

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**MARC A. CELELLO,**

**Defendant.**

**Civil Action File No.**

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (“Commission” or “SEC”) alleges the following:

**OVERVIEW**

1. This case arises from a Ponzi scheme orchestrated by James A. Torchia (“Torchia”), a resident of Canton, Georgia and a number of entities he controlled, Credit Nation Capital, LLC (“CN Capital”), Credit Nation Acceptance, LLC (“CN Acceptance”), American Motor Credit, LLC (“AMC”), Credit Nation Auto,

LLC (“CN Auto”), and Spaghetti Junction, LLC (“Spaghetti Junction”) (collectively “Credit Nation”).

2. Marc A. Celello (“Celello”) was a partner in the Credit Nation enterprise and served as general counsel for the underlying entities.

3. Between 2009 and the fall of 2015, when it was ordered to stop raising money by this Court, CN Capital (formerly known as Credit Nation Lending Services, LLC), raised tens of millions of dollars from investors who purchased unregistered promissory notes, most of which promised a 9% return.

4. CN Capital and Celello touted the safety of the promissory notes, describing them to investors as “100% asset backed” and “backed by hard assets dollar for dollar.”

5. Contrary to these representations, CN Capital operated as an ongoing Ponzi scheme through which the promised investment returns were paid using new investor money. Neither CN Capital’s multi-million dollar per year operating losses nor its massive insolvency was ever disclosed to investors.

6. Celello was an active participant in the fraudulent promissory note offering by Torchia and CN Capital.

7. Celello prepared the offering memoranda used to solicit investors to purchase the promissory notes offered by CN Capital. The offering memoranda falsely touted that the promissory notes were a secure investment capable of generating reliable investment returns.

8. Celello also was the company's primary interface with the sales and marketing representatives. As such, Celello directed these representatives to make some of the key misrepresentations to investors (*e.g.*, that CN Capital's promissory notes were "100% asset backed" and "backed by hard assets dollar for dollar").

9. At the time of these misrepresentations, Celello knew that: a) CN Capital had been generating substantial losses since at least 2011; b) CN Capital had liabilities that dwarfed its assets; and c) CN Capital had generated insufficient returns on its investments to cover its cash flow needs.

10. Celello's deceptive conduct violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5.

11. Alternatively, Celello aided and abetted violations by Torchia and CN Capital of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

## **VIOLATIONS**

12. Defendant has engaged in or aided and abetted acts or practices, and, unless restrained and enjoined by this Court, will continue to engage in or aid and abet acts and practices that constitute and will constitute violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

13. Defendant has engaged in or aided and abetted acts or practices, and, unless restrained and enjoined by this Court, will continue to engage in or aid and abet acts and practices that constitute and will constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## **JURISDICTION AND VENUE**

14. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendant from engaging in the transactions, acts, practices, and courses of business alleged in

this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

15. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

16. Defendant, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

17. Venue is proper in this district as certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia.

18. Defendant, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

#### **THE DEFENDANT**

19. Marc A. Celello, age 45, is a resident of Atlanta, Georgia. Celello is an active member of the Georgia Bar and has been since 1997, when he graduated

from American University's Washington College of Law. Celello was the general counsel of CN Capital from its inception in 2008 until his services were terminated by the Receiver appointed by this Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD. Celello previously worked for other entities controlled by James A. Torchia, including National Viatical, Inc. and Synergy Acceptance Corp. Celello was the general counsel for several of the key Credit Nation entities, including CN Auto, CN Acceptance and AMC.

### **RELATED INDIVIDUAL AND ENTITIES**

20. **James A. Torchia**, age 60, is a resident of Canton, Georgia. Torchia was the CEO of CN Capital since its inception in 2008. Torchia was also the CEO and principal of Credit Nation's corporate affiliates. On March 17, 2017, the Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, entered a consent judgment against Torchia permanently enjoining him from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder arising from his conduct while operating the Credit Nation entities. Pursuant to the terms of the consent judgment, Torchia will not be permitted to contest his liability when the Court determines whether it is appropriate to impose monetary relief against him.

