

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

Consumer Financial Protection Bureau
and Navajo Nation,

Plaintiffs,

v.

S/W Tax Loans, Inc. formerly d/b/a
Fast Refund Loans, Inc.; J Thomas
Development of NM, Inc. formerly
d/b/a H&R Block; Dennis R. Gonzales;
and Jeffrey Scott Thomas,

Defendants.

Civil Action No.

COMPLAINT

The Consumer Financial Protection Bureau and the Navajo Nation bring this action against S/W Tax Loans, Inc. formerly d/b/a Fast Refund Loans, Inc.; J Thomas Development of NM, Inc. formerly d/b/a H&R Block; Dennis R. Gonzales; and Jeffrey Scott Thomas (collectively, “Defendants”) and allege as follows:

INTRODUCTION

1. Jeffrey Scott Thomas, through his company, J Thomas Development of NM, Inc., operated several H&R Block franchises in New Mexico and the territory of the Navajo Nation.

2. Around 1998, Thomas set up and financed S/W Tax Loans, Inc. (“Southwest”), a loan company created to offer Thomas’s tax clients short-term, triple-digit-APR loans secured by the consumer’s anticipated tax refund – also known as refund-anticipation loans (“RALs”). Thomas ordered his tax preparers to recommend only Southwest’s RALs and not to offer H&R Block’s more affordable alternative. Thomas paid his tax preparers bonuses based on the number of tax clients who received Southwest’s RALs, and concealed from consumers the financial interest he and his tax preparers had in each high-cost RAL they recommended. Additionally, Southwest failed to make other required disclosures about the high-cost products they were foisting on consumers.

3. Plaintiffs bring this suit to secure relief for injured consumers, to stop the unlawful conduct by Defendants, and to obtain a penalty against them.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this action because it is brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345, and by an Indian tribe under federal law, 28 U.S.C. § 1362.

5. Venue is proper because Defendants resided, were located, and transacted business in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district. 28 U.S.C. §§ 111, 1391(b); 12 U.S.C. § 5564(f).

PARTIES

6. Plaintiff Consumer Financial Protection Bureau is an agency of the United States charged with regulating the offering and providing of consumer-financial products and services under Federal consumer financial laws, including the Truth in Lending Act (“TILA”), 12 U.S.C. § 1601 *et seq.*, and its implementing regulations (“Regulation Z”), 12 C.F.R. pt. 1026; and the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531, 5536(a)(1). *See* 12 U.S.C. § 5491(a); *see also id.* § 5481(12), (14). The Bureau’s regulatory authority extends to persons extending credit and service providers to those persons. 12 U.S.C. §§ 5531(a), 5481(5), (6), (15)(A)(i), (26). The Bureau has independent litigating authority to commence civil actions to address violations of Federal consumer financial laws, including TILA, Regulation Z, and the CFPA. 12 U.S.C. § 5564(a)-(b); 15 U.S.C. § 1607(a)(6).

7. Plaintiff Navajo Nation is a sovereign Indian nation with over 300,000 citizens. Its sovereign lands include lands also within the boundaries of

the State of New Mexico. Some of its citizens seek consumer-credit products such as those offered by Defendants, particularly in “border towns” surrounding the Nation’s territory. The Navajo Nation Department of Justice, the attorney general’s office for the Nation, explicitly has authority to enforce the CFPA. 12 U.S.C. §§ 5481(27) (including Indian tribes in definition of “State”); 5552(a)(1) (authorizing enforcement action by attorney general of “State”).

8. Defendant Southwest is a New Mexico corporation with offices in Bloomfield, Farmington, North Gallup, South Gallup, and Shiprock. At times material to this Complaint, Southwest regularly extended consumer credit subject to finance charges and was the person to whom the debt arising from the consumer-credit transaction was initially payable on the face of the evidence of indebtedness. Southwest is therefore a “covered person” under the CFPA and a “creditor” under TILA and Regulation Z. 12 U.S.C. § 5481(6), (15)(A)(i); 15 U.S.C. § 1602(g); 12 C.F.R. § 1026.2(17).

9. Defendant J Thomas Development of NM, Inc. formerly d/b/a H&R Block (the “Tax Franchise”) is a New Mexico corporation that owned and operated four H&R Block franchises. At times material to this Complaint, the Tax Franchise referred its clients to Southwest for RALs and collected and processed transactions and documentation related to those RAL applications. The Tax

Franchise is therefore a “service provider” under the CFPA. 12 U.S.C.

