company is commonly referred to as "piercing the corporate veil." During all times relevant to this matter, Section 34-133(a) of the General Statutes of Connecticut provided, with certain exceptions, that "a person who is a member or manager of a limited liability company is not liable, solely by reason of being a member or manager, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company."[1] "[O]ne of the principal reasons to use an LLC is that the owners and managers, if the owners so elect, have limited liability from contract and tort claims of third parties. This is not unlike the protection from liability afforded by incorporation." Stone v. Frederick Hobby Assocs. II, CV000181620S, 2001 Conn. Super. LEXIS 1853, at *26 (Super. Ct. July 10, 2001) (citations omitted; internal quotation marks omitted)

"A limited liability company is analogous to a corporation for purposes of piercing the corporate veil; the identity and instrumentality rules for piercing the corporate veil apply equally to limited liability companies and corporations." Sturm v. Harb Development, LLC, 298 Conn. 124, 131 n.7, (2010). *See, e.g.*, Litchfield Asset Management Corp. v. Howell, 70 Conn. App. 133, 147-48, cert. denied, 261 Conn. 911 (2002).

The Connecticut Supreme Court has held that "courts may pierce the corporate veil under one of two theories: either the instrumentality rule or the identity rule." McKay v. Longman, 332 Conn. 394, 433 (2019) citing Zaist v. Olson, 154 Conn. 563 (1967) at 575. "The veil may be pierced if the elements of either theory are satisfied. Since Zaist, this court has noted that [t]he concept of piercing the corporate veil is equitable in nature, and [n]o hard and fast rule . . . [exists to determine] the conditions under which the entity may be disregarded . . . as they vary according to the circumstances of each case. Consequently, this court has not applied traditional veil piercing lightly but, rather, has pierced the veil only under exceptional circumstances, for example, where the corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice. *See also, e.g.*, Naples v. Keystone Building & Development Corp., 295 Conn. 214, 234 (2010) (courts decline to pierce the veil of even the closest corporations in the absence of proof that failure to do so will perpetrate a fraud or other injustice)." McKay, 332 Conn. at 433. (citations omitted; internal quotation marks omitted.)

[1] Section 34-133 of the General Statutes of Connecticut and the other sections of Chapter 613, Sections 34-100 to 34-242, inclusive, of the "Connecticut Limited Liability Company Act" were repealed effective July 1, 2017; and Chapter 613a, Sections 34-243 to 34-290, inclusive, of the "Connecticut Uniform Limited Liability Company Act" became effective July 1, 2017 (P.A. 16-97)

In veil piercing "trial courts must first apply the instrumentality and/or identity rules and determine if the elements of either are satisfied. The instrumentality rule involves an examination of the defendant's relationship to the company and requires the court to determine whether there exists proof of three elements: (1) Control [by the defendant], not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of." McKay, 332 Conn. at 440-41. (citations omitted; internal quotation marks omitted.)

"In assessing the first prong of the instrumentality rule, that is, whether an entity is dominated or controlled, courts consider a number of factors, including (1) the absence of corporate formalities; (2) inadequate capitalization; (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes; (4) overlapping ownership, officers, directors, personnel; (5) common office space, address, phones; (6) the amount of business discretion by the allegedly dominated corporation; (7) whether the corporations dealt with each other at arm's length; (8) whether the corporations are treated as independent profit centers; (9) payment or guarantee of debts of the dominated corporation; and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own." McKay, 332 Conn. at 441-42. (citations omitted; internal quotation marks omitted.)

"With regard to the second and third prongs of the instrumentality test, that is, (2) whether such control was used to commit a fraud or wrong, and (3) whether that fraud or wrong proximately caused the plaintiff's loss, this court has stated that [i]t is not enough . . . simply to show that a judgment remains unsatisfied . . . . There must be some wrong beyond the creditor's inability to collect, which is contrary to the creditor's rights, and that wrong must have proximately caused the inability to collect." McKay, 332 Conn. at 442. (citations omitted; internal quotation marks omitted.)

"The identity rule, which . . . [the Connecticut Supreme Court] has observed complement[s] the instrumentality rule, has one prong, which requires the plaintiff to show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, [in which case] an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise." McKay, 332 Conn. at 442. (citations omitted; internal quotation marks omitted.)

The record does not establish a basis to hold Bordoy, as owner of Top Notch, LLC, individually liable for violating Section 36a-785(c) of the General Statutes of Connecticut under Connecticut case law. There is not a sufficient factual basis in the record to pierce the corporate veil under the instrumentality rule or the identity rule. In Ward v. RAK Construction, LLC, 2010 Conn. Super. LEXIS 835, 31, Superior Court, Docket No. CV 095010067 (2010), the court stated that "[a]lleging that . . . [the individual defendant] owns 100% of the interest in . . . [the corporate defendant] . . . [and] [that] . . . [the individual defendant] is the sole member of . . . [the corporate defendant] . . . [was] insufficient to satisfy the first element of the instrumentality test because [the] allegations [did] not establish that . . . [the individual defendant's] control reached the necessary level of complete domination."