21. **Credit Nation Capital, LLC (“CN Capital”)** (formerly known as Credit Nation Lending, LLC) is a Georgia limited liability company with its principal place of business in Woodstock, Georgia. CN Capital began offering and selling promissory notes to investors shortly after the company’s formation in August 2008. On September 17, 2014, Credit Nation Lending Services, LLC changed its name to Credit Nation Capital, LLC. Torchia was CN Capital’s CEO and he owned 72% of the membership units jointly with his son. Celello owned 10% of CN Capital and was the company’s general counsel. On April 25, 2016, the Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, appointed a Receiver to operate CN Capital.

22. **Credit Nation Acceptance, LLC (“CN Acceptance”)** is a Texas limited liability company with its principal place of business in Midland, Texas. CN Acceptance offered and sold to investors fractional interests in viatical and life settlement contracts. Torchia was CN Acceptance’s CEO, and Celello was its general counsel. CN Capital owns 100% of CN Acceptance’s membership units. On April 25, 2016, the Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, appointed a Receiver to operate CN Acceptance.

23. **Credit Nation Auto Sales, LLC (“CN Auto”)** is a Georgia limited liability company with its principal place of business in Woodstock, Georgia that was formed in August 2008. CN Auto operated a used automobile dealership, which is now closed. On April 25, 2016, the Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, appointed a Receiver to operate CN Auto.

24. **American Motor Credit, LLC (“AMC”)** is a Georgia limited liability company with its principal place of business in Woodstock, Georgia that was formed in April 2013. AMC is the entity through which CN Capital made subprime automobile loans to customers. AMC also serviced the loans. Torchia was the CEO of AMC and Celello was its general counsel. CN Capital owns 100% of AMC’s membership units. On April 25, 2016, the Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, appointed a Receiver to operate AMC.

25. **Spaghetti Junction, LLC (“Spaghetti Junction”)** is a Nevada limited liability company that was formed in July 2008. Torchia essentially operated Spaghetti Junction as a conduit for transferring funds from CN Capital to himself and family members. On the Nevada Secretary of State website, Torchia is listed as the manager of Spaghetti Junction. On April 25, 2016, the

Court in SEC v. Torchia, et al., 1:15-cv-03904-WSD, appointed a Receiver to operate Spaghetti Junction.

## **THE FRAUDULENT SCHEME**

### ***The Promissory Note Offerings***

26. Credit Nation raised money from investors through two entities, CN Capital and CN Acceptance.
27. CN Capital sold promissory notes (“Notes”), most of which promised investors a 9% annual return.
28. CN Acceptance sold fractional interests in life insurance policy settlements (“LS Interests”) with the promise that it would pay the premiums needed to keep the policies in force until the insured died.
29. From at least January 2009 until the Commission filed its complaint in SEC v. Torchia, et al., 1:15-cv-3904-WSD, CN Capital had been offering and selling Notes to investors in a series of private placements purportedly pursuant to Regulation D of the Securities Act [17 C.F.R. § 230.501 *et seq.*].
30. CN Capital advertised and sold three- and five-year notes typically bearing interest at 9% per annum, compounded and payable quarterly.

Beginning in November 2014, CN Capital also offered five-year, zero-coupon notes typically bearing interest at 9% per annum, compounded semi-annually.

31. The notes automatically renewed for an additional term unless the investor notified the company in writing, at least ninety days before the scheduled maturity date of the note, of his or her desire to receive payment on the maturity date.

32. Most investors renewed their notes at maturity.

33. No additional disclosures were provided to investors in advance of their decision whether or not to let the notes renew.

34. CN Capital, at Celello's direction, continuously led investors to believe the Notes were a secure investment capable of generating reliable investment returns.

35. For example, according to its offering memoranda, CN Capital "expect[ed] to generate interest income and long-term capital gains from its investment in the Auto Loans and Life Settlements in excess of the interest rate payable on the promissory notes."