§ 5481(26)(A).

10. Defendant Jeffrey Scott Thomas is a New Mexico resident who served as the Tax Franchise’s president. Thomas participated in designing, operating, and maintaining the RALs that Southwest offered to Tax Franchise customers. At times material to this Complaint, Thomas directed the Tax Franchise to refer its clients to Southwest for RALs and to collect and process transactions and documentation in support of those RAL applications. Thomas is therefore a “service provider” to Southwest. 12 U.S.C. § 5481(26)(A).

Additionally, at times material to this Complaint, Thomas materially participated in the affairs of Southwest. Thomas is therefore a “related person” to Southwest under the CFPA. 12 U.S.C. § 5481(25)(C)(ii). Because Thomas is a “related person,” he is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

11. Defendant Dennis R. Gonzales is a New Mexico resident who owned Southwest and served as its president. Additionally, at times material to this Complaint, Gonzales had managerial responsibility for Southwest and materially participated in the conduct of its affairs. Gonzales is therefore a “related person” to Southwest under the CFPA. 12 U.S.C. § 5481(25)(C)(i), (ii).

Because Gonzales is a “related person,” he is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

FACTS

A. The Tax Franchise offered tax-preparation services within or near the Navajo Nation.

12. In the late 1990s, the Tax Franchise began offering tax-preparation services in four locations within the territory of the Navajo Nation or in New Mexico near the Nation’s territory. Most of the Tax Franchise’s customers were low-income citizens of the Navajo Nation who qualified for and relied on the Earned Income Tax Credit. Many of those customers desired immediate access to cash for personal, family, or household needs and wanted to defer payment for tax-preparation services.

13. The Tax Franchise could have offered H&R Block’s proprietary financial products to meet its clients’ short-term cash needs. These products included H&R Block’s line of credit, which provided cash advances on tax refunds and had a maximum 36% APR.

B. Thomas created Southwest to offer high-cost, short-term loans to the Tax Franchise's clients.

14. Around 1998, Thomas set up Southwest, a tax-loan company, to offer to the Tax Franchise's clients RALs with APRs above 240%.

15. Thomas installed Gonzales, a friend and employee in one of Thomas's automobile dealerships, as the president and owner of Southwest. Southwest opened offices next door to each of the Tax Franchise's locations.

16. Thomas financed Southwest's entire operation, providing everything from start-up capital to the funding for all of the RALs. Thomas kept close control over Southwest. Thomas installed staff, made the general manager of Southwest report directly to him, and set Gonzales's salary; he approved loan rates, maximum loan limits, underwriting criteria, loan-volume targets, and the terms of the RAL agreements; he determined advertising and marketing copy; and he received daily-activity reports monitoring loan volume. Indeed, in various internal communications, Thomas referred to Southwest and the Tax Franchise as "sister companies" and the "tax/loan division" of his business enterprises.

17. Southwest's RALs were much more expensive than H&R Block's line of credit. The APRs on the RALs ranged from approximately 240-310%, while the APR for the H&R Block line of credit did not exceed 36%.

18. Thomas's investment in Southwest was highly lucrative. Through various companies he owned and controlled, Thomas earned significant income from Southwest, including interest and origination fees and consulting fees for compliance, audit, and other services.

C. Thomas and the Tax Franchise steered consumers to Southwest's costly RALs

19. Thomas and the Tax Franchise played critical and sustaining roles in the offering and provision of Southwest RALs.

20. Each November and December, Southwest offered "holiday" RALs based on the Tax Franchise's estimate of the consumer's expected refund the following year. The estimate was typically based on pay stubs or the refund from the prior year. The Tax Franchise's tax preparers presented holiday-loan applications and other associated forms to consumers, helped consumers complete the forms, and collected birth certificates and social-security cards of entire families to serve as collateral for the loans and to ensure the clients

returned to the Tax Franchise to get their taxes done. Thomas approved and financed radio and print advertisements for the holiday RALs.

21. Southwest also offered RALs during tax season. The Tax Franchise's tax preparers provided many of these same support functions for those RALs, including presenting loan applications and other forms.

22. Like the consumers seeking holiday loans, many of the Tax Franchise's tax-preparation clients were low-income and had immediate cash needs. For Thomas, these cash-strapped consumers were a ready pool of customers for Southwest's high-cost RALs. During tax season, Thomas instructed the Tax Franchise employees to refer tax clients to Southwest for RALs and gave the tax preparers a financial incentive to do so. Each season, the tax preparers received a bonus based on the number of RALs their customers received from Southwest.

