

Electronically Received 04/04/2023 10:56 AM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
Thomas E. Wheeler (SBN 308789)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com
mgeorge@toddfllaw.com
twheeler@toddfllaw.com
Attorneys for Plaintiff

FILED
Superior Court of California
County of Los Angeles
04/07/2023

David W. Slayton, Executive Officer / Clerk of Court
By: A. Morales Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TERRY FABRICANT, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOP FLITE FINANCIAL, INC., and
DOES 1 through 10, inclusive,

Defendant

Case No. 20STCV13837

CLASS ACTION
~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

DATE: April 4, 2023
TIME: 10:00 a.m.
DEPT. SS7

Complaint Filed: April 7, 2020

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable Lawrence Riff presiding, on April 4, 2023 at 10:00 a.m. The Court having
4 considered the papers submitted in support of the Motion, HEREBY ORDERS THE
5 FOLLOWING:

6 1. Capitalized terms shall have the definitions set forth in the Joint Settlement
7 Agreement and Release (the “Settlement”) entered into between the Parties.

8 2. The following Settlement Class is conditionally certified for purposes of
9 settlement only: all California residents who, between April 8, 2019 and June 7, 2019, had a call
10 with Defendant that lasted more than nine (9) seconds and whose call was recorded.

11 3. The Settlement Class shall consist of all Settlement Class Members who do not
12 timely exclude themselves (“opt out”) from the Settlement Class by mailing a timely Request for
13 Exclusion (or “Opt Out”) in accordance with the requirements set forth in the Class Notice and
14 Settlement.

15 4. The Court grants preliminary approval of the Settlement based upon the terms set
16 forth in the Settlement filed herewith, and finds that the Settlement Class meet the requirements
17 for conditional certification for settlement purposes only under California Code of Civil
18 Procedure section 382.

19 5. The Settlement appears to be fair, adequate and reasonable to the Settlement. The
20 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
21 only to any objections that may be raised in connection with the Final Approval Hearing.

22 6. Plaintiff Terry Fabricant is conditionally approved as the class representative for
23 the Settlement Class.

24 7. The Incentive Award of \$5,000.00 payable to Plaintiff for his services as the class
25 representative is conditionally approved.

26 8. Plaintiff’s Counsel Todd Friedman, Thomas E. Wheeler, and Adrian Bacon of the
27 Law Offices of Todd M. Friedman, P.C. are conditionally approved as Class Counsel for the
28 Settlement Class.

1 9. The Fee Award of up to \$91,666 in attorneys' fees plus actual documented
2 litigation costs, not to exceed \$10,000.00 payable to Plaintiff's Counsel is conditionally approved.

3 10. A Final Approval Hearing on the question of whether the Settlement, attorneys'
4 fees and costs to Class Counsel, and Incentive Awards to Plaintiffs should be given Final
5 Approval as fair, reasonable and adequate as to Settlement Class Members is scheduled in
6 Department 7 on the date and time set forth below.

7 11. The Court hereby appoints Postlethwaite & Netterville as the Claims
8 Administrator.

9 12. The estimated Administration Costs of \$60,000 to Postlethwaite & Netterville for
10 its services as the Claims Administrator are hereby conditionally approved.

11 13. The Court approves, as to form and content, the Class Notice in substantially the
12 form attached to the Settlement Agreement as Exhibit A submitted in conjunction with the
13 Motion. The Court approves the procedures for Class Members to participate in, to request
14 exclusion from, and to object to the Settlement as set forth in the Class Notice.

15 14. The Court directs the mailing of the Class Notice by first class mail to all
16 Settlement Class Members in accordance with the Implementation Schedule set forth below. The
17 Court finds the dates selected for the mailing and distribution of the Class Notice, as set forth in
18 the Implementation Schedule, meet the requirements of due process and provide the best notice
19 practicable under the circumstances and shall constitute due and sufficient notice to all persons
20 entitled thereto.

21 15. Any Settlement Class Member may choose to opt-out of and be excluded from the
22 Settlement Class, as provided in the Notice, by following the instructions for requesting exclusion
23 from the Settlement Class that are set forth in the Notice. All requests for exclusion must be
24 submitted as provided in the Notice. Any such person who chooses to opt-out of and be excluded
25 from the Settlement Class will not be entitled to any recovery under the Settlement and will not
26 be bound by the Settlement or have any right to object, appeal, or comment thereon. Any written
27 request to opt-out must be signed by each such person opting out. Settlement Class Members who
28 have not requested exclusion shall be bound by all determinations of the Court, the Settlement,

1 and Judgment.