36. The memoranda also stated that the company "expects the pool of Life Settlements will generally yield about 15% per annum."

37. The 2013 Offering Memorandum portrays the Auto Loans as highly profitable, claiming that the company anticipated that ‘less than one month’s collection of payments on Auto Loans will be sufficient to meet one year’s premiums on Life Settlements held by the Company.”

38. Celello drafted the offering memoranda that contained these statements and, along with Torchia, had ultimate authority on the contents of the offering memoranda.

39. Although the offering memoranda included general boilerplate warnings concerning investment risks, investors were not provided with any related financial statements or any other information regarding the company’s historical losses.

40. After the enactment of the JOBS Act, CN Capital advertised the Notes in newspapers (in at least Georgia, South Carolina, Texas and California) and on the radio (in at least Texas, Louisiana, Georgia and South Carolina) and offered them pursuant to a purported exemption from registration under Securities Act Rule 506(c) [17 C.F.R. § 230.506(c)].

41. Torchia and Celello each approved the newspaper advertisements soliciting investors to purchase the Notes.

42. Celello was primarily responsible for approving radio advertisements and other marketing materials that solicited investors.

43. The newspaper and radio advertisements that Celello prepared or approved portrayed the Notes as a safe investment.

44. Newspaper advertisements prepared or approved by Celello touted the Notes as being “100% asset backed.”

45. Radio advertisements and direct mailers prepared or approved by Celello described the Notes as “backed by hard assets dollar for dollar.”

46. After commencing its general advertising, CN Capital sold at least \$30 million of Notes to at least 123 investors, many of whom were elderly and/or retired.

***Celello, along with Torchia and CN Capital, Misrepresented the Safety of the Investments***

47. Despite the rosy depictions in CN Capital’s offering materials and advertisements, CN Capital was never profitable, nor were the Notes fully secured by hard assets.

48. CN Capital was not generating returns anywhere near the amounts promised in the offering memoranda and in radio and newspaper ads that Celello created or approved.

49. Credit Nation’s outside counsel has admitted that CN Capital was unprofitable virtually from the outset. Financial statements prepared by a forensic accountant hired by Credit Nation confirm this admission.

50. In early September 2015, Credit Nation’s outside counsel produced to the Commission staff non-GAAP financial reports for the company for 2014 (the “2014 Financial Packet”) prepared by an independent forensic accountant.

51. In mid-October 2015, Credit Nation produced a similar set of reports for the first six-months of 2015 (the “2015 Financial Packet”).

52. The 2014 Financial Packet and 2015 Financial Packet confirm that the representations, authorized and approved by Celello, regarding the safety of the investments and the profitability of its investment strategy were false.

53. Instead of the notes being “100% asset backed” or “backed by hard assets dollar for dollar,” the company’s liabilities dwarfed its assets and the company sustained multi-million dollar per year operating losses.

54. Neither the financial condition of the company nor its operating losses were ever disclosed by Celello, or other representatives of Credit Nation, to investors.

55. As of December 31, 2014, the company had only about \$9 million in assets to pay the then-outstanding roughly \$30 million in promissory notes.

56. Credit Nation's losses accelerated during the first six months of 2015.

57. In 2014, the company suffered a net loss of more than \$6.1 million.

58. Credit Nation suffered operating losses of more than \$4.2 million in the first six months of 2015.

59. During 2014, the company collected an average of \$108,472 per month in auto loan proceeds, which was nowhere near enough to pay the more than \$2 million in policy premiums for the year, contrary to the claims in the offering memorandum prepared by Celello and used for most of that year.

60. In short, Credit Nation was able to stay afloat only because it continued to raise more money from investors.

61. Neither Celello nor other representatives of Credit Nation ever disclosed Credit Nation's precarious financial condition to investors and Celello affirmatively misled investors about the safety and profitability of Credit Nation's investment strategies.

