

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

RYAN DEROSIER,
on behalf of himself and all others
similarly situated,

CASE NO.:

Plaintiff,

CLASS REPRESENTATION

v.

APPLIED DATA FINANCE, LLC,
d/b/a PERSONIFY FINANCIAL,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff RYAN DEROSIER (“Plaintiff”), on behalf of himself and all others similarly situated, hereby sues Defendant, APPLIED DATA FINANCE, LLC, d/b/a PERSONIFY FINANCIAL (“Defendant”), and alleges as follows:

NATURE OF THE CASE

1. This is a class action under Florida Rule of Civil Procedure 1.220.
2. Defendant “offers personal loans from \$1,000 to \$10,000 with terms of 12, 24 or 36 months, and biweekly, semimonthly or monthly payment schedules.” The problem is that these online loans it solicited, funded, collected, and serviced for Florida consumers like Plaintiff and Class Members, are entirely illegal here.
3. Defendant’s loans represent deceptive and usurious loans and flat-out illegitimate debts with real interest rates up to 179.99%, when all required payments are taken into account—well above the Florida interest rate ceiling of 18%, making the loans entirely unenforceable in this state. Defendant is also charging a late fee that exceeds the Florida rate cap. Defendant charges 5% or \$30, whichever is greater. Florida law caps the delinquency charge for each

payment in default for at least 10 days, for payments due semimonthly, at \$7.50 and monthly at \$15.00.

4. To make matters worse, Defendant holds no license to even be involved in any loans it extends as it must under Florida law.

5. Because the loans and associated agreements are completely unlawful and void in Florida, to evade operation of Florida's consumer finance and usury laws, Defendant has undertaken a "rent a bank" scheme with a bank chartered in Utah (a state with no interest rate caps) to cloak the loans in federal preemption (due to that bank's registration with the FDIC) in an attempt to circumvent Florida's usury and consumer protection laws and detection by law enforcement.

6. Florida's "usury statutes show a clear legislative intent to prevent accomplishment of a usurious scheme by indirection, and the concealment of the needle of usury in a haystack of subterfuge..."¹ This case involves a modern form of usury evasion, "rent-a-bank" lending, where a non-bank like Defendant claims it is only the agent or service provider for the bank that funds the loan, and thus the state usury laws outside that bank's home state are preempted.

7. Defendant's "rent-a-bank" scheme is a sham. Defendant is the de facto or true lender in these transactions, soliciting, arranging for, funding, servicing, collecting the loans, and assuming the financial risk on the loans.

8. Defendant's scheme is especially egregious because of the desperation and financial harm suffered by so many consumers because of COVID 19, making them susceptible to its sales pitch to look beyond past credit problems to the "person." Defendant purportedly provides

¹ *Pinchuck v. Canzoneri*, 920 So. 2d 713, 715-16 (Fla. 4th DCA 2006).

“Loans with a human face,” targeting lower income individuals—to receive loans conveniently online, with little or no wait time.

9. In this suit, Plaintiff seeks to redress the harm Defendant caused and seeks forfeiture of interest and statutory damages for Defendant’s unlawful conduct. Count I is a claim for usury under Chapter 687, Florida Statutes, including violations of Florida Consumer Finance Act § 516.001 *et seq.*, which serve as a predicate for imposition of the private civil penalty for usury. Count II is a claim for violation of the Florida Consumer Collection Practices Act § 559.55 *et seq.* (“FCCPA”).

PARTIES, VENUE, AND JURISDICTION

10. Plaintiff is a Florida resident and citizen and is *sui juris*.

11. Each Class Member is a Florida resident and citizen.

12. The aggregate amount in controversy exceeds \$30,000.00 exclusive of all interest, costs, and attorney’s fees. Plaintiff understands and believes that no Class Member including Plaintiff has a claim where the amount in controversy exceeds \$75,000.00 including pro rata attorney’s fees. Plaintiff is not in a position to assert whether the total amount in controversy exceeds \$5,000,000.00.

13. Defendant, Applied Data Finance, LLC, d/b/a Personify Financial, is not a chartered bank, trust company, building and loan association, savings and loan association, insurance company or credit union.

14. Defendant is a Delaware limited liability company with a principal place of business in California. Defendant is a citizen of Florida and other states where its members are citizens.²

15. The Court has personal jurisdiction over Defendant because it solicits, arranges for, funds, services, and collects on personal installment loans throughout this state, including Broward County, Florida. At times material, Defendant has engaged in substantial, continuous, systematic, and non-isolated loan solicitation and loan business activity within the State of Florida, including Broward County, Florida, making it foreseeable that Defendant would be subject to this Court's personal jurisdiction. Defendant also committed the violations—in Florida—of Chapter 687, Florida Statutes, prohibiting usury, including violations of Florida Consumer Finance Act § 516.001 *et seq.*, and committed violations of the Florida Consumer Collection Practices Act § 559.55 *et seq.*, both of which serve as the bases for Plaintiff's suit.

16. Defendant is responsible for the content on, and posts content on, its website, www.personifyfinancial.com. Among other things Defendant reserves and purposefully directs a portion of its website to solicit Florida borrowers, including Plaintiff and Class Members, where Defendant purportedly tells them about their potential Florida rates and its "licensure" (which does not exist) and where they access the site and submit paperwork and execute loan documents in and from Florida, making up the illegal loans Plaintiff complains about in this lawsuit. Plaintiff submitted his paperwork and applied for a subject loan in this manner, in and from Florida.

17. Moreover, Defendant regularly and continually and purposefully mails form loan solicitations to addressees in Florida; it regularly corresponds with debtors/borrowers, directing

² Upon information and belief, Defendant's members are citizens of the following states and locations: Delaware, California, New York, Massachusetts, New Jersey, Pennsylvania, Washington, Texas, District of Columbia, Florida, Canada, and the Cayman Islands.

correspondence here; it regularly and purposefully funds loans deposited in accounts held here; it regularly and purposefully arranges for loans of debtors/borrowers listing Florida addresses on the loans; and it regularly and purposefully services and collects on loans of Florida debtors/borrowers. Plaintiff received a form solicitation from Defendant in Florida and underwent the general loan process and collection described above and detailed below in and from Florida.

18. Defendant is not registered with the Florida Secretary of State to conduct business in Florida. Venue is proper in this Circuit because on information and belief, Defendant maintains a residence in Broward County, Florida, because one of Defendant's members resides here; and if not, as unregistered nonresident, Defendant may be sued in any Florida County.

19. All conditions precedent to the filing of this action, if any, have been performed, or have occurred, or Defendant has waived their enforcement or is estopped from enforcing them.

BACKGROUND

20. Caps on loan interest rates and fees have historically been the primary vehicle that states use to protect consumers from predatory lending in the subprime market. A subcategory of this lending market is the installment loan from non-bank lenders, which includes Defendant.

21. A distinguishing characteristic of this type of loan is that it is a closed-end, small loan for as little as \$500 made by a non-bank and payable in installments over six months or more, but it is not used to purchase a particular good.³

22. Defendant's loans fall into this category: Since 2015, Defendant has been in the business of offering and funding small, unsecured, *personal* not commercial installment loans "from \$1,000 to \$10,000 with terms of 12, 24 or 36 months, and biweekly, semimonthly or

³ See National Consumer Law Center, Consumer Credit Regulation, § 10.1.1 (2d ed. 2015), updated at www.nclc.org/library (accessed 2020-04-14 9:52 AM EDT).

monthly payment schedules.”⁴ Since this time, Defendant has made tens of thousands of personal loans nationwide, including loans in Florida.

23. Defendant promotes and offers its personal loans online and through uniform mailed solicitations, including solicitations mailed to Florida residents. Defendant’s loans are only applied for online.

24. Defendant targets lower income borrowers for its personal loans.⁵

25. Defendant specializes in loans to individual consumers, who may have poor credit histories, touting in mail solicitations or online that Defendant looks beyond the credit score of the consumer claiming to treat them “like a person—not a credit score...Even if you have less than perfect credit, we make it easy to get the money you need.”

26. Defendant’s standard sales pitch is that it looks beyond past credit problems to the “person;” it purportedly provides “Loans with a human face,”⁶ with the added bonus that the loans are purportedly funded usually within twenty-four hours or within one business day. Its decision to approve the personal loan can even purportedly be instantaneous.⁷

27. As detailed below, Defendant not only solicits loans, it arranges for them, it funds them, it services them, and pursues collections of the loans in default. And in the process, it violates Florida law.

The Florida Consumer Finance Act and Usury

28. The Florida Supreme Court discerned, “[t]he very purpose of statutes prohibiting usury is to bind the power of creditors over necessitous debtors and prevent them from extorting

⁴ <https://www.personifyfinancial.com/faqs> (last visited 2020-04-03 1:56 PM EDT).

⁵ <https://www.applieddatafinance.com/> (last visited 2020-04-02 2:00 PM EDT).

⁶ <https://www.applieddatafinance.com/about/> (last visited 2020-04-02 2:42 PM EDT).

⁷ <https://www.applieddatafinance.com/> (last visited 2020-04-02 2:00 PM EDT);

<https://www.personifyfinancial.com/apply> (accessed 2020-04-13 2:21 PM EDT).

harsh and undue terms in the making of loans.” *Chandler v. Kendrick*, 108 Fla. 450, 452, 146 So. 551, 552 (1933).

29. Historically, “[t]he conversation about debt and usury... is a discussion about the commonly agreed-upon principles of what is right and wrong.”⁸ As one commentator writes,

The law of usury is one of the oldest tools...utilized to protect borrowers from the financial ruin which often accompanies high-interest debt. Every one of the original thirteen colonies included a usury maximum in their founding charter. The overwhelming majority of states still have such laws in effect. Polling shows usury laws have broad support among members of both political parties.⁹

30. In Florida, the regulatory law protecting consumers from predatory, usurious small installment loans made by non-bank lenders like Defendant is memorialized in the “Florida Consumer Finance Act” (“FCFA”), Section 516.001, *et seq.*, Florida Statutes.

31. Under the FCFA, Florida regulates the rates that can be charged on consumer finance loans, requires licensure, and provides a host of other specific consumer protections, including protection against usury. The FCFA serves as a predicate for a finding of usury.

32. The FCFA applies to “consumer finance loans,” defined “loan[s] of money... in an amount or to a value of \$25,000 or less for which the lender charges, ... at a rate greater than 18 percent per annum.” § 516.01(2), Fla. Stat.