Similarly, in Fischer v. Bella-Vin Development, LLC, 2008 Conn. Super. LEXIS 2594, 9-10, Superior Court, Docket No. CV075003012S (2008), the court found that the plaintiffs' allegations that "[a]t all relevant times the [individual] defendant . . . was the controlling member of the [corporate] defendant . . ." and "[a]t all relevant times any act or omission by . . . [the corporate defendant] was done

by the [individual] defendant" were insufficient to satisfy the instrumentality or identity rules. The court held that "[w]hile the plaintiffs may have alleged that [the individual] defendant . . . was in control of . . . [the corporate defendant] and its principal actor, there . . . [was] no contention that . . . [the individual defendant's] control reached a level of complete domination such that there was no distinction between the limited liability company and [the individual] defendant . . . . Consequently, element one of the instrumentality test . . . [was] not . . . established by the plaintiffs' allegations. Moreover, the plaintiffs . . . failed to provide any allegations that would demonstrate a complete unity of interest between . . . [the corporate defendant] and . . . [the individual defendant], and, therefore, the identity test . . . [was] also not satisfied."

With regard to the identity rule, there are no specific facts alleged to demonstrate that Bordoy disregarded corporate formalities or failed to maintain "separate identities". Janetty Racing Enterprises, Inc. v. Site Development Technologies, LLC, 2006 Conn. Super. LEXIS 366, Superior Court, Docket No. CV-05-4004820-S (2006). ("Aside from adding the names of the defendants, the plaintiff's allegations constitute nothing more than a recital of the elements of the instrumentality and identity rules. No facts are alleged to support these legal conclusions").

The allegations in the Amended Notice that "Bordoy was the owner and registered operating manager of Top Notch", and description of Bordoy's actions on behalf of Top Notch in repossessing the vehicle, are analogous to the allegations in *Ward* and *Fischer*. The record reveals that Bordoy was the owner and registered operating manager of Top Notch, a limited liability company and that he was the individual primarily acting on behalf of Top Notch in the repossession of the retail customer's motor vehicle. While the record establishes that Bordoy executed the Contract, Affidavit of Repossession, and Voluntary Surrender Form on behalf of Top Notch, there is no allegation in the Amended Notice or evidence in the record that Bordoy executed these documents in his individual capacity and not as a representative of Top Notch. There is no allegation or evidence in the record to find that Top Notch and Bordoy failed to observe all the corporate formalities in this transaction or that there was no distinction between Top Notch and Bordoy. There is also no evidence in the record regarding control of the finances, policies or business of Top Notch. The record fails to support a finding that Bordoy was a party to the contract, or that he was in complete domination of the finances, policy and business practices of Top Notch. Accordingly, the record fails to meet the criteria for piercing the corporate veil and does not establish a basis for finding Bordoy liable for Top Notch's statutory violation.

Imposition of Civil Penalty pursuant to
Sections 36a-50(a) of the General Statutes of Connecticut

During the Hearing, evidence was presented concerning the appropriateness of the amount of the civil penalty that should be imposed upon Top Notch. Section 36a-50(a) of the General Statutes of Connecticut gives the Commissioner discretion to order a civil penalty not exceeding One Hundred Thousand Dollars ($100,000) per violation upon any person who has violated a law within the jurisdiction of the Commissioner. The Division is seeking a civil penalty of One hundred Thousand Dollars ($100,000) based on the violation of Section 36a-785(c) of the General Statutes of Connecticut with respect to Top Notch's failure to provide the retail buyer with written notice of the repossession of the motor vehicle. Top Notch failed to provide any notice of the amount required for redemption of the vehicle and otherwise failed to provide the statutorily required repossession notices. The retail buyer appears to have made at least one payment, as well as a $3,200 down payment on the contract. Top Notch's violation denied the retail buyer the opportunity to redeem the vehicle upon payment or tender of the unaccelerated amount due under the contract at the time of retaking and interest. No evidence of mitigating circumstances was provided during the Hearing.

The imposition of a civil penalty upon Top Notch is warranted based upon the record and the matters alleged in the Amended Notice. Future harm to Connecticut residents will be deterred through the imposition of a civil penalty against Top Notch. The Connecticut Supreme Court has stated that "[t]he assessment of civil penalties is a fact-specific and broadly discretionary determination." *Rocque v. Light Sources, Inc*., 275 Conn. 420, 450 (2005)

Top Notch committed one violation of Section 36a-785(c) of the General Statutes of Connecticut, which forms a basis for the imposition of a civil penalty upon Top Notch pursuant to Sections 36a-788 and 36a-50(a) of the General Statutes of Connecticut.

ORDER

Having read the record, I hereby **ORDER**, pursuant to Sections 36a-788, 36a-52(a) and 36a-50(a) of the General Statutes of Connecticut, that:

1. Top Notch Motors, LLC **CEASE AND DESIST** from violating Section 36a-785(c) of the General Statutes of Connecticut;

2. **A CIVIL PENALTY** of Twenty Thousand Dollars ($20,000) be imposed upon Top Notch Motors, LLC, to be remitted to the Department by cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than thirty (30) days from the date the Order is mailed; and

3. The Order shall become effective when mailed.

Dated at Hartford, Connecticut,
this __9th___ day of July 2020.

_____
Jorge L. Perez
Banking Commissioner

This Order was sent by certified mail, return receipt requested, to Gabriel Bordoy and Top Notch Motors, LLC, and hand-delivered to Jeffrey T. Schuyler, Staff Attorney, State of Connecticut Department of Banking on July 10, 2020.

Gabriel Bordoy — Certified Mail No. 7015 1730 0002 2411 3472
62 Carmen Hill Road
New Milford, Connecticut 06776

Top Notch Motors, LLC — Certified Mail No. 7015 1730 0002 2411 3489
Attention: Pasquale Civitella, Agent for Service of Process
456 Derby Avenue
West Haven, Connecticut 06516

A copy of this Order was also sent by electronic mail to Gabriel Bordoy at gbordoy456@gmail.com on July 10, 2020.