***Celollo Knew or Was Severely Reckless in not Knowing that Statements Regarding the Safety of the Notes and Profitability of CN Capital Were False***

62. Celollo knew or was severely reckless in not knowing about the insolvency and unprofitability of Credit Nation by no later than 2013, yet he subsequently authorized the company's sales representatives to market the Notes as "100% asset backed."

63. For example, CN Capital's internal financial statements and tax returns show substantial losses since at least 2011. The tax returns also showed that CN Capitals assets were substantially outweighed by the company's promissory note liability. Celollo received copies of all of the tax returns and at least some of the internal financial statements.

64. Moreover, in early 2015, when one of the marketing representatives requested financial statements, Celollo instructed a subordinate employee to fabricate a "rough balance sheet" that included numerous life insurance policies as "assets" that were not owned by Credit Nation.

65. At the time, Credit Nation was attempting to purchase the policies from a hedge fund and Celollo was drafting the purchase agreements, so it is clear

that he knew the policies were not owned by Credit Nation at the time he directed the creation of the fraudulent balance sheet.

66. Without those policies included on the fraudulent balance sheet, Credit Nation would have had to disclose that it did not have enough death benefit from insurance policies and principal from auto loans to support its outstanding Note liability. In other words, even if every insured had died that day with no more premium outlay and every auto loan was repaid in full (an extremely implausible, best-case scenario for Credit Nation), Credit Nation did not have had enough money to pay off its Note investors.

67. Celello, concealing the true nature of Credit Nation's financial condition, forwarded the fraudulent balance sheet to several marketing representatives, knowing that they would use the key points from the balance sheet in their sales pitches to investors.

68. At least one marketing representative used the false information when soliciting investors. That marketing representative stated that he would not have sold Credit Nation investments had he known that there was insufficient death benefit to support Credit Nation's outstanding liabilities.

69. Despite knowing about the unprofitability and insolvency of CN Capital, Celello approved advertisements that misrepresented that the Notes were a secure investment capable of generating reliable investment returns.

70. Indeed, Celello approved an ongoing radio advertising campaign featuring claims that the notes were “backed by hard assets dollar for dollar” less than two weeks before he directed the fabrication of the balance sheet.

71. At that time, he knew that the company did not have sufficient assets to back the already outstanding promissory notes, but sent the fabricated balance sheet, which misrepresented that Credit Nation’s assets exceeded its liabilities, to the very same sales agent he had just authorized to undertake the advertising campaign.

72. Celello had no reasonable basis in fact to believe the statements in the offering memoranda and advertisements.

73. Celello knew or was severely reckless in not knowing that the offering memoranda and advertisements omitted material information about Credit Nation’s financial condition that was necessary to make the statements contained therein not misleading.

***Celello Substantially Assisted Torchia's Misappropriation of Investor Funds***

74. In addition to causing CN Capital to misrepresent its financial condition, Celello also substantially assisted Torchia in misappropriating significant funds from Credit Nation.
75. Celello personally directed many of the transactions that resulted in the misappropriation of investor funds to Torchia.
76. Credit Nation funds were often routed through Celello's IOLTA trust account on their way to Torchia for his personal use.
77. For instance, after investor money was used to purchase a large tranche of auto loans, Torchia negotiated to sell the loans to a third party. The bulk of the proceeds of the sale (\$470,000), however, was not delivered back to Credit Nation. Instead, the money was sent to Celello.
78. Bank records show countless unexplained and undocumented transactions between the entities under Torchia's control and accounts under Celello's control.
79. Between January 1, 2014 and March 31, 2015, Credit Nation made net transfers of \$777,116 to Spaghetti Junction, a Torchia-controlled entity. That money was deposited into a Spaghetti Junction account with other funds, and

Spaghetti Junction, in turn, made transfers from that account, including \$259,523 to Torchia, \$299,134 to a restaurant Torchia owned, \$139,824 to Torchia's wife, and \$229,546 to Jason's Automotive, an automobile dealership owned by Torchia's son.

