
COMPLAINTS

1. FTC v. Bridge It.....	2
2. FTC v. Floatme	35
3. CFPB v. Solo Funds	67
4. DC AG v. EarnIn d/b/a Active Hours	100
5. United States v. Dave	119
6. NY AG v. Daily Pay	159
7. NY AG v. MoneyLion	198
8. Baltimore v. MoneyLion	245

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRIDGE IT, INC., a corporation, also d/b/a
Brigit,

Defendant.

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, MONETARY
JUDGMENT, AND OTHER
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), 57b, and Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, which authorize the Plaintiff to seek, and the Court to order, permanent injunctive relief, monetary relief, and other relief for the acts or practices of Defendant Bridge It, Inc. (“Brigit”) in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of Section 4 of ROSCA, 15 U.S.C. § 8403.

SUMMARY OF CASE

2. Brigit operates a personal finance mobile application that promises consumers who live paycheck to paycheck short-term cash advances if they enroll in a \$9.99/month membership plan. Brigit debits the \$9.99 monthly membership fee directly from consumers’ bank accounts and automatically renews the plan until consumers cancel. Brigit advertises that

paying members will have the option to receive cash advances of up to \$250, that their membership includes “instant” delivery of these cash advances, and that Brigit does not charge late fees or interest on outstanding cash advances and allows consumers to cancel anytime. In reality, few consumers who pay the monthly membership fee are eligible to receive cash advances of up to \$250, many are not eligible to receive cash advances at all, and those who wish to receive the immediate cash advances they were promised cannot without paying extra. Moreover, once consumers subscribe to a Brigit membership, Brigit makes it difficult for consumers to cancel and stop the monthly charges from being debited from their bank accounts. Brigit uses design tricks, sometimes referred to as “dark patterns,” to make consumers navigate a confusing process that impedes cancellation and is designed to divert consumers from the process. Moreover, Brigit outright prohibits consumers with an outstanding advance from cancelling, and instead requires them to continue paying \$9.99 per month while they attempt to pay down their balance.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), and (d), and 15 U.S.C. § 53(b).

PARTIES

5. The FTC is an independent agency of the United States Government created by the FTC Act. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC

also enforces ROSCA, 15 U.S.C. §§ 8401 *et seq.*, which prohibits certain methods of negative option marketing on the Internet.

6. Defendant Bridge It, Inc., also doing business as “Brigit,” is a Delaware corporation with its principal place of business at 36 West 20th Street, Floor 11, New York, NY 10011. Brigit transacts or has transacted business in this District and throughout the United States.

COMMERCE

7. At all times relevant to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S BUSINESS ACTIVITIES

8. Brigit operates a personal finance mobile application (“app”) over the Internet that can be downloaded through mobile app stores such as the Apple App Store and Google Play or via app store links on Brigit’s website. Brigit advertises its app as a tool that provides alerts and offers short-term cash advances when a consumer’s bank account balance is running low so consumers can avoid paying overdraft fees.

9. Brigit has two membership plans, free and “Plus.” Brigit’s free membership includes alerts for low account balances but does not include cash advances. Brigit’s “Plus” membership costs \$9.99/month and promises consumers access to cash advances. Brigit automatically renews the membership and charges consumers the \$9.99 membership fee each month until the consumer takes affirmative steps to cancel.

I. Brigit's Misrepresentations About Its Cash Advances

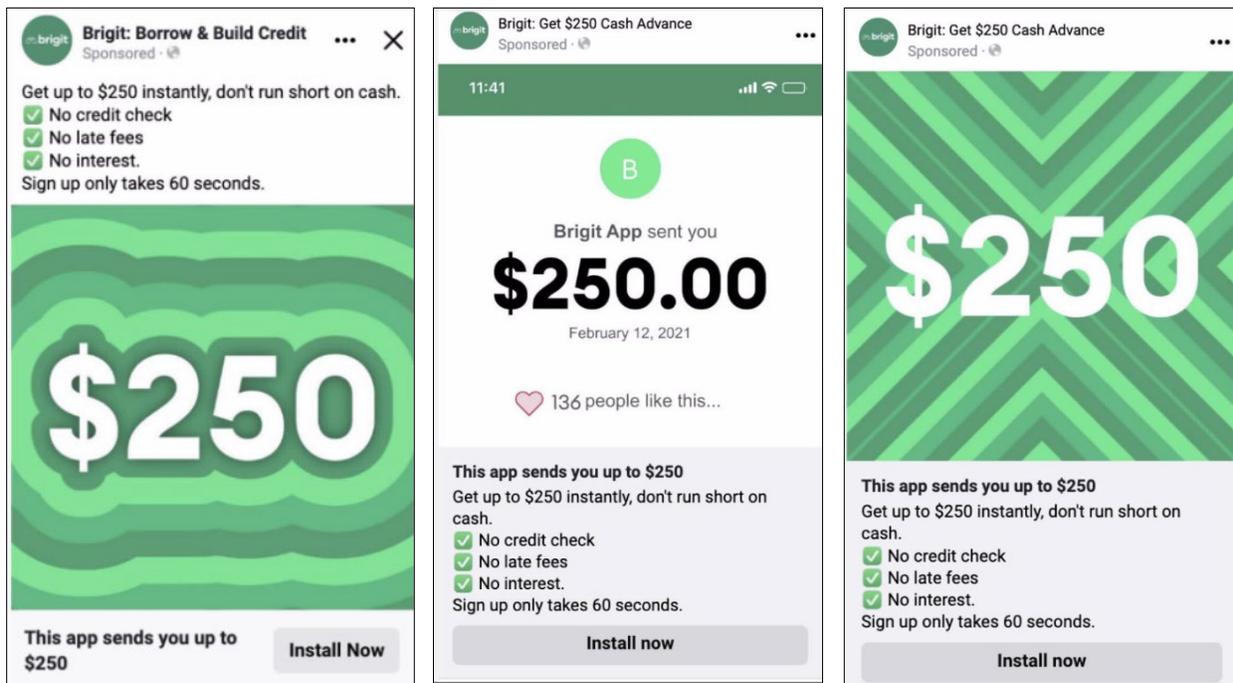
10. Brigit markets its app to consumers who are living paycheck to paycheck, through advertisements on social media, television, and YouTube, and on its website, www.hellobrigit.com. Brigit promises it will give consumers who enroll in its paid plan the option to take cash advances of up to \$250 whenever they need them. Brigit claims it will deliver these cash advances to members “instantly,” “quickly,” “ASAP,” “within seconds,” “when you need it,” and even “in case of emergency.” Brigit has told consumers they can expect “[f]ree instant transfers” and promises “no hidden fees . . . or fine print,” and “[n]o . . . processing fees.” Brigit also promises consumers they will pay “no interest” and “no late fees” for cash advances, and that they “[j]ust repay it next time you get paid.” Brigit reinforces these claims during the enrollment process, which consumers complete by downloading Brigit’s smartphone app.

11. In reality, few consumers who have joined Brigit and paid its \$9.99 monthly membership fee have received access to cash advance amounts anywhere close to the \$250 Brigit promises, and many have not been able to get any cash advances at all. For consumers who can get cash advances, Brigit charges an additional, undisclosed \$.99 fee for “express delivery” that consumers must pay before they can receive the funds “instantly,” “quickly,” “ASAP,” or “within seconds” as promised—otherwise, consumers must wait up to three business days. And despite Brigit’s assurances that consumers can cancel anytime and will not pay late fees or interest charges, once consumers have taken a cash advance, Brigit locks them into its \$9.99 monthly fee by blocking cancellation and further cash advances until the advance is paid in full.