33. Any person that engages in the business of making consumer finance loans at rates above 18% per year must be licensed under the statute. § 516.02(1) and (2)(a), Fla. Stat.

34. The interest rate on consumer finance loans *for licensees* is capped at 30% on first \$3,000; 24% on next \$1,000; and 18% on amount over \$4,000. § 516.031(1), Fla. Stat.

⁸Jayne Munger, *Crossing State Lines: The Trojan Horse Invasion of Rent-A-Bank and Rent-A-Tribe Schemes in Modern Usury Law*, 87 *Geo. Wash. L. Rev.* 468, 482 (2019).

⁹ Christopher Baiamonte, *Stopping Third-Party Debt Buyers from Using National Bank Act Preemption to Dodge State Usury Laws*, 69 *Syracuse L. Rev.* 127, 129 (2019).

35. Under the FCFA, for *non-licensees*, which includes Defendant, the interest on any loans it makes is capped at 18% per year. § 516.02(2)(a), Fla. Stat.

36. FCFA also caps the delinquency charge for each payment in default for at least 10 days, for payments due semimonthly at \$7.50, and those due monthly at \$15.00. § 516.031(3)(a), Fla. Stat.

37. The FCFA also expressly prohibits, “[a]ny act of fraud, misrepresentation, or deceit, regardless of reliance by or damage to a borrower, or any illegal activity, where such acts are in connection with a loan” under the statute, including, “[t]he use of unreasonable collection practices or of false, deceptive, or misleading advertising, where such acts are in connection with the operation of a business to make consumer finance loans.” § 516.007(1), Fla. Stat.

38. The FCFA provides that agreements that Defendant may have made in violation of the statute are unenforceable no matter where the loan was made and that anyone that “in any manner participates” in the loan is subject to the FCFA. This provision reads in relevant part, any “loan for which a greater rate of interest or charge than is allowed...has been contracted for or received, *wherever made*, is not enforceable in this state, and each person *who in any manner participates* therein in this state is subject to this chapter.” § 516.02(2)(c), Fla. Stat. (Emphasis added).

39. Moreover, loans in which entities including Defendant are involved in that violate the FCFA are deemed automatic or predicate violations of Florida’s usury statute, Chapter 687, making the violator liable for the penalties in that statute for violation the FCFA. The relevant FCFA provision states, “[a]ny charges, including interest, in excess of the combined total of all charges authorized and permitted by [the FCFA] constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply.” § 516.031(3)(a), Fla. Stat.

40. Like the FCFA, Chapter 687, Florida Statutes, states that rates of interest above 18% are usurious. *See* §§ 687.02(1), and 687.03(1), Fla. Stat.

41. The consequences of charging a usurious interest rate increase dramatically as the interest rate increases. Where a person willfully charges an effective rate of interest over 18 percent but not exceeding 25 percent, the lender forfeits the earned interest but can still recover the principal. § 687.04, Fla. Stat. Loans charging effective interest rates exceeding 25 percent but less than 45 percent are deemed second degree misdemeanors, and loans charging effective interest rates exceeding 45 percent are deemed third degree felonies. §§ 687.071(2), (3), and (7), Fla. Stat.

42. The usury statute provides a private civil cause of action for forfeiture. It mandates forfeiture of all interest charged on the loan, in relevant part stating,

Any person, or any agent, officer, or other representative of any person...shall forfeit the entire interest so charged, or contracted to be charged or reserved... and when said usurious interest is taken or reserved, or has been paid, then and in that event the person who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest shall forfeit to the party from whom such usurious interest has been reserved, taken, or exacted in any way double the amount of interest so reserved, taken, or exacted.

§ 687.04, Fla. Stat.

The Florida Consumer Collection Practices Act

43. Like the FCFA and Florida’s usury statute, the “Florida Consumer Collection Practices Act,” or “FCCPA” (Sections 559.55-559.785, Florida Statutes) is meant to protect consumers from abusive collection and other practices related to borrowing and associated debts.

44. The FCCPA applies to collection of “debts” defined as “*any* obligation or alleged obligation of a consumer *to pay money* arising out of a transaction in which the money...which [is] the subject of the transaction [is] primarily for personal, family, or household purposes.” § 559.55(6), Fla. Stat. Defendant’s personal installment loans fall under this definition.

45. The FCCPA creates a private right of action for statutory damages. *See* § 559.77, Fla. Stat. Unlike its federal counterpart the Fair Debt Collection Practices Act, the FCCPA does not only regulate “debt collectors” but applies to “persons” including Defendant. *See* § 559.72, Fla. Stat.

46. By the FCCPA the Florida Legislature created shared, substantive statutory rights of Plaintiff and Class Members to be enforced privately. Those rights include the rights to be protected from collection of their debts by (a) “persons” like Defendant who know that the debts they are attempting collect from them are not legitimate or (b) “persons” like Defendant that assert the existence of some legal right *vis-à-vis* their debts when such person knows that the right does not exist. §§ 559.72, 559.72(9), 559.77, Fla. Stat.

DEFENDANT’S USURIOUS INTEREST RATES

47. On its website, Defendant devotes an entire section to its terms and rates and “licensing” applicable in each state, including Florida.

48. With express reference to “residents of Florida” and purported licensure, Defendant advertises rates targeted to Florida consumers that clearly and blatantly on their face violate Florida law—starting at rate above the lawful Florida limit—35% interest per year—soaring to an exorbitant 179.99% interest per year:

Installment loans for residents of Florida

Loan Amount
\$500 - \$10,000

APR Range
35.00% - 179.99%

Loan Terms[†]
6, 9, 12, 18, 24, 36 or 48 months

Loan Origination Fee*
5% of loan amount

We tailor the rates and terms of our loans to your unique financial situation and they may vary by program.

The specific loan amount, APR, and terms you may qualify for depend on your credit and loan repayment history, employment history, and other factors.

Source: <https://www.personifyfinancial.com/rates-terms-and-licensing-information> (Last visited 2020-04-02 1:54 PM).

49. By their express terms, all of the loans Personify makes and made for and targeted to Florida consumers, including Plaintiff and Class Members, fall somewhere within the foregoing interest rate ranges, 35% to 179.99% interest per year.

50. All such loans violate the FCFA and usury rate cap of 18%, making the loans usurious and entirely unenforceable under Florida law, and illegitimate debts under the FCCPA.

51. Also, all of the loans Personify makes and made for and targeted to Florida consumers, including Plaintiff and Class Members, included fixed late charges of either 5% of the unpaid amount of the installment payments, or \$30, whichever is greater, making the charges usurious and loans agreements entirely enforceable under Florida law, and illegitimate debts under the FCCPA.

52. Nevertheless, Defendant has repeatedly solicited, arranged, approved, enforced, funded, collected, attempted to collect, and otherwise “*in any manner participate[d]*” in the loans of Plaintiff and Class Members in Florida.

DEFENDANT’S WILLFUL AND KNOWING COURSE OF CONDUCT

53. Defendant knows its loans would be illegitimate under Florida law.

54. Defendant clearly has actual knowledge that the loans it made with consumers, including Plaintiff and Class Members, are usurious and illegitimate, uncollectable debts under the foregoing Florida law.

55. Defendant made these loans willfully, with a purpose and with knowledge that it was getting more interest was legally allowed in Florida.

Defendant’s Rent-A-Bank Scheme and Willful Attempt to Evade Florida Law

56. Defendant's actual knowledge and willfulness are not only evident on the face of loans and Defendant's website, but also in Defendant's deliberate attempt to evade Florida laws like the FCFA and the usury statute in Chapter 687.

57. Because Defendant knew that its interest rates would violate Florida and other state's consumer protection laws, Defendant has engaged in "rent-a-bank" scheme, whose purpose and intent is to evade the foregoing laws and similar ones aimed at curbing predatory lending and usury in Florida.

58. States regulate usury and consumer protection. Both are traditionally the province of state legislatures.

59. But federally chartered banks benefit from a statutory preemption from state regulation. State-chartered banks are regulated by the states in which they are established, but those who are federally insured (through the FDIC) enjoy the ability to charge the rates allowed by their home states and "export" that rate to charge borrowers the rate in other states while benefiting from a federal preemption of that other state's regulation.¹⁰

60. Knowing about this preemption, *non*-bank lenders including Defendant that want to charge rates it knows are illegal in states like Florida, seek out these state-chartered banks for "partnering" agreements to "rent" their charters so they can exploit that bank's ability to export its rates to other states and escape regulation through federal preemption.

61. These "rent-a-bank" arrangements are really a subterfuge on the part of the non-bank to make illegal loans and thwart state lending and consumer protection laws. In the instant case, Defendant entered a "rent-a-bank" arrangement with a bank chartered in Utah, First Electronic

¹⁰ See 12 U.S.C. § 1831d(a).

Bank, whose name appears as the nominal lender on the loans Defendant made in Florida. Not surprisingly, Utah has no rate ceiling.¹¹

62. Schemes to evade usury are not new. Over one-hundred-fifty years ago, the U.S. Supreme Court described courts' abhorrence of such schemes:

The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded. [. . .] Yet it is apparent, that if giving [its stated] form to the contract will afford a cover which conceals it from judicial investigation, the statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.¹²

63. Defendant's rent-a-bank scheme is in substance simply a newer contrivance Defendant has willfully employed with the intent of evading Florida's and other states' usury and consumer finance laws and regulation.

64. Florida's "usury statutes show a clear legislative intent to prevent accomplishment of a usurious scheme by indirection, and the concealment of the needle of usury in a haystack of subterfuge..."¹³ Allowing Defendant to perpetrate this scheme would open up Florida to an explosion of usurious, predatory lending. There is no limit to the rates that could be charged if the Court allows Defendant's rent-a-bank scheme to work here. The consumer protections in Florida, memorialized in the FCFA, Florida's usury statute, and the FCCPA, would be flouted with absolute impunity by an entity founded on the very premise of evading Florida's and other state's laws, including laws like Florida's usury statute, the FCFA and the FCCPA.

65. Defendant's scheme is especially egregious because of the desperation and financial harm suffered by so many consumers because of COVID 19, making them susceptible to

¹¹ <https://dfi.utah.gov/general-information/consumer-tips/interest-rates/> (accessed 2020-04-14 7:22 PM EDT).

¹² *Scott v. Lloyd*, 34 U.S. 418, 419 (1835).