23. Neither Thomas nor the Tax Franchise disclosed to the tax clients that Thomas and his tax preparers had a financial interest in each and every RAL the clients took out from Southwest.

24. From 2011 through 2013, Southwest provided RALs to about 7,000 consumers annually and, in total, issued more than 39,000 RALs with a face value of more than \$36 million.

D. Southwest did not disclose that consumers' tax refunds had been received and would soon be available but instead persuaded consumers to take out additional RALs.

25. Southwest set forth the terms and conditions of its RALs in a "Loan Agreement and Disclosure Statement" and a "RAL Authorization/Certification Agreement" (collectively the "RAL Agreement").

26. Under the terms of the RAL Agreement, consumers had to cede control over their refunds to Southwest. The RAL Agreement authorized Southwest to receive consumers' state and federal tax refunds, endorse their refund checks, use their tax refunds to pay off RALs and the tax-preparation services provided by the Tax Franchise, and contact the IRS to determine the status of their refunds. It also authorized Southwest to open bank accounts in consumers' names for the deposit of their tax refund checks.

27. Consumers had to rely on Southwest to learn when their tax refunds had arrived.

28. During tax season, the process of reconciling tax-refund checks from the IRS took a few days. Southwest deducted the principal, interest, and fees for its RALs and the Tax Franchise's tax-preparation fees from the tax refund. The remaining refund was remitted to the consumer.

29. Southwest did not disclose to more than 1,500 consumers that their tax refunds had been received from the IRS and were being processed. Instead, when these consumers inquired about the status of their refund, Southwest persuaded the consumers to take out a second RAL.

30. Many consumers, had they know that their refunds had been received and would be available to them in a matter of days, would not have taken out another high-cost Southwest RAL. Because Southwest concealed this information from them, many consumers unwittingly paid significant fees to borrow funds that would have been available to them in only a few days.

31. In January 2013, H&R Block notified Thomas that Southwest was issuing second and third RALs to consumers whose tax refunds had been received by the company. Thomas took no steps to stop or prevent this practice, even though he had authority to do so.

32. Gonzales was the president and owner of Southwest, and had the authority to control Southwest's operations and activities. He knew or should have known about Southwest's practices of extending unnecessary RALs but took no steps to stop or prevent it.

33. From 2011 through 2014, Southwest extended RALs to more than 1,500 consumers whose refunds had already been received, charging more than \$250,000 in interest and fees.

E. Southwest's RAL Agreement grossly understated the loans' APR.

34. Thomas played a key role in determining the APR disclosures for the RALs.

35. Gonzales had the authority to control Southwest's activities and operations, and knew or should have known about the company's inaccurate RAL disclosures.

36. The RAL Agreement required consumers to pay back RALs "on demand or when [their] anticipated refunds [were] received from the federal and state (if applicable) agencies."

37. From 2011 through 2012, Southwest's RAL Agreement failed to disclose that the APR provided was based on a loan-term estimate.

38. Southwest also understated the APRs on RALs it issued from January to May 2013 by using an inflated loan-term estimate to calculate the APR. Southwest used a 45-day loan-term estimate in calculating the APR even though its RAL Agreement stated that "the IRS normally makes an electronic deposit in an average of about 12 days."

39. H&R Block terminated its relationship with the Tax Franchise in late 2014. As a result, both the Tax Franchise and Southwest ceased their operations.

COUNT I
by the Bureau and the Nation against the Tax Franchise and Thomas for
abusive steering, in violation of the CFPA

40. The Bureau and the Nation reallege and incorporate by reference paragraphs 1 through 39.

41. Section 1036(a)(1)(B) of the CFPA prohibits abusive acts or practices in connection with the offering or provision of consumer financial products or services. 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a). An act or practice is abusive if it takes unreasonable advantage of the inability of the consumer to protect her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

42. Although authorized to sell H&R Block financial products through the Tax Franchise, including a line of credit with a 36% APR, Thomas created and financed Southwest to sell high-cost RALs to the Tax Franchise's clients.

43. Thomas bankrolled Southwest's entire business, including financing all its RALs, but presented Southwest to the public as a separate and independent firm.

44. The Tax Franchise's clients were generally low-income consumers with immediate cash needs. Thomas and the Tax Franchise sought to capitalize on these cash-strapped and vulnerable consumers by steering them to Southwest for high-cost RALs.