a. Misrepresentations in Advertising and Marketing

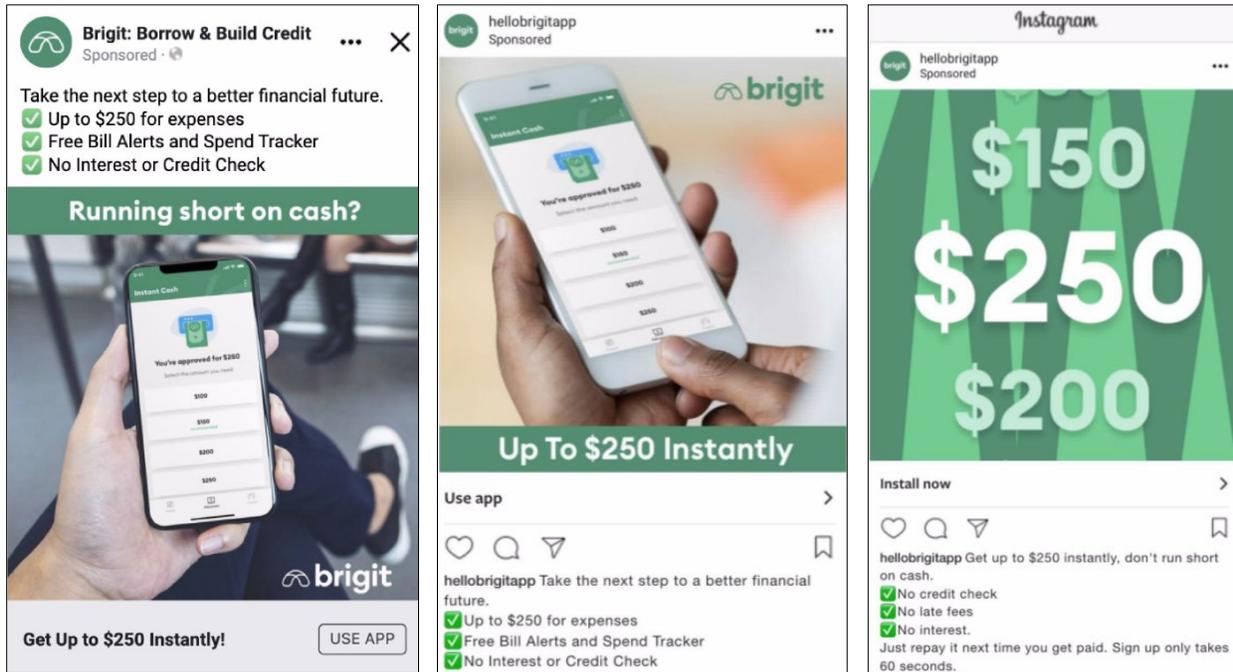
i. Advertising on Social Media, YouTube, and Television

12. Since at least 2019, Brigit has advertised extensively on social media platforms such as Facebook and Instagram. Its ads expressly and prominently tell consumers that by signing up for a Brigit membership and downloading the app, they will be able to receive cash advances of \$250 on demand. Brigit also tells consumers repeatedly that funds will be available “instantly,” and that Brigit charges “[n]o late fees” and “[n]o interest.” Examples of these ads appear below:

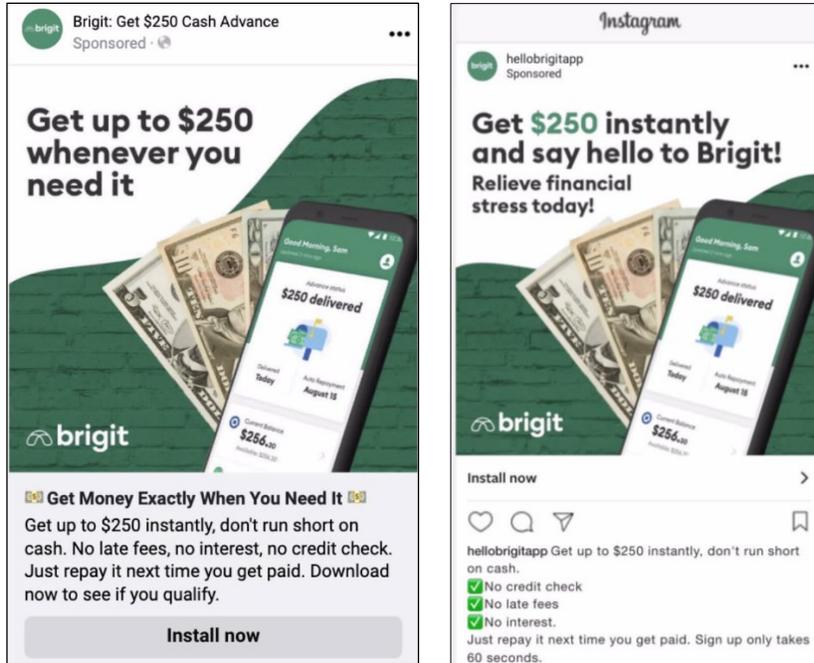


13. Brigit’s ads emphasize that consumers can choose the amount of the cash advance they want to receive up to \$250. In numerous ads, Brigit includes an image of a smartphone with bold text at the top of the screen stating, “You’re approved for \$250.” Below this text is the statement “Select the amount you need,” followed by several buttons illustrating that the consumer is free to select an amount of his or her choice between \$100 and \$250. In other ads,

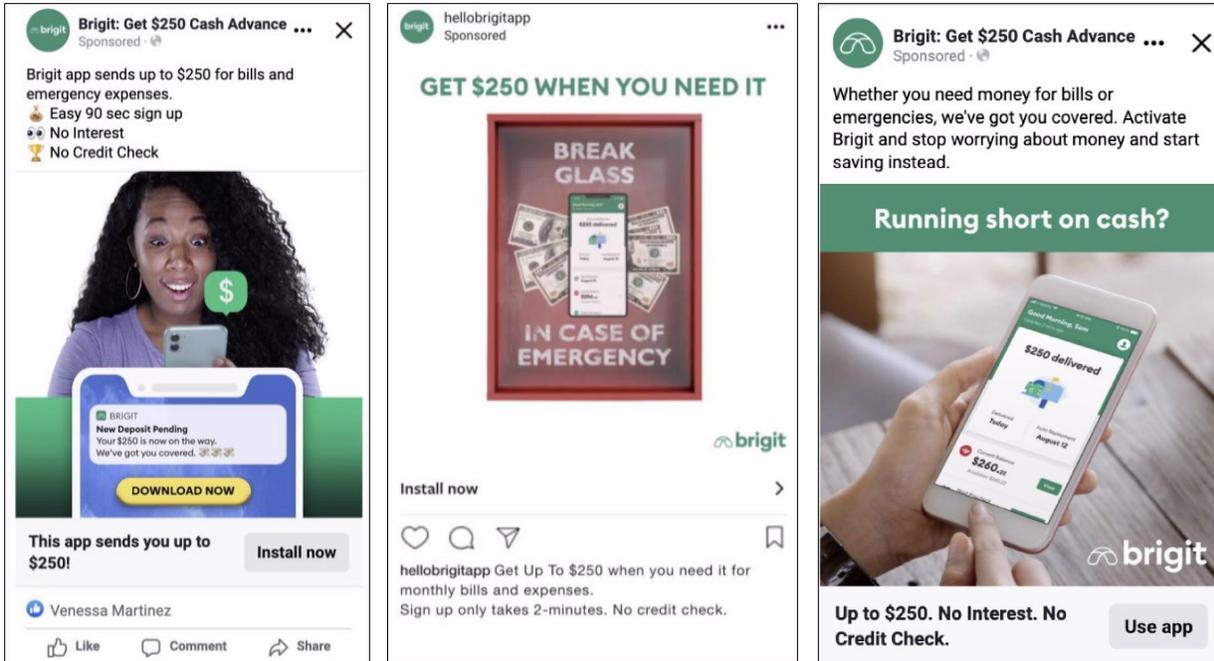
Brigit includes a graphic depicting three dollar figures, with the largest figure—\$250—appearing to have been selected. Examples of these ads that ran on Facebook and Instagram appear below:



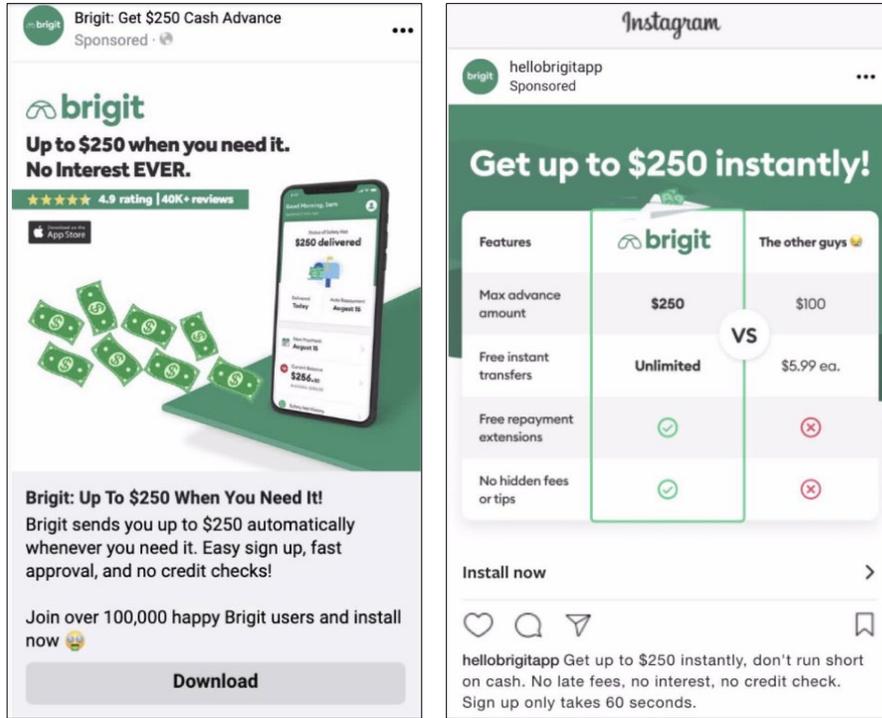
14. Brigit also emphasizes the immediacy with which consumers can obtain \$250 cash advances. Brigit’s ads include bold headlines telling consumers they can “Get \$250 instantly,” “Get Money Exactly When You Need It,” and “Get up to \$250 whenever you need it.” These ads often feature a prominent image of a smartphone with bold text at the top of the screen stating, “\$250 delivered,” and bold text in the middle of the screen stating, “Delivered Today.” Examples of these ads that ran on Facebook and Instagram appear below:



15. Brigit advertises that its cash advances are fast and reliable and that consumers can count on them for emergencies. Some ads claim that Brigit sends up to \$250 for “bills and emergency expenses,” above a graphic depicting a consumer looking at her smartphone, which displays the message header “New Deposit Pending,” and text stating “Your \$250 is now on the way. We’ve got you covered.” Others include the header “GET \$250 WHEN YOU NEED IT,” above a graphic showing a glass case with cash inside, with the words, “break glass in case of emergency.” Other ads include headline text stating, “[w]hether you need money for bills or emergencies, we’ve got you covered,” above a graphic of a smartphone screen with bold text at the top stating, “\$250 delivered,” and in the middle of the screen stating “Delivered Today.” Examples of ads making these claims that ran on Facebook and Instagram appear below:



16. Brigit has claimed that consumers will receive instant advances for free, without limitation. For example, Brigit has advised consumers that they will receive an unlimited number of “[f]ree instant transfers.” Brigit has differentiated itself from competitors on this basis, telling consumers that “[t]he other guys” charge “\$5.99 ea.” for instant transfers. In these same ads, Brigit also touts that it will not charge consumers any fees for these advances, including by claiming that consumers will pay “no hidden fees,” “no late fees,” and “[n]o interest EVER,” and that they will even receive “[f]ree repayment extensions.” Examples of ads making these claims that ran on Facebook and Instagram appear below:



17. Brigit also runs video advertisements on television and online platforms such as YouTube. These ads feature actors portraying consumers stating, “with Brigit, I can get 50 to 250 dollars.” Videos depict a user scrolling through a smartphone screen showing various available dollar amounts between \$20 and \$250 and selecting \$250, followed by a close-up of the screen showing, in large bold text, “\$250 on the way!” Ads also tell consumers to “download the Brigit app today and get \$50 to \$250 dollars instantly.” The ads tell consumers Brigit’s cash advances are for people who live “paycheck to paycheck,” and stress that qualifying is easy, claiming it only takes between one and two minutes to sign up and requires “no credit check.” They also emphasize that Brigit charges “no hidden fees” and “no interest” on outstanding advances. Like its social media ads, Brigit’s video ads tout that consumers can count on its cash advances for emergencies. Actors portraying consumers claim that “Brigit sent me money when I had an emergency,” and “in an emergency, with Brigit, I can get \$50 to

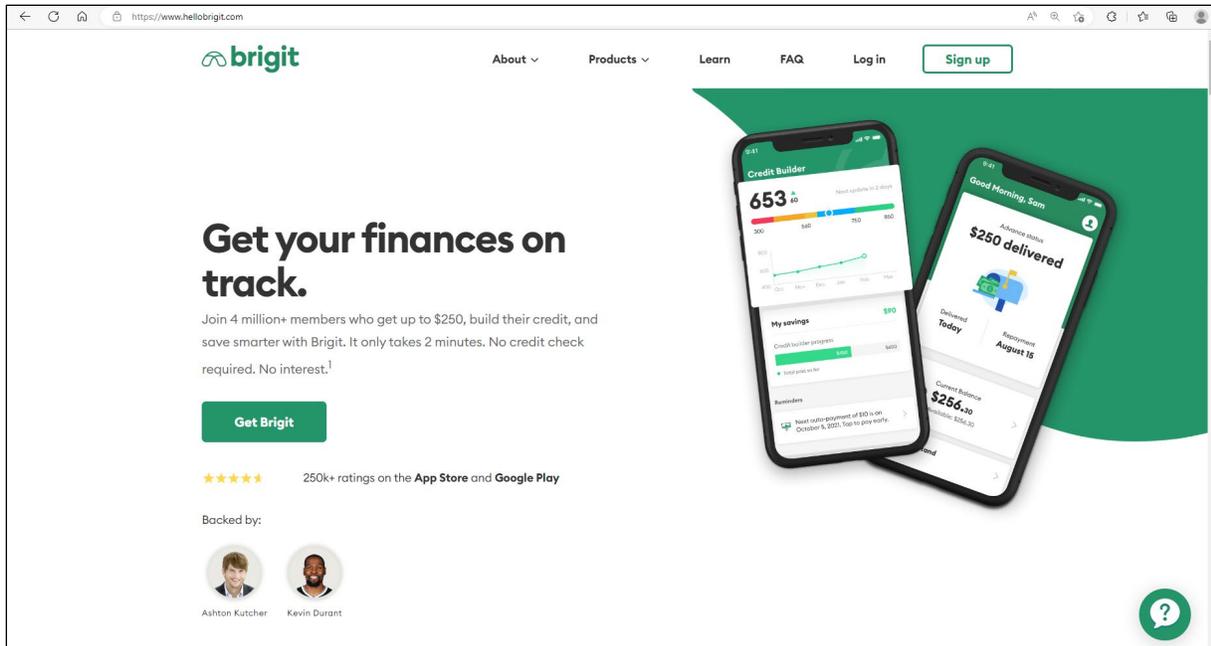
\$250.” In each case, these claims are followed by an image of a smartphone screen displaying, in large bold text, “\$250 delivered.” Ads also state, “with Brigit, I can get 50 to 250 dollars just in time to pay my rent,” and “I get cash advances whenever I need it, no problem.” These claims are immediately followed by an image of a smartphone displaying respectively, in large bold text, the statements “Success! \$250 on the way!” and “Instant Cash[.] You’re approved for \$250.”

18. Despite these prominent claims, the advertisements include a fleeting, inconspicuous text noting that eligibility requirements apply, advance limits vary between \$50 and \$250, and consumers should visit Brigit’s website for details. The text does not inform consumers that Brigit is unlikely to make available \$250, may not make any funds available at all, and will charge an extra fee to deliver cash instantly.