¹³ *Pinchuck v. Canzoneri*, 920 So. 2d 713, 715-16 (Fla. 4th DCA 2006).

Defendant sales pitch to look beyond past credit problems to the “person,” providing “Loans with a human face,” targeting lower income individuals—conveniently all done online with little or no wait time.

66. Defendant’s landing page of its website features a woman appearing to be a healthcare provider.¹⁴ The current COVID 19 pandemic has triggered a heightened awareness of the need to protect individuals including healthcare providers from predatory lending practices, including contrivances like Defendant’s rent-a-bank scheme.

Defendant is the true lender of the loans it makes in Florida.

67. Defendant’s “rent-a-bank” scheme is a sham, elevating form over substance: The weight of authority from modern courts looks beyond the nominal bank whose name may appear on a loan, holding that state usury and consumer protection laws apply to the true lender and are not preempted by federal law. Florida courts look to the substance and the total circumstances of the loan transaction rather its form when analyzing a loan transaction for usury.

68. Despite whose name may appear as “lender” on final loan documents, Defendant systematically and routinely carries out every material step in the loan process and is in substance the de facto or true lender on the loans it made to Plaintiff and Class Members, all of whom are borrowers located in Florida to whom Defendant offered loans in Florida.

69. Defendant uses entirely its own platforms and procedures to solicit, arrange for, fund, receive payment on, service, and collect on the loans, made to Florida borrowers, including Plaintiff and Class Members.

¹⁴ <https://www.personifyfinancial.com/> (accessed 2020-04-13 2:25 PM EDT).

70. The State of Utah has no reasonable or normal relationship to the loans offered and made to Plaintiff and Class Members. Plaintiff and Class Members receive the loan offers and execute the loans in Florida. The documents Plaintiff and Class Members submitted on the loans came from Florida, from where the loan payments are made and collected.

71. Defendant dedicates an entire website to this process, www.personifyfinancial.com. Florida consumers may only apply online at its website, <https://www.personifyfinancial.com/apply>, which is accessible from and in Florida. Plaintiff and Class Members have each applied for and submitted information for each one's installment loans at issue through the site and in the same general manner set forth below.

72. Defendant's website, as stated above, includes an "*our* [i.e., Defendant's] Rates, Terms, and Licensing" page showing the rates it charges in Florida.¹⁵ It invites consumers to "[s]elect your state of legal residence to see the rates and terms that apply to you."¹⁶ The reference to "Licensing" on this page is deceptive because Defendant holds no license to make its loans here or to engage in any other activity in Florida.¹⁷ The page also reasonably represents expressly or by implication that Florida law governs the loan offer and transaction and that Defendant makes the loan in compliance with Florida law, when such is not the case.

73. Defendant also regularly solicits the loans via direct mail—it refers to as "Personify mailer"¹⁸—that it deliberately sends to Florida consumers in Florida, whose terms, logos, verbiage, and format are Defendant's and copyrighted by Defendant. Defendant runs its own processes and

¹⁵ <https://www.personifyfinancial.com/rates-terms-and-licensing-information> (accessed 2020-04-16 6:56 PM EDT).

¹⁶ <https://www.personifyfinancial.com/rates-terms-and-licensing-information> (accessed 2020-04-16 6:56 PM EDT).

¹⁷ First Electronic Bank holds no such license either.

¹⁸ <https://www.personifyfinancial.com/apply/ps-6?src=PS> (accessed 2020-04-16 11:24 AM EDT).

decides which Florida consumers to target through these “Personify mailers” and other solicitations sent to Florida consumers.

74. Defendant’s proprietary loan application is filled out online in and from Florida, and Defendant evaluates the Florida applicant. From there, Defendant makes offers for loans to Florida applicants based on a few personal details (including Florida-specific information) consumers submit online on the site from locations in Florida.

75. Defendant’s website makes doubly clear Defendant is the true lender of the loans it makes with Florida consumers. The site specifies that Defendant “*Personify offers...[the] personal loans from \$1,000 to \$10,000 with terms of 12, 24 or 36 months, and biweekly, semimonthly or monthly payment schedules.*”¹⁹ It states “*Personify...loans are installment loans.*”²⁰ Defendant specifically refers to “*our [i.e., Defendant’s] loan application process*” and allowing “*us [i.e., Defendant] to verify your income and other financial information quickly and easily.*”²¹ Defendant specifies similarly “*We don’t take applications by phone. We make it fast and easy to apply for a personal loan online from any PC, smartphone, or tablet.*”²²

76. Defendant decides whether to approve the loans it makes on the spot or request more information from the Florida consumer applicant.²³ Defendant states that “*We [i.e. Defendant] schedule[s] Personify loan repayments at equal intervals throughout the term of a*

¹⁹<https://www.personifyfinancial.com/faqs> (last visited 2020-04-03 1:56 PM EDT) (emphasis added).

²⁰ <https://www.personifyfinancial.com/glossary> (accessed 2020-04-15 1:12 PM EDT).

²¹ <https://www.personifyfinancial.com/faqs> (last visited 2020-04-03 1:56 PM EDT) (emphasis added).

²² *Id.* (emphasis added).

²³ <https://www.personifyfinancial.com/faqs> (last visited 2020-04-03 1:56 PM EDT) (“If you’re approved online, you’ll receive an instant decision. Sometimes *we’ll* need more information before *we* can make a decision on your application. If so, *we’ll* provide you with detailed instructions on next steps.”) (emphasis added).

loan.”²⁴ And “When *we* [i.e. Defendant] first present you with *Personify* loan offers, *we* will show an estimated APR. At the time your loan is approved and you are ready to e-sign, your loan agreement will include the actual APR.”²⁵

77. Upon information and belief, Defendant also bears the financial and default risk on the loans it has solicited, arranged for, and approved for Florida borrowers, including Plaintiff and Class Members, applying in and from Florida.

78. When Defendant has approved the loans Plaintiff and Class Members either instantaneously or after receiving further paperwork, Plaintiff and Class Members execute the loans in Florida and submit loan documents online on Defendant’s website accessing it in and from Florida. Any materials including loan materials submitted through the site thereafter become “*Personify*’s [no other lender’s] property.”²⁶

79. The website’s terms state that Defendant’s services are the ones available on the site and that Defendant its terms apply to the “*Personify* loan application you may complete and submit and any loan agreement that may be *entered into between you and Personify*.”²⁷

80. On the same website where Florida consumers apply for its Florida-based loans, Defendant defines a “Loan Agreement” to be “A legal contract between a lender and a borrower.”²⁸ *It then defines itself as the “Lender” on the “loan agreement”* as follows:

²⁴<https://www.personifyfinancial.com/glossary> (accessed 2020-04-15 1:52 PM) (emphasis added).

²⁵<https://www.personifyfinancial.com/glossary> (accessed 2020-04-15 2:03 PM EDT) (emphasis added).

²⁶ <https://www.personifyfinancial.com/terms-conditions/> (accessed 2020-04-15 13:37 PM EDT) (emphasis added).

²⁷ <https://www.personifyfinancial.com/terms-conditions/> (accessed 2020-04-15 13:37 PM EDT) (emphasis added).

²⁸<https://www.personifyfinancial.com/glossary> (accessed 2020-04-15 2:16 PM EDT).

Lender

In a [Loan Agreement](#), the party that provides the funds. Personify Financial is a lender that makes unsecured installment loans.

Source: <https://www.personifyfinancial.com/glossary> (accessed 2020-04-15 1:39 PM EDT).

81. Furthermore, in Defendant’s loan process, Florida consumers, including Plaintiff and Class Members, have provided Defendant their Florida checking account information so that Defendant knows where to send the loan funds to.

82. Defendant as a matter of course and practice funds the installment loans it offered, arranged for, and approved via wire or electronic funds transfer directedly from Defendant’s accounts to the financial accounts of the consumer whose loans it is funding. The loans of Plaintiff and each Class Member were funded in this manner. For these loans Defendant bears the risk of loss if Plaintiff or the Class Member defaults.

83. Defendant has also acted as servicer, collector, and point-of-contact on the loans of Plaintiff and Class Members and other Florida consumers. The loan documents identify Defendant’s contact information under the lender’s name and refers to Defendant as the “loan center.” Defendant routinely not only collected the installment payments, but in case of default, Defendant has pursued the collection of their debts. To this end, Defendant specifies that it is the entity that charges the origination, late, and NSF fees.²⁹

84. Defendant has also used the financial account information required from Florida borrowers in the loan application process regularly to debit their accounts for their loan installment payments under Plaintiff’s and Class Members’ loans, which are then credited to Defendant’s accounts. If borrowers—including Plaintiff and Class Members—opted to make installment

²⁹<https://www.personifyfinancial.com/faqs> (accessed 2020-04-16 10:17 AM EDT).

payments by check, under the terms of their loans they make those checks payable to Defendant and mail them to Defendant's address. Florida borrowers, including Plaintiff and Class Members may also initiate installment payments on Defendant's website, where Defendant expressly states that Defendant debits the accounts for payments and that its use of the automatic debit helps prevent defaults.

No agreement relating to arbitration with Defendant was ever formed or concluded with Plaintiff and Class Members.

85. As stated above, Plaintiff has no dispute with or involving First Electronic Bank, which is the named Lender on the Agreement Plaintiff and Class Members execute to receive their loans in Florida. Rather, Plaintiff challenges Defendant's involvement in Plaintiff's and Class Members loan transactions.

86. Even though Defendant is *not* a named party to any agreement with Plaintiff and Class Members, Defendant may try to hide behind the Agreement First Electronic Bank and Plaintiff and Class Members entered when they memorialized the unlawful loans Defendant arranged and funded. Using the Agreement, Defendant may try to force Plaintiff's and Class Members' claims into private arbitrations in furtherance of Defendant's rent-a-bank scheme to escape judicial, public, and regulatory scrutiny of its conduct in Florida.

87. The "Agreement" includes several agreements including a "Loan Agreement" memorializing Plaintiff's loan and a distinct and separately executed "Jury Trial Waiver and Arbitration Clause" referred to as the "Arbitration Clause" or "Arbitration Agreement." *See* Ex. A at ¶ 8. A copy of the Agreement including these agreements is attached as **Exhibit A**.

88. The Agreement and the Arbitration Clause are drafted by some other person besides Plaintiff and Class Members; and both agreements are standardized forms whose preset terms are nonnegotiable. One of those preset terms is the separately executed Arbitration Clause.