45. Thomas and the tax preparers had a financial interest in each Southwest RAL their tax clients took out. The Tax Franchise paid its tax preparers a seasonal bonus based on the number of Southwest RALs their clients took out. Thomas, through various entities he owned and controlled, earned significant income from Southwest, including interest and origination fees, and consulting fees for compliance, audit, and other services.

46. Neither Thomas nor the Tax Franchise disclosed those financial interests to the tax clients they steered to Southwest's RALs. The tax clients thus lacked important information in evaluating whether to choose a Southwest RAL or to seek an alternative financial product to meet their short-term cash needs.

47. By failing to disclose their financial interests in the high-cost loan products to which they were steering their cash-strapped and vulnerable customers, Thomas and the Tax Franchise took unreasonable advantage of their tax clients' inability to protect their own interests in selecting a Southwest RAL.

48. Thus, Thomas and the Tax Franchise engaged in abusive acts or practices in violation of § 1036(a)(1)(B) and § 1031(d)(2)(B) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B), 5531(d)(2)(B).

COUNT II
by the Bureau and the Nation against Southwest, Thomas, and Gonzales for
unfair extensions of credit, in violation of the CFPA

49. The Bureau and the Nation reallege and incorporate by reference paragraphs 1 through 39.

50. Section 1036(a)(1)(B) of the CFPA prohibits unfair acts or practices in connection with the offering or provision of consumer financial products or services. 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a).

51. An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1).

52. Under the RAL Agreement, Southwest assumed control over consumers' tax refunds, obtaining the power to receive and endorse the consumers' refund checks and contact the IRS to learn the status of the refunds. As a result, Southwest knew or should have known when the consumers' tax refunds had been received.

53. Southwest extended RALs to consumers whose refunds they knew or should have known had been received without disclosing this information to consumers.

54. Southwest's practice of extending RALs to consumers without disclosing that their tax refunds had been received was likely to cause substantial injury to consumers. Many consumers, had they known that their refunds had been received and would be available to them in a few days, likely would not have taken out additional RALs with triple-digit APRs.

55. This injury was not reasonably avoidable by consumers because the refund checks were sent to Southwest, and the consumers, having ceded control over their refund to Southwest as a condition of the loan, had to rely on Southwest to learn whether their refund check had been received.

56. The substantial injury caused by this practice of extending unnecessary high-cost RALs without disclosing critical information – that is, that the tax refund had been received – is not outweighed by any countervailing benefits to consumers or competition created by failing to inform consumers of information that was likely to impact their decision to take out a RAL.

57. Thus, Southwest engaged in unfair acts and practices in violation of § 1036(a)(1)(B) and § 1031(c)(1) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B), 5531(c)(1).

58. Thomas knew Southwest was extending RALs to consumers whose refunds had been received but took no steps to stop or prevent the practice.

59. Likewise, Gonzales was the owner and president of Southwest. He knew or should have known of these wrongful acts but took no steps to stop or prevent them.

60. Because Thomas and Gonzales are “related persons” to Southwest, they are each deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25). Thomas and Gonzales are liable for violations of the CFPA.

COUNT III
by the Bureau and the Nation against Southwest, Thomas, and Gonzales for
abusive extensions of credit, in violation of the CFPA

61. The Bureau and the Nation reallege and incorporate by reference paragraphs 1 through 39.

62. Section 1036(a)(1)(B) of the CFPA prohibits abusive acts or practices in connection with the offering or provision of consumer financial products or services. 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a).

63. An act or practice is abusive if it takes unreasonable advantage of the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

64. Because Southwest withheld crucial information from consumers about their tax refunds – i.e., that they had been received into accounts Southwest controlled and were being processed by Southwest, and would be available in days – consumers were unable to protect their interests in determining whether to take out an additional high-cost RAL.

65. By extending an additional high-cost RAL without disclosing to consumers that their tax refunds had been received into accounts that Southwest controlled, Southwest took unreasonable advantage of consumers' inability to protect their interests in selecting a Southwest RAL.

66. Thus, Southwest engaged in abusive acts and practices in violation of § 1036(a)(1)(B) and § 1031(d)(2)(B) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B), 5531(d)(2)(B).

67. Because Thomas and Gonzales are “related persons” to Southwest, they are each deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25). Thomas and Gonzales are liable for violations of the CFPA.