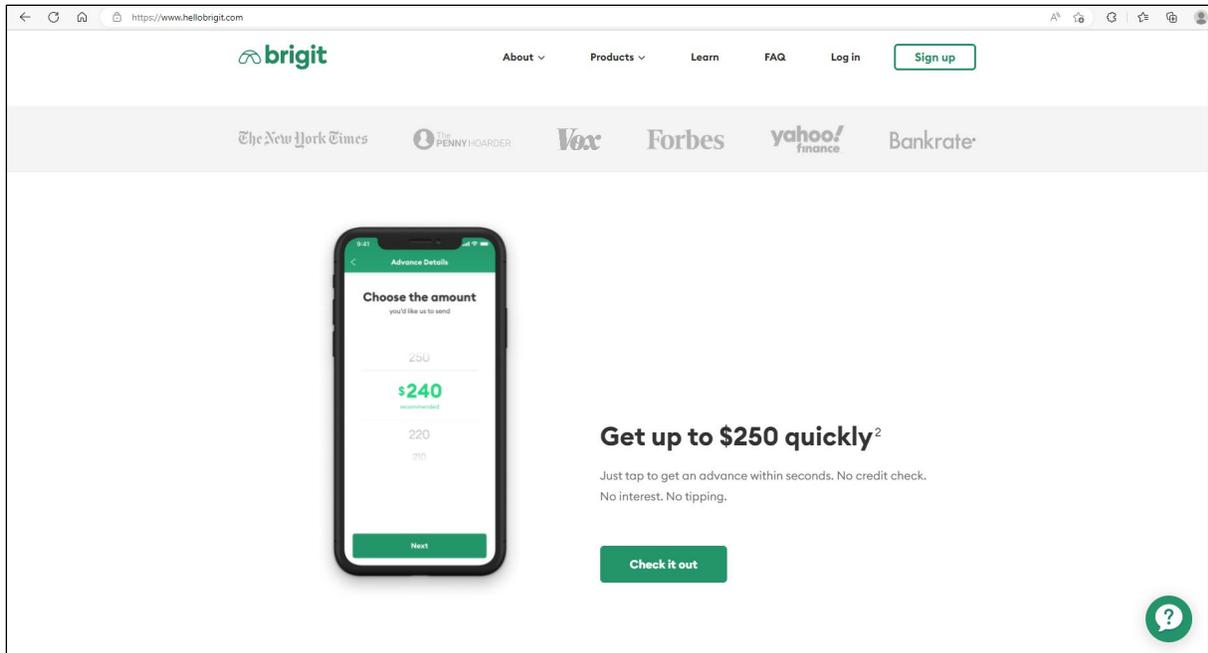
ii. Brigit’s Website

19. Brigit reinforces the deceptive claims in its advertisements on its website, www.hellobrigit.com.

20. On the landing page of Brigit’s website, consumers first see a screen that invites them to “join 4 million+ members who get up to \$250.” The page touts that there is “[n]o credit check required,” and signing up “only takes 2 minutes,” further reinforcing that consumers need not worry about qualification and eligibility. The landing page also tells consumers they will pay “[n]o interest.” To the right of these words is a large illustration of two smartphones, one of which shows a screen stating in bold text at the top “**\$250 delivered**,” and in the middle, “Delivered Today.” The screen appears as follows:



21. By scrolling down from this initial screen on the landing page, consumers see a series of additional discrete screens that make further claims. The first of these additional screens tells consumers, in bold headline text, that Brigit will allow them to **“Get up to \$250 quickly.”** After the headline, Brigit promises consumers **“Just tap to get an advance within seconds.”** These claims are accompanied by a large illustration of a smartphone screen offering the consumer, in bold headline text, to **“Choose the amount you’d like us to send.”** Below these words is a scrolling selection tool showing options to receive \$250, \$240, \$220, or \$210. The screen shows **“\$240 recommended”** in bold green text. The page also repeats that Brigit charges **“no interest”** for advances.



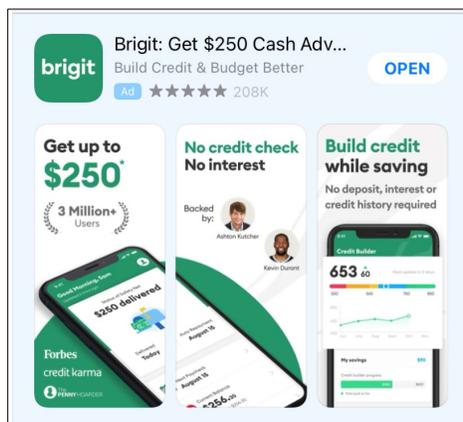
22. Brigit’s website includes additional claims that emphasize the absence of fees beyond the \$9.99 monthly membership. For example, on one page, in bold, headline print, Brigit states that it offers “**Two simple plans. No hidden fees, ‘tips,’ or fine print.**” On another page, titled “Our Values,” under the heading “**Transparency,**” Brigit explains that “[w]hen it comes to finances, nobody likes surprises. With Brigit, there are no hidden costs, ever. Ever.”

b. Brigit Reinforces Its Misrepresentations During Enrollment

23. Brigit’s advertisements and marketing materials tell consumers they can enroll in Brigit and receive cash advances by downloading the Brigit app on their Apple or Android smartphone, or by visiting the company’s website—which directs consumers to download the app. The material Brigit provides in the Apple App Store and in Google Play further repeats and reinforces its claims. Similarly, the app’s enrollment screens reinforce Brigit’s claims.

i. Deceptive Claims in the Mobile App Stores

24. Brigit's app store listings claim it offers immediate \$250 cash advances with no late fees or interest, and no hidden fees or fine print. For example, in the Apple App Store, Brigit's initial app listing screen includes the headline, "Brigit: Get \$250 Cash Advance" and a graphic showing a smartphone screen with the headline "Get up to \$250." When consumers click the listing, they are taken to Brigit's App Store page, which includes a larger headline stating "Brigit: Get \$250 Cash Advance" and below, a larger version of the graphic with a headline stating "Get up to \$250" and a phone screen showing "\$250 delivered" in bold text at the top, and "Delivered Today" in the middle. This page appears as follows:



25. Immediately below the graphic is a text description of the Brigit app, which begins, "Get up to \$250 when you need it*." If consumers expand the section by selecting "more," they see a longer text description that includes one section beginning, "UP TO \$250* WITH INSTANT CASH," followed by "Get cash fast and avoid expensive overdraft fees and charges with up to \$250* when you need it." The description also touts "\$0 origination fees, \$0 processing fees." By scrolling further, consumers see a section titled "EASY SIGN UP, FAST ACCESS," that includes the claim "Two simple plans. No hidden fees, tips or fine print." At

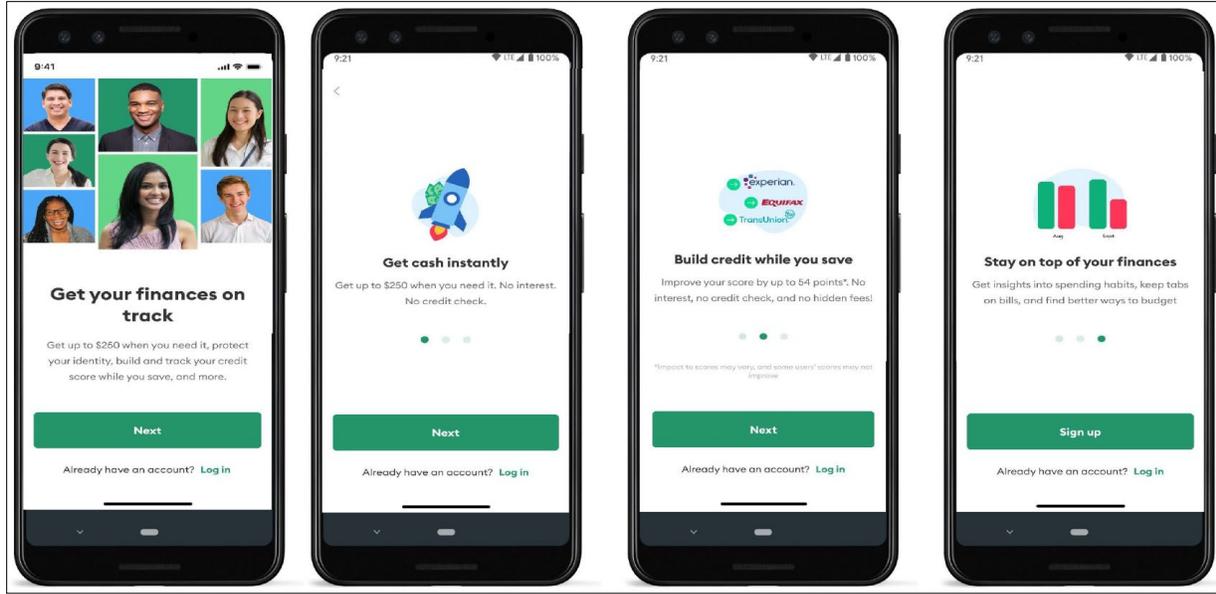
the bottom of the description, Brigit includes the remark “*Subject to Brigit’s approval and policies.”

ii. Deceptive Claims During Enrollment

26. Brigit offers two membership plan levels: a free plan that does not provide cash advances, and “Brigit Plus,” which costs \$9.99 per month and allows consumers to obtain cash advances. Brigit requires consumers to first enroll in the free plan before they may enroll in Brigit Plus.