89. Neither the Agreement nor the Arbitration Clause was an agreement concluded or formed between Defendant and Plaintiff or between Defendant and any Class Member. *See Ex. A* at ¶ 8. Nor was any agreement formed or concluded between Defendant and Plaintiff or between Defendant and any Class Member regarding delegating questions concerning contract formation or arbitration in any manner and for any purpose to an arbitrator.

90. Like the overall Agreement, the Arbitration Clause was offered, received, and executed by Plaintiff in Florida. It is submitted online at the same time as and as a part of the Agreement executed during the loan process described above.

91. Defendant has no right to enforce the Agreement, including its Arbitration Clause, and any purported delegation of questions concerning arbitration to an arbitrator. The Arbitration Clause does not manifest an intent it was formed with or could be enforceable by Defendant, acting in any capacity or for any purpose.

92. As part of Defendant's standard practice, Defendant never executed the Arbitration Clause or the overall Agreement.

93. Defendant is *not* a named party or a third-party beneficiary to the Agreement or Arbitration Clause.

94. The Arbitration Clause does not specify essential terms of an agreement regarding Defendant, acting in any capacity or for any purpose, and Defendant has as a standard practice made material omissions regarding the Arbitration Clause.

95. Neither Defendant nor the Agreement nor the Arbitration Clause nor any party to either agreement informed Plaintiff that Defendant's involvement in his loan was illegal and unenforceable in Florida.

96. Neither Defendant nor the Agreement nor the Arbitration Clause nor any party to either agreement informed Plaintiff that Defendant was unlicensed.

97. Neither Defendant nor the Agreement nor the Arbitration Clause nor any party to either agreement informed Plaintiff about Defendant's rent-a-bank scheme and arrangement.

98. Plaintiff never assented to the Arbitration Clause with respect to Defendant, and the Arbitration Clause does not evidence that Plaintiff ever assented to enter such agreement with respect to Defendant, acting in any capacity or for any purpose.

99. The Arbitration Clause is in truth and in fact deceptive and ambiguous as to Defendant. While Defendant may point out that the Arbitration Clause says it "governs" undefined "third parties" or "assigns." Those "third parties" or "assigns" are only ones "related to any *Dispute*." See Ex.A at ¶ 8.

100. First Electronic Bank is the only named party to the Arbitration Clause—and the Arbitration Clause by its terms specifically only applies to "Disputes" defined as disputes "involving *the parties*" and "agreements with *us*," which by definition in the overall Agreement **only mean** First Electronic Bank or other persons later acting lawfully (i.e., a "Holder") of the Agreement. See Ex. A at p. 1.

101. Defendant's involvement in the Agreement is illegal, and because of that, it cannot be a "Holder" or a "party" as defined by the Agreement, and as corollary, it is not a party or "Holder" or "assign" with respect to the Arbitration Clause.

102. Confusingly and misleadingly, as detailed above, rather than a "third party," "assign," or "holder" vis-à-vis the Agreement, Loan Agreement, or Arbitration Clause, Defendant operating under the pretense of rent-a-bank scheme is de facto the true lender of the loans at issue,

soliciting, arranging for, funding, servicing, collecting the loans, and assuming the financial risk on the loans.

103. Throughout the entire loan process and thereafter Defendant has always been unlicensed and cannot lawfully ever be even involved in or have “in *any* manner participate[d]” in the loan transactions of Plaintiff and Class Members in Florida during which the Arbitration Clause was executed or thereafter when it might have become a “Holder” or “assign.” *See* Ex. A at p. 1. & at ¶ 8; § 516.02(2)(c), Fla. Stat. In other words, during any of its transactions with Plaintiff and Class Members and thereafter, Defendant has had no lawful capacity or authority to conclude or be a beneficiary of an arbitration agreement or any other agreement with Plaintiff and Class Members relating to “Disputes” over its illegal loans at issue in Florida. Defendant’s involvement in the Agreement and Arbitration Clause is illegal from inception and cannot later be cured.

FACTS RELATED TO PLAINTIFF DEROSIER

104. Plaintiff received a loan solicitation from Defendant deliberately targeted to him at his physical address in Florida, he applied for the Defendant’s loan from Florida, made installment and late charge payments from his Florida bank account on the loan, and has been subject to collection efforts by Defendant on the loan from Florida.

105. Plaintiff applied for the loan through Defendant’s website, where he received a loan offer from Defendant and submitted information and documents in and from Florida per Defendant’s loan application and approval process stated above that underwent in and from Florida.

106. Upon loan approval by Defendant, Defendant made a loan to Plaintiff. On or about July 13, 2019, Plaintiff executed loan documents in Florida and submitted them online to Defendant in and from Florida. Plaintiff’s loan was for personal, family, or household purposes.

107. Plaintiff's loan from Defendant was for 96% APR, payable to Defendant in bi-weekly installments over three years. The loan Finance Charge was \$9,258.03 and the Amount Financed was \$4,500 with a Total of Payments of \$13,758.03. In addition, Defendant charged a \$250 "Origination Fee" charged as pre-paid finance charge. Late fees were set at 5% of defaulted installments or \$30 whichever is greater.

108. Plaintiff's loan therefore violates the FCFA and usury statute rate cap of 18% and cap on late charges, making the loans usurious and void under Florida law, and an illegitimate debt under the FCCPA. Nevertheless, Defendant has repeatedly enforced, collected, and attempted to collect his loan in Florida.

109. Plaintiff has made timely payments under the loan but has been in default. As result, Defendant charged and collected from Plaintiff and Plaintiff paid from Florida the late charges to Defendant, despite that the charges are prohibited under the FCFA and an illegitimate debt under the FCCPA that Defendant has no right to collect.

DEFENDANT'S MISCONDUCT IS UNIFORM AND TRACKABLE

110. Defendant's loan business detailed above employs uniform procedures and standardized forms, containing pre-printed text and terms, which are materially the same for Plaintiff and each Class Member. Each loan was for personal as opposed to commercial purposes. Each loan had an interest rate and late fee charge that exceed the rates allowed under the FCFA, and Florida's usury statute, Chapter 687.

111. Plaintiff alleges violations of Florida's usury law (including the predicate violations of the FCFA) and FCCPA based on shared statutory rights of Plaintiff and each Class Member, which apply to each equally and uniformly and are not dependent on any individualized factual circumstances applying to Plaintiff and each Class Member.

112. The common injury that Defendant caused Plaintiff and Class Members is based on violations of their shared statutory rights under these Florida statutes.

113. Upon information and belief, Defendant can electronically track the loans it makes, including the interest rates, installment payments, and late fee charges on the loans, and its collections on the foregoing.

CLASS REPRESENTATION ALLEGATIONS

114. Plaintiff wishes to be designated as a “Class Representative,” and as Class Representative brings this action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure on behalf of all other individuals similarly situated—the “Class” or “Class Members”—defined as follows:

From four years before the filing of this complaint until the day the Court decides class certification (the “Class Period”), all individuals in Florida who, through Defendant’s website, www.personifyfinancial.com, applied for and executed a personal installment loan at a rate exceeding 18 % simple interest per year and on whose loan Defendant collected payments.

FCCPA Subclass: Individuals meeting the criteria of the Class defined above within the two years before the filing of this complaint until the day the Court decides class certification.

Plaintiff reserves the right to amend the Class definition as discovery proceeds and to conform to the evidence. Excluded from the Class are all members of the judiciary and persons employed by or family members of Plaintiff’s counsel.

115. Numerosity (Rule 1.220(a)(1)). Plaintiff alleges on information and belief that the number of Class Members is so numerous that joinder of them is impractical. Plaintiff estimates that there are over 50 Class Members inclusive of Subclass Members.

116. A simple run of Defendant’s computer data will uncover the identities of Class Members. Upon information and belief, Defendant’s records will show the name and address of

each Class Member, his/her loan number, that he/she has executed a loan document, the interest rate on the loan, and that Defendant has collect payments, including interest and any late charges on the loan.

117. Commonality and Predominance (Rules 1.220(a)(2) and (b)(3)). Plaintiff's and each Class member's claims raise predominant factual or legal questions that can be answered for all Class Members through a single class-wide proceeding. Questions of law or fact arising out of Defendant's conduct are common to all members of the Class, and such common issues of law or fact predominate over any questions affecting only individual members of the Class. For example, to resolve the claims, it will be necessary to answer the following questions, each of which can be answered through common, generalized evidence:

- a. Whether under the FCFA Defendant is licensed to solicit and make consumer finance loans in Florida;
- b. Whether Defendant must comply with Florida law regarding soliciting and making loans and usury;
- c. Whether the interest rates on the loans Defendant has arranged for Plaintiff and Class Members exceeded 18% per year;
- d. Whether Defendant's loans are usurious under Chapter 687, Florida Statutes;
- e. Whether under Chapter 687, Florida Statutes, Plaintiff and the Class are entitled to forfeiture of interest on their loans made through Defendant;
- f. Whether the loans of Plaintiff and Class Members are enforceable;
- g. Whether under the FCCPA the loans of Plaintiff and Class Members are illegitimate debts for which Defendant has no right to collect;
- h. Whether under the FCCPA Defendant had actual knowledge that the loans were illegitimate under Florida;
- i. Whether Defendant's conduct was willful under ; and,

- j. Whether the Plaintiff and the Class are entitled to statutory damages under the FCCPA and the proper measurement thereof.

118. Typicality (Rule 1.220(a)(3)). The claims of the Class Representative are typical of the claims that would be asserted by other members of the Class in that, in proving Plaintiff's claims, Plaintiff will simultaneously prove the claims of all Class Members. Plaintiff and each member of the Class is a borrower under one of Defendant's loans, whose interest rates exceed 18% per year, and Defendant has collected payments including interest on the loans. In litigating and reaching an adjudication as to whether his loan and Defendant are subject to Florida law and whether his loan is unlawful here, Plaintiff simultaneously will advance the claims of each member of Class.

119. Adequacy (Rule 1.220(a)(4)). Plaintiff has no conflicts of interest and will fairly and adequately protect and represent the interests of each member of the Class. Additionally, Plaintiff is fully cognizant of his responsibility as Class Representative and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing the action. Each Class counsel has extensive experience in class and/or debt collection and consumer protection claims and litigation.