2 16. Any Settlement Class Member may appear at the Final Approval Hearing and may
3 object or express the Class Member's views regarding the Settlement and may present evidence
4 and file briefs or other papers that may be proper and relevant to the issues to be heard and
5 determined by the Court as provided in the Notice. Any written objection by a Settlement Class
6 Member must set forth the name and case number of this matter, the objecting Settlement Class
7 Member's name, address, telephone number with which he or she had a call with Defendant and
8 all arguments, and citations and evidence supporting the Objection. Any written objection must
9 be mailed to the Claims Administrator and postmarked by the deadline set forth below. Any
10 Settlement Class Member may appear at and request to be heard at the Final Approval Hearing
11 without filing any other documents. Settlement Class Members who fail to file and serve timely
12 written objections or appear at the hearing to lodge such objections in the manner specified herein
13 and in the Settlement, shall be deemed to have waived any objections and shall be foreclosed
14 from making any objection (whether by appeal or otherwise) to the Settlement.

15 17. The Settlement is not a concession or admission, and shall not be used against
16 Defendant or any of the Released Parties as an admission or indication with respect to any claim
17 of any fault or omission by Defendant, or any of the Released Parties. Whether or not the
18 Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding,
19 or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be:

- 20 a. Construed as, offered or admitted in evidence as, received as or deemed to be
21 evidence for any purpose adverse to the Released Parties, including, but not
22 limited to, evidence of a presumption, concession, indication, or admission by
23 Defendant or any of the Released Parties of any liability, fault, wrongdoing,
24 omission, concession, or damage; or
- 25 b. Disclosed, referred to, or offered or received in evidence against any of the
26 Released Parties in any further proceeding in the Action, or in any other civil,
27 criminal, or administrative action or proceeding, except for purposes of settling
28 the Action pursuant to the Settlement.

1 18. In the event the Settlement does not become effective in accordance with the terms
2 of the Settlement, or the Settlement is not finally approved, or is terminated, canceled or fails to
3 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
4 and the Parties shall revert to their respective positions as of before entering into the Stipulation.

5 19. The Court orders the following **Implementation Schedule** for further
6 proceedings:

7 . Deadline for Defendant to submit Settlement
8 Class Member Data to Claims Administrator
9 (within 21 days after the Court Granting
Preliminary Approval):

April 25, 2023

10 . Deadline for Claims Administrator to Mail the
11 Class Notice to Settlement Class Members
12 (within 30 days after the Court Granting
Preliminary Approval):

May 4, 2023

13 . Objection/Opt-Out Deadline (60 days after
14 Mail notice is sent):

July 3, 2023

15 . Deadline for Class Members to make Claims
16 (60 days after Mail notice is sent):

July 3, 2023

17 . Deadline for Class Counsel to file Motion for
18 Attorneys' Fees, Costs and Incentive Award
19 (76 days from the Court Granting Preliminary
Approval)

June 23, 2023

20 . Deadline for Class Counsel to file Motion for
21 Final Approval of Class Action Settlement:
(21 days before Final Approval Hearing)

August 3, 2023

22 Final Approval Hearing Date:

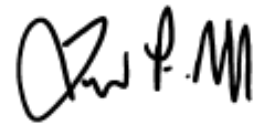
August 24, 2023 10:00 a.m.

23
24 **IT IS SO ORDERED.**

25 Date: ~~April 4, 2023~~

26 04/07/2023



27 

27 Lawrence P. Riff / Judge

28 HON. LAWRENCE RIFF

PROOF OF SERVICE

1
2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 18 and not a party to the within action. My Business Address is 21031 Ventura Blvd, Suite 340
4 Woodland Hills, CA 91364.

5 On April 4, 2023, I served the following document(s) described as: **[PROPOSED]**
6 **ORDER GRANTING PRELIMINARY APPROVAL**, on all interested parties in this action
7 by placing:

- 8
9 a true copy
10 the original thereof enclosed in sealed envelope(s) addressed as follows:


11 **WOOD, SMITH, HENNING & BERMAN,**
12 **LLP**

13 Frances O’Meara, Esq. (SBN 140600)
14 Mindy S. Bae, Esq. (SBN 301769)
15 10960 Wilshire Blvd., 18th Floor,
16 Los Angeles, California 90024
17 E-mail: fomeara@wshblaw.com
18 mbae@wshblaw.com

19 Attorneys for Defendant

- 20 BY ELECTRONIC SERVICE THROUGH CASE ANYWHERE
21 STATE – I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct.

23 Executed on April 4, 2023, at Los Angeles, California.

24
25
26
27
28
By: 
Thomas Wheeler