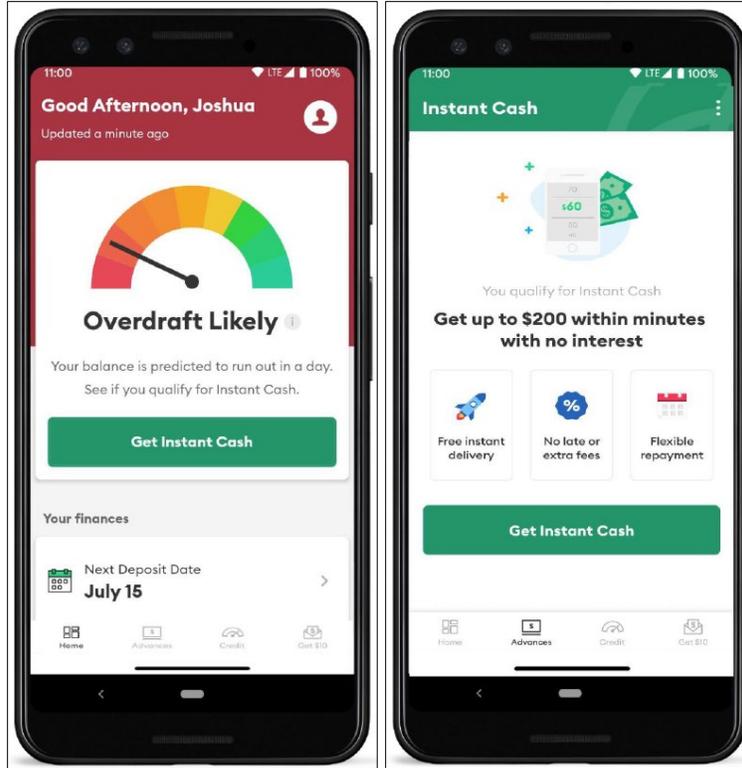
27. After consumers download and open the Brigit app on their smartphones, it ushers them through a series of enrollment screens that link the app to consumers’ bank accounts, determine the size and timing of their paychecks, and complete the sign-up process.

28. Consumers first encounter three welcome screens that repeat and reinforce Brigit’s misleading claims and lead to a final welcome screen with a button that allows them to “Sign up.” The first screen tells consumers they can “Get up to \$250 when you need it.” The second says, “Get cash instantly,” followed by “Get up to \$250 when you need it. No interest. No credit check.” The third says, “No interest, no credit check, and no hidden fees!” The screens appear as follows:

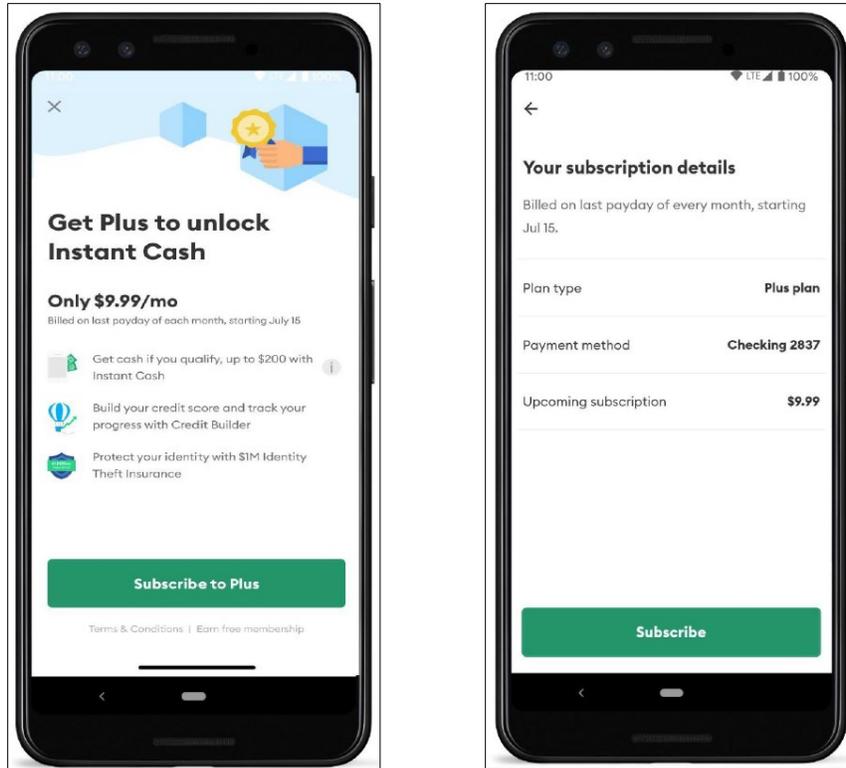


29. If consumers select the button to “Sign up,” they find that they must first enroll in Brigit’s free plan before they can enroll in Brigit Plus and receive cash advances. To enroll in the free plan, consumers must link their cell phones and bank accounts to the Brigit app, confirm their bank account balance, and report their paydays and paycheck amounts to Brigit.

30. After completing these steps, consumers are enrolled in the free plan and many see a message telling them, “Overdraft Likely,” with a large green button stating “Get Instant Cash.” Pressing the “Get Instant Cash” button takes consumers to a screen saying they can get a specific amount that will prevent a negative balance “within minutes with no interest.” The screen includes prominent graphics accompanied by the messages “Free instant delivery” and “No late or extra fees.” Examples of these screens appear below:



31. If a consumer clicks the button at the bottom that says “Get Instant Cash,” Brigit displays a screen that states in bold, “Get Plus to unlock Instant Cash,” followed by “Only \$9.99/mo.” At the bottom of the screen, consumers are given one option to proceed—“Subscribe to Plus.” Consumers next see a screen providing information about the day of the month and amount they will be billed, and are offered one option to proceed, by selecting a large green button over a white background that says “Subscribe.” Examples of these screens appear below:



32. During enrollment, Brigit sometimes mentions dollar amounts below \$250. But nothing Brigit does before or during enrollment in the free plan informs consumers that despite Brigit’s offer of cash advances up to \$250, consumers who enroll in Brigit Plus are likely to receive substantially less than \$250. Not until after consumers subscribe to Brigit Plus and agree to pay \$9.99 a month does Brigit tell consumers they are “approved for” less than \$250 and even then, many consumers do not see or understand the disclosure.

33. Many consumers report being surprised to learn that they are not eligible for the \$250 cash advances Brigit promises. In fact, numerous consumer complaints show that many consumers do not realize even after signing up that they cannot obtain \$250.

c. Brigit Provides Less Than the Advertised Cash Advance and Charges Extra for “Immediate” Delivery

34. Despite Brigit’s numerous prominent claims that it will provide cash advances of

up to \$250, few consumers receive anything close to that amount, if they receive anything at all. In fact, only approximately 1% of Brigit Plus customers have received access to \$250, and approximately 20% have been denied access to cash advances entirely.

35. Additionally, despite Brigit's promises that consumers can "Get \$250 instantly" with "Free instant transfers" and "Free instant delivery," while paying "no hidden fees," "no . . . processing fees," and "no hidden costs, ever[,] Ever," Brigit began charging consumers a fee of \$.99 per advance in June 2022 to get cash advances immediately; otherwise consumers had to wait up to three business days for cash advances to arrive. Even after Brigit started charging this fee, it continued to tell consumers they could "Get \$250 instantly" with "instant transfers" and "instant delivery," while paying "no hidden fees," "no . . . processing fees," and "no hidden costs, ever[,] Ever." And contrary to Brigit's claim of "transparency," it does not disclose the amount of this fee anywhere in its advertising, marketing, or enrollment material, its website, or even its terms of service. It is disclosed only after a consumer actually requests a cash advance.

II. Brigit Has Made It Difficult for Consumers to Cancel

36. Brigit has made it difficult for consumers to cancel their subscriptions by using design tricks, sometimes referred to as "dark patterns," requiring consumers to navigate through numerous confusing screens littered with impediments to cancellation. Brigit also does not allow members to cancel their paid monthly "Brigit Plus" subscription when they have an outstanding cash advance, even though Brigit tells consumers they can cancel anytime.