120. Superiority (Rule 1.220(b)(3)). Plaintiff's claim should be certified under (b)(3) because class representation is superior to other available methods for the fair and efficient adjudication of this controversy. A class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein. The interest of Class Members in individually controlling the prosecution of separate claims is small. The maximum damages for the violations alleged are minimal here. Management of these claims is likely to present significantly fewer difficulties than those presented in many larger class claims. Damages will be formulaic and based on set amounts available in Defendant's records.

121. Rule 1.220(d)(4). If so inclined, the Court can certainly certify an issue class with respect to the Defendant's liability on a class-wide basis and then proceed in accordance with the Florida Rules of Civil Procedure and employ other mechanisms at its disposal with respect to individual Class Members.

COUNT I
(Usury, Chapter 687, Florida Statutes)

122. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-121 above, as if the same were fully alleged herein and further alleges:

123. Plaintiff brings this count on an individual basis and on behalf of the Class.

124. From 2015 to the present, Defendant has solicited, arranged, approved, enforced, funded, collected, attempted to collect, and otherwise "*in any manner participate[d]*" in the loans of Plaintiff and Class Members in Florida, on which it willfully and knowingly charged, took, or received interest grossly exceeding the rates and charges permitted by Florida usury law in violation of Sections 687.02(1), 687.03(1) and 687.04(1), Florida Statutes.

125. Each of the foregoing personal installment loans comprised an understanding that the money must be repaid and in consideration of the loan, interest above 18% per year in violation of the Sections 516.02(2)(a), 687.02(1), 687.03(1), Florida Statutes, was paid or has been agreed to be paid by the borrower; and Defendant willfully and knowingly imposed that amount of interest.

126. Accordingly, under Section 687.04, Florida Statutes, Plaintiff and the Class are entitled to forfeiture of all interest of the foregoing loans.

127. As a result of the Defendant's actions, Plaintiff was required to obtain the undersigned counsel and has agreed to pay them a reasonable fee.

WHEREFORE, Plaintiff, individually and on behalf of the Class prays for an order as follows:

- a. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Florida Rule of Civil Procedure 1.220;
- b. Designating Plaintiff as representative of the Class and his counsel as their counsel;
- c. Entering judgment against Defendant for forfeitures of all interest on the loans of Plaintiff and the Class to paid to them;
- d. Awarding attorney fees and costs as allowed by law; and
- e. Awarding Plaintiff and Class Members any other relief the Court deems proper.

COUNT II

(Florida Consumer Collection Practices Act § 559.72(9), Fla. Stat.)

128. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-121 above, as if the same were fully alleged herein and further alleges:

129. Plaintiff brings this count on an individual basis and on behalf of the Subclass.

130. Plaintiff and each Class Member was a “debtor” and “consumer” as defined by Section 559.55(8), Florida Statutes, when each executed a person installment loan arranged for by Defendant.

131. In Section 559.72, Florida Statutes, the FCCPA mandates that “no person” shall engage in certain practices in collecting consumer debts. Defendant is a “person” within the meaning of the FCCPA. *Id.*; *see also* § 1.01(3), Fla. Stat.

132. The personal installment loans of Plaintiff and Class Members are each a “debt” under the FCCPA because each one is “an[] obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” § 559.55(6), Fla. Stat.

133. The FCCPA creates a private right of action. *See* § 559.77, Fla. Stat.

134. The Florida Legislature created shared, substantive statutory rights of Plaintiff and Class Members to be enforced and protected privately under the FCCPA, which Defendant violated. *See* §§ 559.72, 559.72(9), 559.77, Fla. Stat.

135. Under Section 559.72, Florida Statutes,

In collecting consumer debts, no *person* shall:

.....

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

136. Based on the foregoing allegations, Defendant violated Section 559.72(9), Florida Statutes, by collecting and attempting to collect debts memorialized in personal installment loans that it had actual knowledge were unenforceable because they were usurious in violation of Florida law.

137. These violations of FCCPA caused injury to Plaintiff and Class Members by violating the foregoing substantive FCCPA rights.

138. As a result of these violations, Plaintiff and Class Members are entitled to statutory damages together with reasonable attorney's fees and costs under Section 559.77, Florida Statutes.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass prays for an order as follows:

- a. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Florida Rule of Civil Procedure 1.220;
- b. Designating Plaintiff as representative of the Class and his counsel as their counsel;
- c. Entering judgment against Defendant awarding statutory damages to Plaintiff and the Subclass for violation of the FCCPA;

- d. Awarding attorney fees and costs as allowed by the FCCPA; and
- e. Awarding Plaintiff and Class Members any other relief the Court deems proper.

JURY TRIAL DEMAND

Plaintiff requests trial by jury on all issues triable before a jury.

Dated: May 22nd, 2020.

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Attorneys for Plaintiff

Congratulations on your approval for a loan with us!

This document (the "Agreement") includes the Loan Agreement set forth in Section 6, the ACH Agreement or RCC Agreement as applicable, the Arbitration Agreement and all other authorizations and consents that you provided to us, and all disclosures and notices that we provided to you through the application process. By executing the Agreement as described in Section 10, you are confirming your acceptance of the terms set forth in the Agreement. In the Agreement, the words "you" and "your" mean the borrower who has electronically signed it. The words "we", "us", "Lender", and "Holder" mean First Electronic Bank or any subsequent holder of the Agreement.

Rev0.003

1. Electronic Communications

DEFINITIONS: In this section of the agreement, "Communications" means any disclosure, notice, record or other type of information that is provided to you in connection with all transactions with us, including but not limited to, this Application, the Loan Agreement (if one is offered to you), this Consent, Privacy policy, Notices of Adverse Action, federal, state and locally mandated brochures and disclosures, and transaction information.

ELECTRONIC RECORDS AND SIGNATURE: From time to time we may be required by law to provide you certain written notices or disclosures that apply to your loan transaction that you may need to sign electronically. Described below are the terms and conditions for providing to you such notices and disclosures for your electronic signature. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to the terms and conditions, please confirm your agreement by clicking the "I Agree" button below.

CONSENT TO ELECTRONIC COMMUNICATIONS: The following terms and conditions govern electronic communications in connection with Communications and all transactions and communications evidenced hereby (the "Consent").

By accepting these terms for electronic communications, you consent to conduct transactions with us electronically, use electronic signatures and Communications, and receive electronic mail (email) and electronic communication with respect to any and all transactions and Communications regarding your account, instead of receiving them in paper or by regular mail. By clicking the "I agree" button and submitting your Application, you are confirming that you have agreed to the terms and conditions of the Consent. Your consent will be effective unless you withdraw it in the manner provided below.

SCOPE OF CONSENT. We may provide information to you electronically by posting it online at the website, myaccount.personifyfinancial.com, or by email, which may include attachments or embedded links. Communications may be further sent to you electronically by SMS or similar instant message, as permitted by applicable law.

OBTAINING PAPER COPIES. We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so or we are required to do so. You may obtain a copy of any Communication by calling us at (888) 578-9546. We may, at our sole discretion, charge you a service fee of \$5 for providing you with a paper copy of any Communication, or the maximum amount allowed by law, whichever is less. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. The request for a paper copy of a Communication will not by itself constitute a withdrawal of your consent to receive Communications electronically. We reserve the right, but are not required, to send a paper copy of any Communication you authorize us to provide electronically.

WITHDRAWING CONSENT. If you decide to receive Communications from us electronically, you may at any time and without charge change your mind and tell us thereafter you want to receive Communications only in paper format. You may withdraw your consent by calling us at (888) 578-9546. If you do not consent, or withdraw your consent before you get a loan, you will not be able to obtain a loan from us.

CONSEQUENCES OF CHANGING YOUR MIND. If you elect to receive Communications only in paper format, or if you withdraw the consent to receive communications electronically that you previously gave us after you have obtained a loan from us, it will significantly slow the speed at which we can complete certain steps in transactions with you and delivering notices to you.

HOW TO UPDATE YOUR CONTACT INFORMATION. You agree to provide us with your current e-mail address and personal contact information. If your e-mail or other contact information changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change. If mail is undeliverable to your email address for three consecutive months, your consent will be considered withdrawn and we will send you future Communications in writing.

HARDWARE AND SOFTWARE REQUIREMENTS. In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet and a working email address. Your browser must support the Transport Layer Security ("TLS") protocol, version 1.1 or higher. TLS provides a secure channel to send and receive data over the Internet. The current versions of Internet Explorer, Firefox, Chrome, Safari, Opera and Android browsers support this feature. You will need software that allows you to view, save or print PDF files, such as Adobe Reader 6.0 or higher. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). You must have your own Internet service provider. If we ever change the hardware and software requirements in a way that creates a material risk that you will not be able to access or retain a Communication that we previously sent you, we will send you a notice of the revised requirements. Please save and print a copy of this "Electronic Communications" section to confirm that you have the required hardware and software to conduct electronic transactions with us.

We may amend (add to, delete or change) the terms of this Consent to electronic communication by providing you with advance notice in accordance with applicable law.

By clicking the "I Agree" button below, you are confirming that:

- (1) Your system meets the hardware and software requirements set forth above,
- (2) You agree that all Communications of any kind delivered in an electronic manner, including but not limited to disclosures, statements, and notices will be accepted as "written notice" for all purposes, and to the use of electronic signatures,



(3) You are able to receive emails sent to the email address you have provided to us and to access and print or store information presented at this website, and

(4) You consent to having information regarding this transaction, and others you may enter into with us, transmitted via email to the email address you have provided to us, and to having that information communicated with any third party who has or obtains access to emails sent to that address.

Rev0.005

I agree to use electronic communications and signatures in my loan transaction.

2. Privacy Policy

FACTS	WHAT DOES FIRST ELECTRONIC BANK DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> Social Security number and income account balances and payment history credit history and credit scores <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons First Electronic Bank chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does First Electronic Bank share?	Can you limit this sharing?
For our everyday business purposes - such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes - to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We do not share
For our affiliates' everyday business purposes - information about your transactions and experiences	No	We do not share
For our affiliates' everyday business purposes - information about your creditworthiness	No	We do not share
For our affiliates to market to you	No	We do not share
For nonaffiliates to market to you	No	We do not share

Questions?	Call (888) 578-9546
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Who we are	
Who is providing this notice?	First Electronic Bank

What we do	
How does First Electronic Bank	To protect your personal information from unauthorized access and use, we use security

protect my personal information?	measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does First Electronic Bank collect my personal information?	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> • apply for a loan or open an account • give us your contact information or pay your bills • use your credit card <p>We also collect your personal information from others, such as credit bureaus, affiliates or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> • sharing for affiliates' everyday business purposes – information about your creditworthiness • affiliates from using your information to market to you • sharing for nonaffiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing.</p>

Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • <i>First Electronic Bank does not share with our affiliates</i>
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • <i>First Electronic Bank does not share with nonaffiliates so they can market to you</i>
Joint Marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> • <i>First Electronic Bank does not jointly market.</i>
Other important information	
<p>For California Customers: We will limit our sharing of personal information about you with our affiliates to comply with all California privacy laws that apply to us.</p>	

Rev0.002

I have received delivery of and reviewed the privacy policy.