COUNT IV
by the Bureau and the Nation against Southwest, Thomas, and Gonzales for
deceptive extensions of credit, in violation of the CFPA

68. The Bureau and the Nation reallege and incorporate by reference paragraphs 1 through 39.

69. Section 1036(a)(1)(B) of the CFPA prohibits deceptive acts or practices in connection with the offering or provision of consumer financial products or services. 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a).

70. An act or practice is deceptive if it is likely to mislead customers acting reasonably under the circumstances and the representation was material.

71. Southwest, in urging consumers to take out new loans when consumers inquired about the status of their refunds, created the misleading impression that the refunds had not yet been received and that the consumers would need a new loan to obtain cash. Indeed, by extending new RALs to consumers inquiring whether their refunds had been received, Southwest implied that the consumers' tax refunds had not yet arrived.

72. Southwest failed to disclose that the consumers' refunds had been received and would be available in a matter of days. Those facts would have been material to consumers in deciding whether to take out another high-cost RAL, incurring substantial fees and interest as a result.

73. As a result, Southwest's extensions of RALs without disclosing that consumers' tax refunds had been received constitute deceptive acts and practices in violation of § 1031(a) and § 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

74. Because Thomas and Gonzales are "related persons" to Southwest, they are each deemed a "covered person" under the CFPA. 12 U.S.C. § 5481(25). Thomas and Gonzales are liable for violations of the CFPA.

COUNT V
by the Bureau against Southwest for violations of Regulation Z

75. The Bureau realleges and incorporates by reference paragraphs 1-39.

76. Section 1026.17(c)(2)(i) of Regulation Z provides that if information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate. 12 C.F.R. § 1026.17(c)(2)(i).

77. From 2011 through 2012, Southwest failed to disclose in its RAL Agreement that its APR disclosure was based upon an estimate of the loan term for the RAL.

78. From January to May 2013, Southwest based its APR disclosures on a 45-day loan-term estimate even though the company's RAL Agreements noted that the IRS generally processed refunds in about twelve days.

79. Thus, Southwest violated Regulation Z in its disclosure of the APRs for its RALs.

COUNT VI
by the Bureau and the Nation against Southwest for violations of the CFPA
relating to Regulation Z

80. The Bureau and the Nation reallege and incorporate by reference paragraphs 1 through 39.

81. Section 1036(a)(1)(A) of the CFPA provides that is "unlawful for . . . any covered person or service provider . . . to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law." 12 U.S.C. § 5536(a)(1)(A).

82. Because Southwest violated Regulation Z in its disclosure of the APRs for its RALs, Southwest also violated § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

COUNT VII
by the Bureau and the Nation against Southwest, Thomas, and Gonzales for
deceptive APR disclosures, in violation of the CFPA

83. The Bureau and the Nation reallege and incorporate by reference paragraphs 1-39.

84. Section 1036(a)(1)(B) of the CFPA prohibits deceptive acts or practices in connection with the offering or provision of consumer financial products or services. 12 U.S.C. § 5536(a)(1)(B); *see also id.* § 5531(a).

85. An act or practice is deceptive if it is likely to mislead customers acting reasonably under the circumstances and the representation was material.

86. Because Southwest failed to state that the APRs were based on estimates and used an inappropriate loan-term estimate, Southwest's APR disclosures were substantially understated and therefore misleading as to the cost of credit.

87. These representations about the cost of credit were material.

88. As a result, Southwest's misleading APR disclosures constitute deceptive acts or practices in violation of §1031(a) and § 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

89. Thomas played a key role in determining the APR disclosures for the RALs.

90. Gonzales had the authority to control Southwest's activities and operations, and knew or should have known about the company's RAL disclosures.

91. Because Thomas and Gonzales are "related persons" to Southwest, they are each deemed a "covered person" under the CFPA. 12 U.S.C. § 5481(25). Thomas and Gonzales are liable for violations of the CFPA.

DEMAND FOR RELIEF

The Bureau and the Nation request that the Court:

- a. permanently enjoin Defendants from committing future violations of the CFPA and Regulation Z;
- b. award damages or other monetary relief against Defendants;
- c. order Defendants to pay restitution to consumers harmed by their unlawful conduct;
- d. order disgorgement of ill-gotten revenues against Defendants;
- e. impose civil money penalties against Defendants;
- f. order Defendants to pay the Bureau's and the Nation's costs incurred in connection with prosecuting this action; and
- g. award additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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