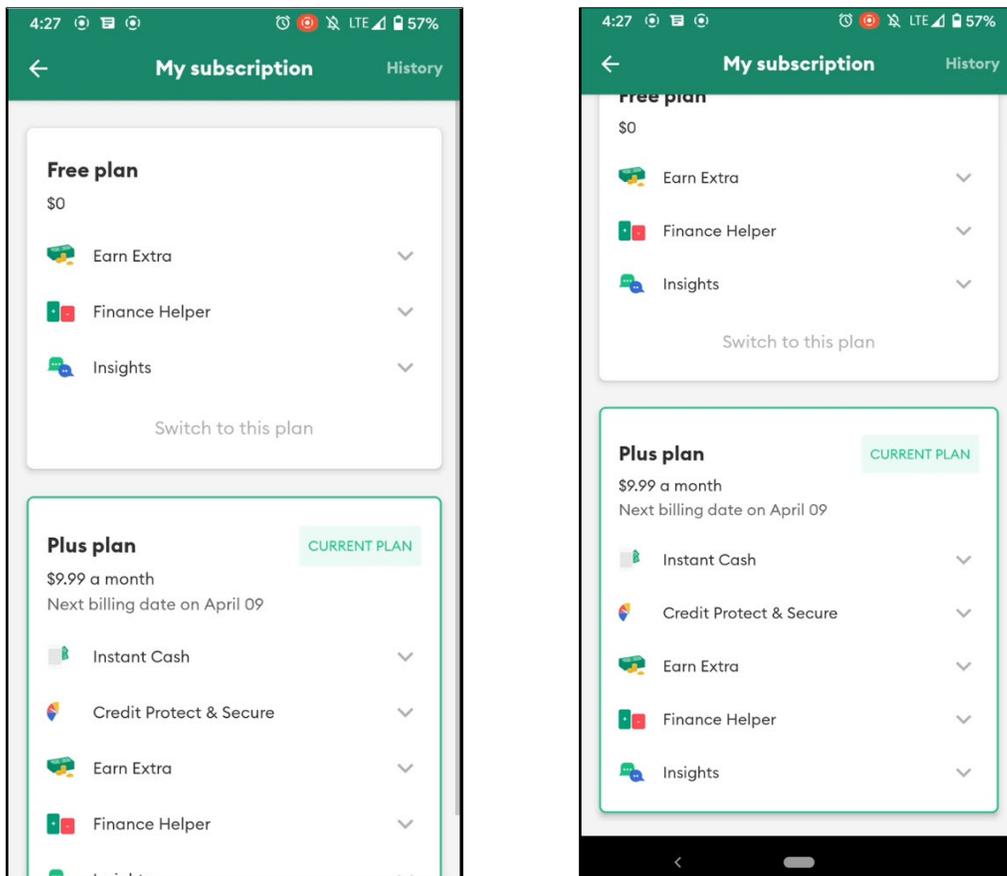
a. Brigit Uses Dark Patterns to Deter Consumers from Cancelling Their Subscription

37. Brigit has not posted a customer service telephone number on either its website or its mobile app. Consumers who have tried to cancel their account by sending an email to

Brigit’s customer support have typically been directed to log in to their account and manage their subscription rather than having their request processed by Brigit.

38. Consumers who tried to cancel their account by using Brigit’s chatbot named “Jess” have similarly been directed to log in to their account to manage their subscription rather than have their request processed.

39. To try to cancel, a Plus member might navigate to “Account settings” in the mobile app and select “My subscription.”

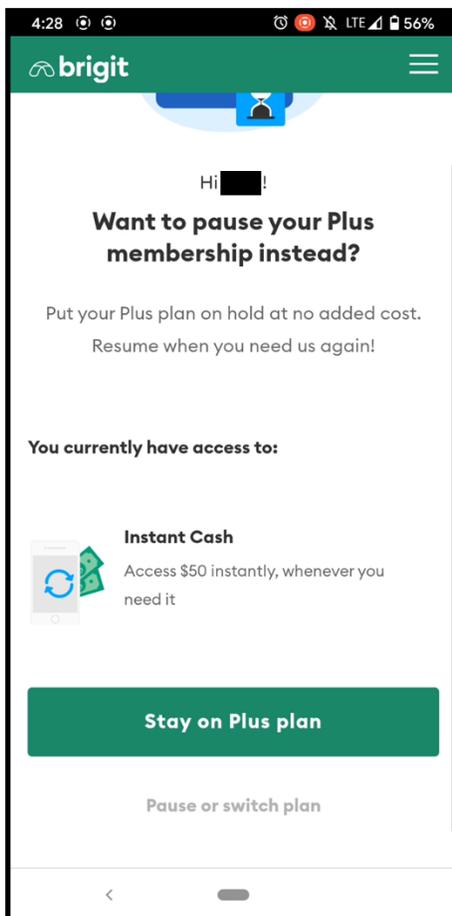


40. As shown above, the “My subscription” page has included illustrations showing the features of Brigit’s “Free plan” and “Plus plan.” The portion dedicated to the Plus plan has not provided any options for cancelling, pausing, or otherwise deactivating the Plus plan

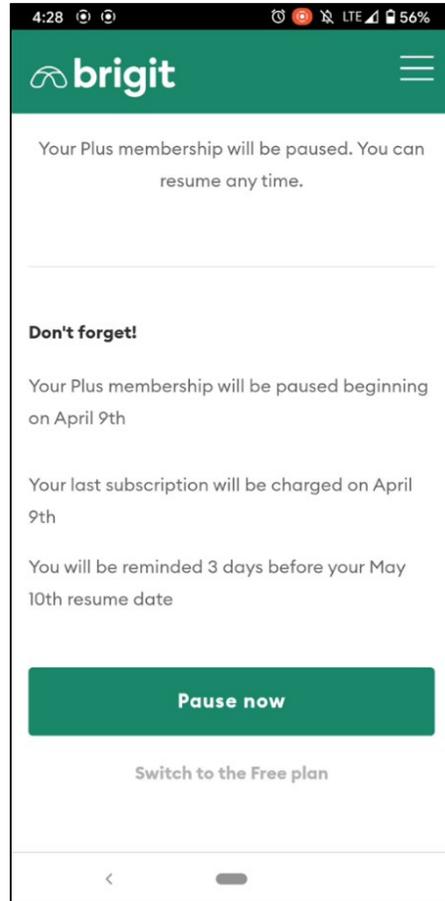
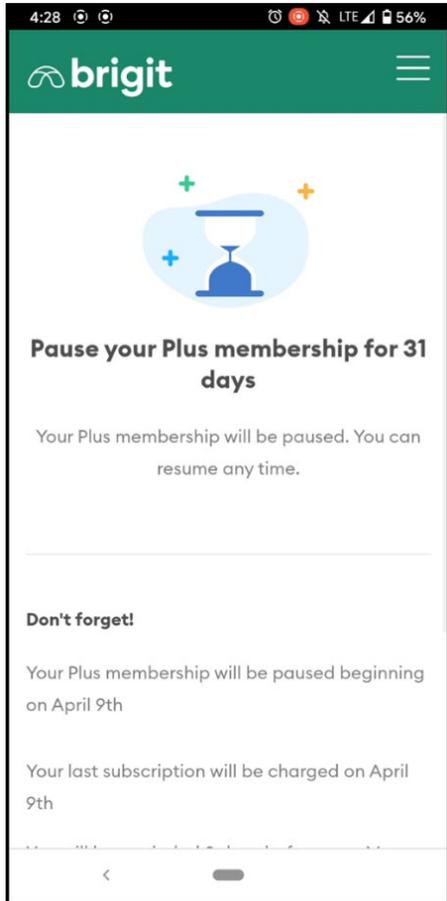
membership. Instead, in the portion dedicated to the Free plan, Brigit has included a line that says “Switch to this plan.”

41. If a consumer were to click that text, until January 2022, Brigit did not allow them to downgrade to the Free plan using the mobile app. Instead, mobile app users were directed to leave the mobile app to visit Bridget’s website, where they had to login again and start the process anew in a web-based app.