3. Credit Report and Verification

CONSUMER CREDIT REPORT: You authorize us to obtain one or more consumer credit reports on you in connection with your loan application and in connection with any updates, renewals, or extensions of any credit as a result of this loan application. If you ask, you will be informed whether or not such a report was obtained and, if so, the name and address of the agency that furnished the report. You also understand and agree that we may obtain a consumer credit report in connection with the review or collection of any loan made to you as a result of your loan application or for other legitimate purposes related to such loan. Your authorization for us to obtain your consumer credit report from consumer reporting agencies is valid as long as any amounts owed on such loan remain unpaid.

VERIFICATIONS: You understand and authorize us to verify information you provide with third parties, and authorize those parties to provide verification of that information to us, including any and all supporting documentation. You understand that this may include, but is not limited to, verification of your employment, income and identity.

PUBLICLY AVAILABLE AND OTHER INFORMATION: You understand and agree that we may obtain additional information about you from publicly available sources, including the Internet, as well as information about the manner in which you are conducting this transaction, including IP address, type of device used, sequence and timing of interactions with this electronic system, and similar information. You consent to our use of this information for verification or underwriting purposes to the extent permitted by law.

ADDITIONAL STATE NOTICES

CALIFORNIA RESIDENTS: A married applicant may apply for a separate account.

OHIO RESIDENTS: The Ohio law against discrimination require that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

WISCONSIN RESIDENTS: If you are a married Wisconsin resident: (1) Your signature on this loan application confirms that the loan you are requesting is being incurred in the interest of your marriage or family. (2) No provision of any marital property agreement, unilateral statement under § 766.59 of the Wisconsin Statutes or court decree under § 766.70 adversely affects the Holder's interest unless, prior to the time that the loan is approved, we are furnished with a copy of the marital property agreement, statement, or decree or has actual knowledge of the adverse provision. (3) You agree to cooperate with us so that your spouse receives written notice of, or a copy of the terms of, any loan that is approved.

Rev0.003

I confirm

4. Active Duty Military and Dependents

If you are a member of the active military, or a spouse or dependent of a member of the active military, and your loan is subject to the provisions of the Military Lending Act, 10 U.S.C. § 987 and its implementing regulations, 32 C.F.R. § 232.1, et seq., the following apply to you.

Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

To hear this statement of your rights under the Military Lending Act, 10 U.S.C. § 987 and its implementing regulations, 32 C.F.R. § 232.1, et seq., and for a description of your payment obligation, please call (888) 508-0293.

When you click the button below you agree that you have reviewed the explanation above and when you indicated your status as an active duty member of the military or a dependent of such on the application, you did so truthfully and accurately.

Rev0.003

I am NOT an active duty member of the military or a dependent of one.

5. Borrowing History

You have neither considered the filing of a Petition in Bankruptcy in the prior 90 days nor do you have any present intention or any financial circumstance that would cause you to file a Petition in Bankruptcy for at least the next 45 days.

Rev0.005

I confirm

6. Loan Terms

This Agreement Shall Not Constitute a Negotiable Instrument
LOAN AGREEMENT

Agreement Date: Jul-13-2019 Disbursement Date: Jul-15-2019 Payment Due Date: Aug-01-2019	LOAN#: 2019071300069A
LENDER: First Electronic Bank ADDRESS: 2150 South 1300 East, STE 400 CITY: Salt Lake City, Utah 84106 PHONE: (888) 578-9546 EMAIL: Contact@personifyfinancial.com	NAME: Ryan Derosier ADDRESS: 10601 Gandy Blvd N Apt 1108 CITY: St Petersburg STATE: FL ZIP: 33702-1471 PHONE: 727-239-6612

This loan agreement (the "Loan Agreement") is deemed to be consummated when it is accepted by the Lender after your signature and establishes the terms of your loan (the "Loan") as described below.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE: The cost of your credit as a yearly rate. 96.63%	FINANCE CHARGE: The dollar amount the credit will cost you. \$ 9,258.03	Amount Financed The amount of credit provided to you or on your behalf. \$ 4,500.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 13,758.03
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Your payment schedule (the "Payment Schedule") will be:

Number of Payments	Amount of Payments	When Payments are Due (each a "Payment Due Date")
13	\$ 182.17	Bi-weekly beginning Aug-01-2019
13	\$ 179.27	Bi-weekly beginning Jan-30-2020
13	\$ 176.73	Bi-weekly beginning Jul-30-2020
13	\$ 174.66	Bi-weekly beginning Jan-28-2021
13	\$ 173.16	Bi-weekly beginning Jul-29-2021
12	\$ 172.32	Bi-weekly beginning Jan-27-2022
1	\$ 172.32	Final payment Jul-14-2022

Prepayment: If you prepay all or any part of the Loan, you will not have to pay a penalty, but you will not be entitled to a refund of the origination fee.

Late Fee: If any payment listed in the Payment Schedule is not received by the applicable Payment Due Date, you may be charged a fee of either 5% of the unpaid amount of the installment, or \$30, whichever is greater.

Security Interest: If applicable, your payment authorization may be security for this Loan.

See the Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date.

Itemization of the Amount Financed of 1. Amount given to you directly: \$ 4,500.00 2. Amount paid to your account: \$ 0.00 3. Amount paid to others on your behalf: \$ 0 4. Origination Fee (Prepaid Finance Charge): \$ 225.00 5. Total Amount Financed (sum of 1 through 3 above): \$ 4,500.00 Principal Balance of the Loan (sum of 4 and 5 above): \$ 4,725.00

In disclosing the Annual Percentage Rate, the Finance Charge, the Total of Payments, and the payments in the Payment Schedule above, Lender has assumed that each payment you make will be an On-Time Payment. If you do not make any On-Time Payment, the Annual Percentage Rate, Finance Charge, Total of Payments and scheduled payments you must pay under this Loan Agreement will be greater than the amounts shown above in the Truth in Lending Disclosures. For example, the Loan payment you must make by a scheduled Payment Due Date will not decrease to any lower payment shown in the Payment Schedule, unless and until you have made the number of consecutive On-Time Payments required to qualify for a reduced annual interest rate and reduced payment. If you do not make any 13 consecutive On-Time Payments during the Loan term, you would make 78 payments of \$ 182.17, repaying a total of \$ 14,209.26 over the life of the loan, with a finance charge of \$ 9,709.26 and an Annual Percentage Rate of 98.69%.

PROMISE TO PAY AND ON-TIME PAYMENT INCENTIVE: You promise to pay to the order of Lender or any subsequent holder of this Loan Agreement the principal balance of \$ 4,725.00 which is the Amount Financed plus the Origination Fee (prepaid finance charge) shown in the Itemization, plus interest on the unpaid principal balance from the date this Loan is disbursed ("Disbursement Date") at the rate of 93.50% per year until this Loan is repaid in full. There may be unavoidable delays that affect your Disbursement Date (for example, due to bank holidays, bank processing schedules, untimely receipt of documents or information required to process your Loan, inadvertent processing errors, "acts of God" and/or "acts of terror"). You promise to pay interest on the unpaid amount of the Loan each day from the Disbursement Date until the Loan is paid in full. You also promise to pay to the Lender or to any subsequent holder of this Loan Agreement any other fees provided for under this Loan Agreement.

You promise to make each Loan payment in the amount and by the Payment Due Date shown above in the Payment Schedule (each, an "On-Time Payment"). If you make a payment for less than required or after a Payment Due Date, you must pay the additional interest that accrues after the Payment Due Date on the unpaid principal balance of the Loan. There is no grace period for you to make a Loan payment after a Payment Due Date to avoid having interest accrue against the unpaid balance of your Loan. If a Loan payment is due on a Payment Due Date when your bank is not open, your payment is due on the next day after that when your bank is open. If you make a payment for more than required or before a scheduled Payment Due Date (a partial prepayment), this payment will be applied to reduce the unpaid balance of your Loan, but you must still

make each payment after that by the scheduled Payment Due Dates and in the amount required by this Loan Agreement until the Loan is paid in full.

The first time you make 13 consecutive On-Time Payments during the Loan term, the annual interest rate that applies to the unpaid balance of the Loan will be reduced by 2% points. If, after we reduce the annual interest rate, you later make the same number of consecutive On-Time Payments during the Loan term, we will reduce the annual interest rate by an additional 2% points every time that you make an additional 13 On-Time Payments, except that the annual interest rate will never be less than 24.00% per year. The annual interest rate will never increase to a rate higher than the most recent one we applied to your Loan (either a discounted annual interest rate that applied after you made 13 consecutive On-Time Payments or the annual interest rate shown above in this Promise to Pay paragraph). Each time the annual interest rate is reduced, we will also reduce the dollar amount of your remaining Loan payments to an amount scheduled to pay your Loan's unpaid balance in full by the date your final Loan payment is due under the Payment Schedule (assuming that you continue making On-Time Payments).

OPTION TO ACCELERATE ON-TIME PAYMENT INCENTIVE: Lender or any subsequent holder of this Loan Agreement has the right, at its election, to accelerate the On-time Payment Incentive as if all future interest rate decreases were deemed earned. In the event we accelerate future interest rate decreases we will reduce the annual interest rate as if you had made all required On-Time Payments as described in the Payment Schedule above, except that the annual interest rate will never be less than 24.00% per year. We will also reduce the dollar amount of your remaining Loan payments to an amount scheduled to pay your Loan's unpaid balance in full by the date your final Loan payment is due under the Payment Schedule.