80. During that same time period, Spaghetti Junction also transferred \$46,500 to casinos for unknown reasons.

81. Celello was involved with many of these transfers between Credit Nation and Spaghetti Junction either by executing them himself or by directing administrative personnel to execute them.

82. Celello knew or was reckless in not knowing that Torchia was using investor funds contrary to the representations made in the offering memoranda.

83. Celello also knew that the revenue generated by Credit Nation was primarily composed of investor funds and that his fees were being paid out of those investor funds.

84. In short, it appears that Celello worked with Torchia to move funds to wherever they were needed to keep the fraudulent scheme afloat using bank accounts over which Celello and Torchia exercised control.

85. To effectuate such transactions, Celello was required to disregard corporate formalities and ignore the language of the offering memoranda.

**COUNT I—FRAUD**

**Violations of Section 17(a)(1) of the Securities Act**

**[15 U.S.C. § 77q(a)(1)]**

86. Paragraphs 1 through 85 are hereby realleged and incorporated herein by reference.

87. Between in or around 2013 and the present, Celello, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

88. Celello knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

89. While engaging in the course of conduct described above, Celello acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a reckless disregard for the truth.

90. By reason of the foregoing, Celello, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**COUNT II—FRAUD**

**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act**

**[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]**

91. Paragraphs 1 through 85 are hereby realleged and incorporated herein by reference.

92. Between in or around 2013 and the present, Celello, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities; all as more particularly described above.

93. By reason of the foregoing, Celello, directly and indirectly, has violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**COUNT III—FRAUD**

**Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5 thereunder  
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]**

94. Paragraphs 1 through 85 are hereby re-alleged and are incorporated herein by reference.

95. Between in or around 2013 and the present, Celello, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities; all as more particularly described above.

96. Celello knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Celello acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a reckless disregard for the truth.

97. By reason of the foregoing, Celello, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**COUNT IV—AIDING AND ABETTING**

98. Paragraphs 1 through 85 are hereby restated and incorporated herein by reference.

99. Between in or around 2013 and the present, Celello knowingly provided substantial assistance to the violations by Torchia and CN Capital of Section 17(a) of the Securities Act [15 U.S.C. § 77q], and therefore is liable as an aider and abettor.

100. Unless restrained and enjoined, Celello will continue to aid and abet violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q].

**COUNT V—AIDING AND ABETTING**

101. Paragraphs 1 through 85 are hereby restated and incorporated herein by reference.

102. Between in or around 2013 and the present, Celello knowingly provided substantial assistance to the violations by Torchia and CN Capital of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5], and therefore is liable as an aider and abettor.

103. Unless restrained and enjoined, Celello will continue to aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully prays for:

**I.**

A permanent injunction enjoining Defendant, his officers, agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

**II.**

An order requiring an accounting by Defendant of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by Defendant of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

**III.**

An order pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] imposing civil penalties against Defendant.

**IV.**

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

**JURY TRIAL DEMAND**

The Commission hereby demands a trial by jury as to all issues that may be so tried.

This 5th day of October, 2017.

Respectfully submitted,

*/s/ Kristin W. Murnahan*  
M. Graham Loomis  
Regional Trial Counsel  
Georgia Bar No. 457868  
[loomism@sec.gov](mailto:loomism@sec.gov)

Kristin W. Murnahan  
Senior Trial Counsel  
Georgia Bar No. 759054  
[murnahank@sec.gov](mailto:murnahank@sec.gov)

Joshua A. Mayes  
Senior Trial Counsel  
Georgia Bar No. 143107  
[mayesj@sec.gov](mailto:mayesj@sec.gov)

Attorneys for Plaintiff  
Securities and Exchange Commission

950 East Paces Ferry Road, NE, Suite 900  
Atlanta, GA 30326  
Tel:(404) 842-7600  
Facsimile: (404) 842-7679