PAYMENT OPTIONS: To change or cancel any authorization given for automatic payments made from the deposit account you maintain with your depository institution ("Bank Account") at any time, you may call the loan center at (888) 578-9546 during its normal business hours (posted at www.personifyfinancial.com/contact.aspx) and speak directly with a loan center representative. You agree the loan center may have a reasonable period of time, of at least three (3) business days, to process any request to cancel your payment method. For changes in your payment method, you agree to promptly provide any information, authorizations and cooperation that the loan center reasonably requests. If you choose to pay by check, you agree to mail checks made payable to Personify Financial and addressed to: Personify Financial loan center, PO Box 500650 San Diego, CA 92150. To avoid late fees, you understand the loan center must receive your payments on or before the scheduled due dates, subject to any applicable grace periods described under "Late Payment Fee" below.

NO CONTINGENCY: You agree that Lender cannot make and has not made the Loan contingent upon you obtaining any other product or service from the Lender or anyone else.

CALCULATION OF INTEREST AND PAYMENTS: Interest shall not be payable in advance or compounded. Interest will only be calculated on the unpaid principal balance of the Loan. No interest will be charged on unpaid interest.

PREPAYMENT: You may prepay all or part of the amount you owe us at any time without penalty, but you will not be entitled to a refund of the origination fee. We fully earn the origination fee (prepaid finance charge) shown in the itemization, in full on the date this Loan is made. Any partial prepayment will be credited against the outstanding balance of your Loan and will not excuse or reduce the next payment(s) due on your Loan. A partial prepayment may result in you making fewer payments than shown in the Payment Schedule or in a smaller final payment. If you prepay in full, you must pay the interest accrued on your Loan and all other amounts due up to the date of your payment. For an exact payoff amount due on this Loan at any time, call us at (888) 578-9546. See "When You Begin Paying Interest" above for a discussion of the treatment of partial prepayments.

LATE PAYMENT FEE: If any payment listed in the Payment Schedule is not received by us by the applicable Payment Due Date, you may be charged a fee equal to either 5% of the delinquent amount or \$30, whichever is greater.

DEFAULT: You will have broken the promise you made to us in this Loan Agreement (each, a "Default") if: (a) You fail to make a payment by the due date, or (b) Lender's prospect of payment, performance or ability to realize upon the collateral (if any) is significantly impaired.

CONSEQUENCES OF DEFAULT: If you are in Default, we may, at our option and after we give any notice and wait any time period that may be required by applicable law, do any one or more of the following: (a) require you to immediately pay us everything you owe us; (b) obtain payments from your Bank Account to the extent authorized by you in connection with this Loan Agreement or any related automatic payment authorization; and (c) pursue all legally available means to collect what you owe us. By choosing any one or more of these, we do not give up our right to use another way to collect the money you owe us later. We may decide not to use any of the ways described above to get back the money that you owe us. If so, we do not give up our right to consider what we said you would do to make payment(s) and, if you fail to make those payment(s), we will consider you to be in Default.

COLLECTION: You understand that in the event that Lender is required to employ an attorney at law and file a lawsuit to collect any amounts due under this Loan Agreement, you will be required to pay the reasonable fees of such attorney to protect the interest of Lender as well as any fees incurred by us to take any other action required to collect the amounts due hereunder as permitted by applicable law. You also understand that we reserve the right to sell or transfer this Loan Agreement and its obligations at any time (subject to the paragraph under the heading "Registered Form" below), regardless of whether your Loan is current or in default.

VERIFICATION: You authorize us, and our agents, to verify the information you provided to us in connection with your Loan application. You give us consent to obtain information about you from a consumer reporting agency or other sources at any time you have repayment obligations under this Loan. We reserve the right to withhold funding of this Loan, at any time prior to disbursement, to allow us to verify the information you have provided to us.

CREDIT REPORTING: We may report information about your Loan to credit bureaus. Late payments, missed payments, or other account activities, may be reflected on your credit report.

SECURITY: Lender has disclosed that your payment authorization for your Loan is a security interest for Truth-in-Lending purposes only.

ASSIGNMENT: This Loan Agreement may not be assigned by you. Subject to the paragraph under the heading "Registered Form" below, we may assign or transfer this Loan Agreement and our related rights and obligations without notice to you and your consent is not required if we make such an assignment or transfer.

WAIVER: We may delay enforcing any of our rights or elect not to enforce our rights without losing any of them. To the extent permitted by applicable law, you agree that we are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid

or have not been paid in the correct amount, time or manner; or (3) give notice that we intend to make, or are making, this Loan Agreement immediately due. However, the preceding sentence does not apply to you if you are a member of the active military, or a spouse or dependent of a member of the active military, and your loan is subject to the provisions of the Military Lending Act, 10 U.S.C. § 987 and its implementing regulations, 32 C.F.R. § 232.1, et seq.

REGISTERED FORM: All obligations, if any, issued under this Loan Agreement and all notes issued hereunder are intended to be maintained in "registered form" for purposes of Sections 163(f), 871(h)(2) and 881(c)(2) of the U.S. Internal Revenue Code of 1986, as amended, and the applicable Treasury regulations promulgated thereunder. By signing below, you appoint Applied Data Finance, LLC as your authorized agent (in such capacity, the "Note Registrar") to maintain a book-entry system (the "Register") for recording the name and address of each beneficial owner of an interest in any obligations or notes issued hereunder (the "Note Owners") and the corresponding principal amount (and stated interest) with respect to such ownership interest. The person or persons identified as the Note Owners in the Register shall be deemed to be the owner(s) of such obligations for purposes of receiving payment of principal and interest on such obligations and for all other purposes. With respect to any transfer by a Note Owner of its beneficial interest in any obligation or note issued hereunder, the right to payment of principal and interest on such obligation or note shall not be effective until the transfer is recorded in the Register. You hereby appoint Applied Data Finance, LLC as your agent, to be delivered and receive on your behalf from any person holding rights regarding the Loan Agreement or the Notes, any applicable IRS Form, including IRS Forms W-8 and W-9 (and other successor forms).

GOVERNING LAW: The laws of the State of Utah will govern this Loan Agreement.

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I agree to all loan terms and conditions as stated in the Loan Agreement

7. Draft Authorization

ACH DRAFT AUTHORIZATION

READ VERY CAREFULLY BEFORE SIGNING. YOU SELECTED ACH AS YOUR REPAYMENT METHOD. TO USE THIS REPAYMENT METHOD, WE NEED YOUR AUTHORIZATION. YOU ARE NOT REQUIRED TO PROVIDE THIS AUTHORIZATION TO OBTAIN A LOAN.

ACH AUTHORIZATION: This Automated Clearing House ("ACH") Authorization is a part of and relates to the Loan Agreement set forth separately ("Loan Terms"). Unless otherwise defined in this ACH Authorization, capitalized terms used in this ACH Authorization have the meanings assigned to such terms in the Loan Agreement. You voluntarily authorize us, and our successors and assigns, to initiate automatic ACH credit and debit entries to your Bank Account as you provided on your application, as subsequently changed or updated by you, and in accordance with the Loan Agreement.

You authorize us to initiate an ACH credit (deposit) entry to your Bank Account equal to the Amount Financed of your Loan on or about its Disbursement Date. You authorize us, if necessary, to initiate credit (deposit) entries to your Bank Account at any time to correct any errors we might make or make any refunds that may be required.

On each scheduled Payment Due Date, you authorize us to initiate ACH debit entries (charges) to your Bank Account for: (i) an amount equal to the full amount of the payment then due according to your Payment Schedule and the Loan Agreement, as you and we may agree to amend from time to time; or (ii) any varying amount that may otherwise then be due and payable according to the Loan Agreement (for example, to pay the Loan in full as of the due date of the final scheduled installment), after we provide any notice and wait any time period that may be required. If you have not made the consecutive On-Time Payments needed to qualify for the reduced interest rate and payments described in the Loan Agreement, you authorize us to initiate ACH debit entries (charges) to your Bank Account on the Payment Due Dates equal to the amount of the installment payments then due under the Loan Agreement, without reducing the annual interest rate of your Loan and any corresponding reduction in the amount of the installment payments required by the Loan Agreement. If an ACH debit entry is returned to us unpaid due to insufficient or uncollected funds in your Bank Account, you agree that, at any time within 180 days after the date of the original debit entry, we may initiate ACH debit entries up to two (2) additional times to collect this amount. If an ACH debit entry is returned unpaid, you authorize us to make a one-time electronic fund transfer from your Bank Account to collect any returned payment fee authorized by the Loan Agreement.

This ACH Authorization is to remain in full force and effect for this transaction until your indebtedness to us, plus any other charges or fees incurred and described in the Loan Agreement, is fully satisfied. You may revoke the above ACH Authorization as described below. Contact your own depository institution for more information about your rights to stop ACH payments through the institution and how to do so through your depository institution. If you revoke your ACH Authorization, you agree to provide us with another form of payment acceptable to us. In no event shall any revocation affect prior payments made to us pursuant to this Authorization.

You certify that the Bank Account used for your ACH Authorization is a legitimate, open and active deposit account, that you are authorized to have these ACH transactions made to and from the Bank Account and these ACH transactions comply with applicable law.

If any Payment Due Date is not a business day, the debit authorized by this ACH Authorization will occur on the next following business day.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the ACH Authorization herein is for repayment of your Loan and that these entries will appear as described in Loan Agreement.

Right to stop payment and procedure for doing so. If you have told us in advance to make regular payments from your Bank Account, you can stop these payments at any time by notifying us or notifying your own depository institution. Here's how to notify us:

Call the Personify Financial Loan Center at (888) 578-9546, or write us at Personify Financial, PO Box 500650 San Diego, CA 92150, in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

Rev0.006

I agree to the terms of the Draft Authorization

8. Arbitration

The following arbitration agreement does not apply to you if you are a member of the active military, or a spouse or dependent of a member of the active military, and your loan is subject to the provisions of the Military Lending Act, 10 U.S.C. § 987 and its implementing regulations, 32 C.F.R. § 232.1, et seq.

Governing Law. This Agreement (the "Arbitration Agreement") will be construed, applied and governed by the Federal Arbitration Act, 9 U.S.C. Sect. 1 et seq., ("FAA"), as amended

JURY TRIAL WAIVER AND ARBITRATION CLAUSE.

By signing this agreement, you agree to the Jury Trial Waiver and Arbitration Clause ("Clause"):

Background and Scope

What is arbitration?	An alternative to court.	In arbitration, a third party ("Arbiter") solves Disputes in a hearing ("hearing"). You, related third parties, and we, waive the right to go to court. Such "parties" waive jury trials.
Is it different from court and jury trials?	Yes.	The hearing is private and less formal than court. Arbiters may limit pre-hearing fact finding, called "discovery." The decision is final. Courts rarely overturn Arbiters.
Who does the Clause cover?	You, Us, and Others.	This Clause governs the parties, their heirs, successors, assigns, and third parties related to any Dispute.
Which Disputes are covered?	All Disputes.	In this Clause, the word "Disputes" has the broadest possible meaning. This Clause governs all "Disputes" involving the parties. This includes all claims even indirectly related to your application and agreements with us. This includes claims related to information you previously gave us. It includes all past agreements. It includes extensions, renewals, refinancings, or payment plans. It includes claims related to collections, privacy, and customer information. It includes claims related to setting aside this Clause. It includes claims about the Clause's validity and scope. It includes claims about whether to arbitrate.
Are you waiving rights?	Yes.	You waive your rights to: <ol style="list-style-type: none"> 1. Have juries solve Disputes. 2. Have courts, other than small-claims courts, solve Disputes. 3. Serve as a private attorney general or in a representative capacity. 4. Be in a class action.
Are you waiving class action rights?	Yes.	COURTS AND ARBITERS WON'T ALLOW CLASS ACTIONS. You <u>wave</u> your rights to be in a <u>class action</u> , as a representative and a member. Only individual arbitration, or small-claims courts, will solve Disputes. You waive your right to have representative claims. Unless reversed on appeal, if a court invalidates this waiver, the Clause will be void.
What law applies?	The Federal Arbitration Act ("FAA").	This transaction involves interstate commerce, so the FAA governs. If a court finds the FAA doesn't apply, and the finding can't be appealed, then your state's law governs. The Arbiter must apply substantive law consistent with the FAA. The Arbiter must follow statutes of limitation and privilege claims.
Can the parties try to solve Disputes first?	Yes.	We can try to solve Disputes if you call us at (888) 578-9546. If this doesn't solve the Dispute, mail us notice, within 100 days of the Dispute date. In your notice, tell us the details and how you want to solve it. We will try to solve the Dispute. If we make a written offer ("Settlement Offer"), you can reject it and arbitrate. If we don't solve the Dispute, either party may start arbitration. To start arbitration, contact an Arbiter or arbitration group listed below. No party will disclose settlement proposals to the Arbiter during arbitration.
How should you contact us?	By mail.	Send mail to: First Electronic Bank c/o Personify Financial Legal Dept., PO Box 500650 San Diego, CA 92150. You can call us or use certified mail to confirm receipt.
Can small-claims court solve some Disputes?	Yes.	Each party has the right to arbitrate, or to go to small-claims court if the small-claims court has the power to hear the Dispute. Arbitration will solve all Disputes that the small-claims court does not have the power to hear. If there is an appeal from small-claims court, or if a Dispute changes so that the small-claims court loses the power to hear it, then the Dispute will only be heard by an Arbiter.

Do other options exist?	Yes.	Both parties may use lawful self-help remedies. This includes set-off or repossession and sale of any collateral. Both parties may seek remedies which don't claim money damages. This includes pre-judgment seizure, injunctions, or equitable relief.
Will this Clause continue to govern?	Yes, unless otherwise agreed.	The Clause stays effective, unless the parties sign an agreement stating it doesn't. The Clause governs if you rescind the transaction. It governs if you default, renew, prepay, or pay. It governs if your contract is discharged through bankruptcy. The Clause remains effective, despite a transaction's termination, amendment, expiration, or performance.

Process.

How does arbitration start?	Mailing a notice.	Either party may mail the other a request to arbitrate, even if a lawsuit has been filed. The notice should describe the Dispute and relief sought. The receiving party must mail a response within 20 days. If you mail the demand, you may choose the arbitration group. Or, your demand may state that you want the parties to choose a local Arbiter. If related third parties or we mail the demand, you must respond in 20 days. Your response must choose an arbitration group or propose a local Arbiter. If it doesn't, we may choose the group.
Who arbitrates?	AAA, JAMS, or an agreed Arbiter.	You may select the American Arbitration Association ("AAA") (800-778-7879) http://www.adr.org or JAMS (800-352-5267) http://www.jamsadr.com . The parties may also agree in writing to a local attorney, retired judge, or Arbiter in good standing with an arbitration group. The Arbiter must arbitrate under AAA or JAMS consumer rules. You may get a copy of these rules from such group. Any rules that conflict with any of our agreements with you, don't apply. If these options aren't available, and the parties can't agree on another, a court may choose the Arbiter. Such Arbiter must enforce your agreements with us, as they are written.
Will the hearing be held nearby?	Yes.	The Arbiter will order the hearing within 30 miles of your home or where the transaction occurred.
What about appeals?	Appeals are limited.	The Arbiter's decision will be final. A party may file the Arbiter's award with the proper court. Arbitration will solve appeals of a small-claims court judgment. A party may appeal under the FAA. If the amount in controversy exceeds \$ 10,000.00, a party may appeal the Arbiter's finding. Such appeal will be to a three-Arbiter panel from the same arbitration group. The appeal will be <i>de novo</i> , and solved by majority vote. The appealing party bears appeal costs, despite the outcome.

Arbitration Fees and Awards.

Will we advance Arbitration Fees?	Yes, but you pay your costs.	We will advance your "Arbitration Fees" if you ask us to. This includes filing, administrative, hearing, and Arbiter's fees. You pay your attorney fees and other expenses.
Are damages and attorney fees possible?	Yes, if allowed by law.	The Arbiter may award the same damages as a court. Arbiters may award reasonable attorney fees, and expenses, if allowed by law.
Will you pay Arbitration Fees if you win?	No.	If the Arbiter awards you funds, you don't reimburse us the Arbitration Fees.
Will you ever pay Arbitration Fees?	Yes.	If the Arbiter doesn't award you funds, then you must repay the Arbitration Fees. If you must pay Arbitration Fees, the amount won't exceed state court costs.
What happens if you win?	You could get more than the Arbiter awarded.	If an Arbiter's award to you exceeds our last Settlement Offer, we will pay 3 amounts. We will pay the award, plus 10% of such amount ("bonus payment"). We will pay your attorney the attorney fees conferred, plus 10% of such amount ("attorney premium"). If the Arbiter orders, we will pay reasonable expert witness costs and other costs you incurred ("cost premium"). If we never made a Settlement Offer, we will pay the bonus payment, attorney premium, and any cost premium. If a law allows you more, this Clause won't prevent such award. We won't seek attorney fees and expenses.
Can an award be explained?	Yes.	A party may request details from the Arbiter, within 14 days of the ruling. Upon such request, the Arbiter will explain the ruling in writing.

Other Options.

If you don't want to arbitrate, can you still get a transaction?	Yes. You can get our services and decide not to arbitrate.	Consider these choices: <ol style="list-style-type: none">1. Informal Dispute Resolution. Contact us, and attempt to settle any Disputes.2. Small-claims Court. Seek to solve Disputes in small-claims court, within state law limits.3. Opt-Out of Arbitration. Sign and then timely opt-out.
Can you opt-out of the Clause?	Yes. Within 60 days.	Write us within 60 calendar days of signing your agreement to opt-out of the Clause for that agreement. List your name, address, account number and date. List that you "opt out." If you opt out, it will only apply to that agreement.

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I agree to the terms of this Arbitration Agreement, except that, if I am protected by the Military Lending Act ("MLA"), I understand and agree that the Arbitration Agreement does not apply to me.

9. Acknowledgements

NOTICE: In submitting your application, you agreed to a number of terms and conditions. The purpose of this acknowledgement is to remind you of the terms and conditions to which you have already agreed and to inform you that **BY CONTINUING THIS PROCESS AND OBTAINING A LOAN FROM US, YOU ARE RE-AFFIRMING YOUR PRIOR AGREEMENT TO THE TERMS AND CONDITIONS OF THE LOAN APPLICATION.**

ACKNOWLEDGEMENT: By clicking "Yes" below you acknowledge that you:

- Have agreed to the electronic communications agreement,
- Have expressly consented to receiving communications, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system, from us or any of our affiliates, service providers, assignees, or agents, at the phone number you provided for servicing and collection purposes related to any loan that you may obtain from us,
- Have received notice of the Lender's privacy policy and was presented with the privacy policy to read it in full prior to submitting your application,
- Provided your consent for the Lender and its service providers to obtain one or more consumer credit reports on you, as well as other information including but not limited to verification of employment and income,
- Were presented with multiple repayment options, including at least one option that was not an ACH authorization, and you selected your preferred option voluntarily; and
- Completed every aspect of the application truthfully and in good faith.

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Yes, I acknowledge all of the above

10. E-signature

WHOLE AND ENTIRE AGREEMENT: By marking the "I Confirm" box below and providing your electronic signature as described below, you confirm that:

- (a) You have read, understand, and agree to all of the terms and conditions of this Agreement, and specifically that you:
- (i) acknowledge and re-affirm your agreement to all terms and conditions made in connection with your application for this Loan,
 - (ii) have been presented with a copy of our Privacy Policy,
 - (iii) have received your Loan Agreement and "Truth in Lending" disclosures and agree to the terms and conditions of the Loan Agreement,
 - (iv) authorize us to obtain repayment by electronic debit (ACH) or remotely created check (RCC), the terms of which are set forth above,
 - (v) agree to the terms and conditions of the Arbitration Agreement and the waivers contained in the Arbitration Agreement of any rights to a jury trial and any rights to participate in class proceedings, and you understand how you may opt out of the Arbitration Agreement;
- (b) this Agreement constitutes the entire understanding and agreement between you and us, supersedes all prior agreements, correspondence or discussions regarding this transaction, and that no representations or promises other than those contained in this Agreement have been made;
- (c) no modifications, alterations or amendments of this Agreement shall be valid or effective unless reduced to writing and executed by both you and us;
- (d) you are not a debtor under any proceeding in Bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code;
- (e) this Agreement was filled in before you received and signed it;

(f) you acknowledge that you have the ability to print or retain a completed copy of this Agreement;

(g) you further acknowledge that we may withhold funding of your Loan until we ensure all the information you gave us on your application is true and we decide whether you meet our requirements to receive the Loan; and

(h) if you are protected by the Military Lending Act, those provisions above that are indicated as not applicable to borrowers and loans subject to the Military Lending Act will be inapplicable with respect to you and your Loan.

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I confirm all of the above

Esigned by: Ryan Derosier on Jul-13-2019

Esigned by: First Electronic Bank on Jul-13-2019

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