42. On the web-based app, Brigit has made cancellation difficult. If a consumer were to navigate to a settings page and then their membership page within Brigit’s web-based app, Brigit has displayed “Switch to this plan” under the list of Free plan options, but has not included an option to cancel the Plus plan. If the consumer selected “Switch to this plan,” however, rather than switching the consumer to the Free plan, Brigit has presented the consumer with a screen asking if they would like to “pause [their] Plus membership instead,” as set forth below:

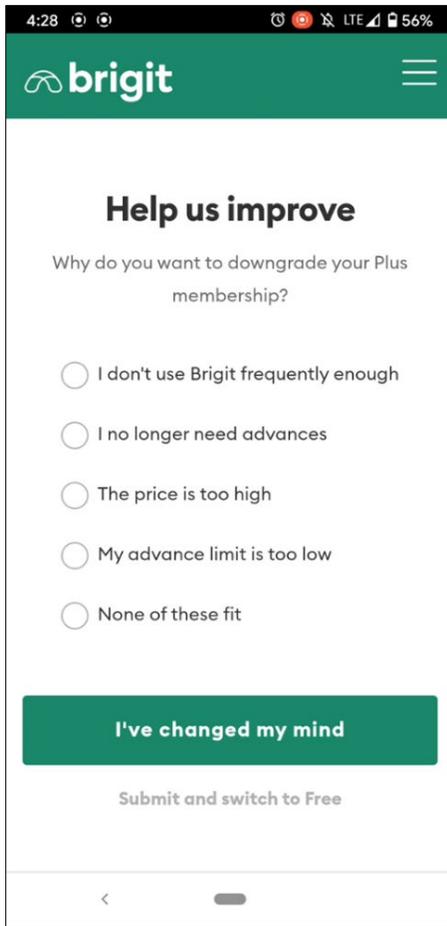


43. The first and most prominent option presented to the customer on this page has been to “Stay on Plus plan,” which has appeared as a large, dark green button against a white background. Below this button has been the option to “Pause or switch plan.” If the consumer selected “Pause or switch plan,” however, rather than switching the consumer to the Free plan, Brigit has displayed a screen informing consumers that their “Plus membership will be paused.”



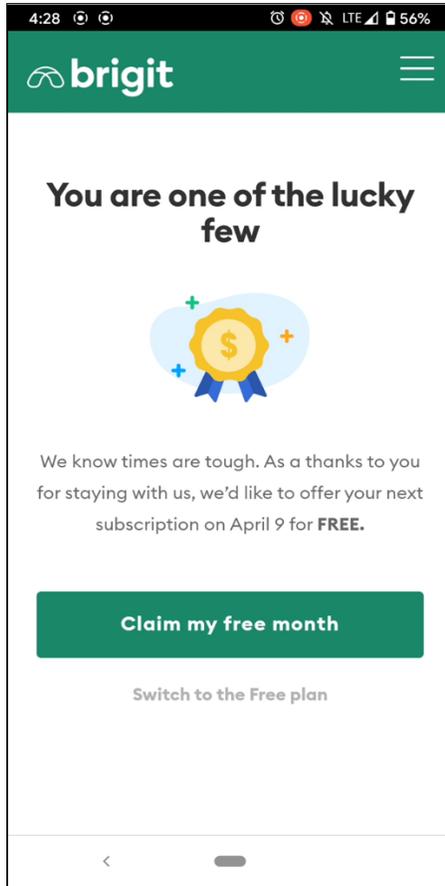
44. If a consumer were to scroll to the bottom of that page, the first and most prominent option has been “Pause now,” which has appeared as a large, dark green button against a white background. Below this button has been the option to “Switch to the Free plan.”

45. If the consumer attempted to downgrade by selecting “Switch to the Free plan,” however, they instead have been presented with a survey question asking for their reason for downgrading their Plus membership, offering five reasons that can be selected. Consumers have been required to select one of those five reasons before proceeding to the next screen.



46. After those reasons, Brigit has displayed another large green button, though the button has not allowed consumers to submit their response and continue switching to the free plan; instead, it has prompted them to reverse course with the statement, “I’ve changed my mind.” Below this button has been the option to “Submit and switch to free.”

47. If a consumer were to click the prominent green button, they would have remained enrolled. And if the consumer again attempted to continue downgrading by selecting “Submit and switch to Free,” Brigit has not at that point downgraded their Plus membership. Instead, Brigit has offered the consumer their “next subscription” beginning the following month “for **FREE.**” An example of this screen follows:



48. The screen has told the consumer that they “are one of the lucky few” to receive that option, even though Brigit has prompted every consumer who made it this far in the cancellation process with the same solicitation. The first and most prominent option presented has been for the consumer to “Claim my free month,” which has appeared as a large, dark green button against a white background. Clicking that button meant Brigit would not have charged the consumer for the next month—but then would have kept them enrolled in the \$9.99/month Plus plan after that. Below the dark green button has been the option to “Switch to the Free plan.” If a consumer persisted and selected “Switch to the Free plan” on this page, then and only then have they been finally unenrolled from the Plus membership.

49. Brigit has intentionally adopted many of these dark patterns to make it more

difficult for consumers to cancel recurring charges. For example, Brigit has removed consumers' ability to cancel a membership within the mobile app to "[i]ncrease friction to delete;" has added a requirement for consumers to complete a survey before downgrading as part of a plan to "reduce user churn" by "[a]dding [f]riction" to the deactivation flow; and has changed the font color of the text consumers had to click to downgrade to light gray to help "stop leakage from recently implemented credit changes (users getting amounts lowered to \$50)."

50. Even after Brigit's employees complained that its burdensome cancellation procedure was "making a lot of people angry in the name of retention," and it "doesn't align with [Brigit's] values of simplicity and transparency," Brigit has continued to impose the requirements. Brigit explained in an email to the whole company that "unfortunately" it "had to make changes to prepare for high churn during post-covid time."

51. Brigit acknowledged in an email communication that the difficult cancellation process was part of the company's business strategy. Such communication noted that Brigit had a "pretty clear business argument" for making deactivation "so frictionful," and that they were "making decisions with no time to test" and "throwing the kitchen sink to see what sticks."

52. Many consumers have complained—including to Brigit—that they were confounded by the complexity of Brigit's cancellation process, and were unable to cancel, or had great difficulty cancelling, their accounts. Yet for years Brigit has continued to deter consumers from cancelling their subscriptions.

53. At times, Brigit made changes to this process, but it continued to frustrate consumers' attempts to cancel. In January 2022—in order to avoid having their mobile-app removed from the Apple app store—Brigit began allowing consumers to cancel within the

mobile-app. On or before June 2022, Brigit modified the screens requiring consumers to decline an option to pause twice, respond to a survey, and then decline a free month before they could cancel. In July 2022, after becoming aware of the FTC’s investigation, Brigit stopped requiring consumers to decline a free month before they could proceed with cancelling.

b. Brigit Forces Members with Pending Advances to Continue Paying \$9.99 Each Month Until They Repay Their Advance

54. Brigit makes numerous representations on its website and in other materials that it will not charge consumers late fees, interest, or penalties on cash advances, will not take collection action, and allows consumers to cancel their accounts at any time. Brigit advertises, for example, that there are “[n]o late fees” associated with their cash advances, and that members are entitled to “free repayment extensions.” Brigit also represents on its website that consumers can “Get cash – with no interest or late fees” and “With Brigit, you’ll never pay interest on your advance, and we won’t ding you if you need more time to pay it back.” Brigit’s website also states there are “[n]o hidden fees... or fine print” associated with membership. Brigit’s website represents that Plus members can “[c]ancel anytime,” and touts that Members do not “get locked into layers of subscriptions.”

55. Contrary to these representations, Brigit prohibits Plus members who have an outstanding cash advance from stopping the recurring monthly fees it charges by cancelling their account or switching to a free membership plan.

56. This means that Plus members are locked into paying \$9.99 per month indefinitely until they repay an advance. Some customers reported incurring monthly charges against their will for over a year while they were unable to cancel their account due to an outstanding advance. For a \$250 cash advance, this monthly fee is equivalent to a finance

charge of more than 48%, and for a \$100 cash advance, it is equivalent to a finance charge of more than 121%.

57. Not only does Brigit's cancellation restriction contradict many of the prominent advertising and marketing claims it makes, but nowhere during the enrollment process, or even in Brigit's terms of service, does Brigit tell consumers they will be required to repay outstanding advances to stop being charged a recurring monthly fee. In fact, Brigit's terms of service describe the cash advances as "non-recourse [a]dvances," and warrant that Brigit "will not engage in any debt collection activities" and "has no legal or contractual claim against you based on a failure to repay an advance." Consumers learn that they are locked into the recurring monthly payments only after they unsuccessfully attempt to cancel their monthly subscription.

58. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendant is violating or is about to violate the FTC Act and ROSCA.

VIOLATIONS OF THE FTC ACT

59. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

60. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

61. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Deceptive Claims Regarding Cash Advances

62. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their cash advance services, including through the means described in Paragraphs 8-35, Defendant represents, directly or indirectly, expressly or by implication, that consumers who enroll in Defendant's membership program can get cash advances up to \$250.

63. The representations set forth in Paragraph 62 are false and misleading or were not substantiated at the time the representations were made.

64. Therefore, the making of the representations as set forth in Paragraph 62 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Deceptive Claims Regarding the Charge for Instant Cash Advances

65. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their cash advance services, Defendant represents, directly or indirectly, expressly or by implication, that consumers who enroll in Defendant's membership can get cash advances immediately at no extra cost.

66. The representations set forth in Paragraph 65 are false and misleading or were not substantiated at the time the representations were made.

67. Therefore, Defendant's representations as set forth in paragraph 65 constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III

Deceptive Claims Regarding Outstanding Advances

68. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of the Brigit Plus membership, Defendant represents, directly or indirectly, expressly or by implication, that consumers can cancel at any time without paying any fees, interest, or other charges on an outstanding advance.

69. The representations set forth in Paragraph 68 are false and misleading or were not substantiated at the time the representations were made.

70. Therefore, Defendant's representations as set forth in paragraph 68 constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count IV

Unfairly Charging Consumers Without Consent

71. In numerous instances, Defendant charges consumers without consent.

72. Defendant's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

73. Therefore, Defendant's acts or practices as set forth in Paragraph 71 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

74. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401 *et seq.*, which became effective on December 29, 2010. Congress passed

ROSCA because “[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers’ business.” Section 2 of ROSCA, 15 U.S.C. § 8401.

75. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information, (2) obtains the consumer’s express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. 15 U.S.C. § 8403.

76. The TSR defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services “under which the customer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2(w).

77. As described in Paragraphs 8 to 58 above, Defendant has advertised and sold its Brigit Plus membership through a negative option feature as defined by the TSR. 16 C.F.R. § 310.2(w).

78. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

Count V

Illegal Negative Option Marketing

79. In numerous instances, in connection with charging consumers for Brigit Plus membership in transactions effected on the Internet through a negative option feature, Defendant failed to:

- a) clearly and conspicuously disclose all material terms of the transactions before obtaining the consumers' billing information, including (1) that most consumers cannot obtain cash advances in the amount advertised by the company and many are not able to receive any cash advance at all; (2) that consumers cannot obtain cash advances immediately unless they pay an additional expedited fund fee; and (3) that consumers cannot cancel their membership and stop incurring fees until they have repaid their cash advance in full.
- b) obtain consumers' express informed consent before charging the consumers' credit cards, debit cards, bank accounts or other financial accounts for products or services through such transactions including by the conduct described in sub-paragraph (a).
- c) provide simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account or other financial account.

80. Defendant's acts or practices, as described in Paragraph 79 above, violate Section 4 of ROSCA, 15 U.S.C. § 8403.

CONSUMER INJURY

81. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act and ROSCA. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

Wherefore, the FTC requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act and ROSCA by Defendant;
- B. Award monetary and other relief within the Court's power to grant; and
- C. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

Dated: November 2, 2023

/s/ James Doty _____

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FEDERAL TRADE COMMISSION

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FLOATME CORP., a corporation,

JOSHUA SANCHEZ, individually and as an
officer of FLOATME CORP., and

RYAN CLEARY, individually and as an officer
of FLOATME CORP.,

Defendants.

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, MONETARY
JUDGMENT, AND OTHER
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action for Defendants’ violations of Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f. For these violations, Plaintiff seeks relief, including a permanent injunction, monetary relief, and other relief, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b), 57b, ROSCA, 15 U.S.C. § 8403, and ECOA, 15 U.S.C. §§ 1691-1691f, and its implementing rule, Regulation B, 12 C.F.R. § 1002.

SUMMARY OF THE CASE

2. FloatMe operates a personal finance mobile application that promises consumers who live paycheck to paycheck short-term cash advances if they enroll in a \$1.99-per-month membership plan. FloatMe debits the monthly membership fee directly from consumers' bank accounts and automatically renews the plan until consumers cancel.

3. Since launching its app in 2019, FloatMe has used misrepresentations to induce consumers to enroll in a subscription plan. FloatMe advertises that paying consumers can receive cash advances of up to \$50 instantly upon request, and that consumers can receive this amount immediately after signing up. But consumers can actually receive only \$20, at most. And, as one employee admitted in an internal communication, FloatMe “lie[s]” to consumers who ask how to receive greater advances: FloatMe tells consumers that their cash advance limit will increase over time pursuant to an automated process, but in fact, there is no such process, and the vast majority of consumers never receive increases.

4. Further, despite its promise to make cash available “instantly” for only the cost of a subscription, consumers cannot receive money “instantly” unless they pay a surprise fee. And tens of thousands of other consumers are categorically prohibited from receiving cash advances—even after paying subscription fees—because of FloatMe’s refusal to offer cash advances for income that derives from gig work and public assistance such as military benefits and Social Security (both disability and retirement benefits).

5. FloatMe also repeatedly charges consumers for services without consent. Many consumers have been double-charged for fees, charged before the agreed-upon repayment date, or charged after cancelling their accounts. When consumers try to cancel their membership,

FloatMe requires them to navigate faulty cancellation mechanisms that are steeped with friction and dark patterns designed to thwart consumers' attempts to cancel.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

8. The FTC is an independent agency of the United States Government created by the FTC Act, which authorizes the FTC to commence this district court civil action by its own attorneys. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces ROSCA, 15 U.S.C. §§ 8401-05, which, *inter alia*, prohibits the sale of goods or services on the Internet through negative option marketing without meeting certain requirements to protect consumers. A negative option is an offer in which the seller treats a consumer's silence—their failure to reject an offer or cancel an agreement—as consent to be charged for goods or services. 16 C.F.R. § 310.2(w). The FTC further enforces ECOA, 15 U.S.C. §§ 1691-1691f, which, *inter alia*, prohibits discrimination on the basis that all or part of an applicant's income derives from a public assistance program.

DEFENDANTS

9. Defendant FloatMe Corp. is a Texas corporation with its principal place of business at 110 E Houston St., San Antonio, TX 78205-2991. FloatMe transacts or has transacted business in this District and throughout the United States. At all times relevant to this

Complaint, acting alone or in concert with others, FloatMe has advertised, marketed, distributed, or sold access to its platform to consumers throughout the United States.

10. Defendant Joshua Sanchez is an officer, co-founder, and board member of FloatMe. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of FloatMe, including the acts and practices set forth in this Complaint. Sanchez was directly involved in the unlawful practices set forth in this Complaint, including reviewing and approving FloatMe's cancellation practices, advertising claims, and policies regarding cash advance limits. Sanchez resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

11. Defendant Ryan Cleary is a co-founder, and former board member and officer, of FloatMe. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of FloatMe, including the acts and practices set forth in this Complaint. Cleary was directly involved in the unlawful practices set forth in this Complaint, including reviewing and approving FloatMe's cancellation practices, advertising claims, and policies regarding cash advance limits. Cleary resides in Cleveland, Ohio, and in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

12. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

13. FloatMe operates a mobile app, which is available on the Apple App Store and Google Play Store. FloatMe advertises its app as a tool that offers short-term cash advances to cover unexpected emergencies. FloatMe calls its cash advances “Floats” and says consumers can receive amounts “up to \$50.” These cash advances are automatically debited from consumers’ bank accounts on consumers’ next estimated payday.

14. Consumers must enroll in a FloatMe subscription to receive a cash advance. FloatMe charges monthly fees of \$1.99 for a membership (or \$4.99 for an MVP membership that also includes access to a secured charge card). FloatMe subscriptions renew automatically, charging consumers on a recurring basis unless they take affirmative action to cancel.

15. Consumers can contact FloatMe only by emailing the support team at support@floatme.com or submitting a support ticket through the app.

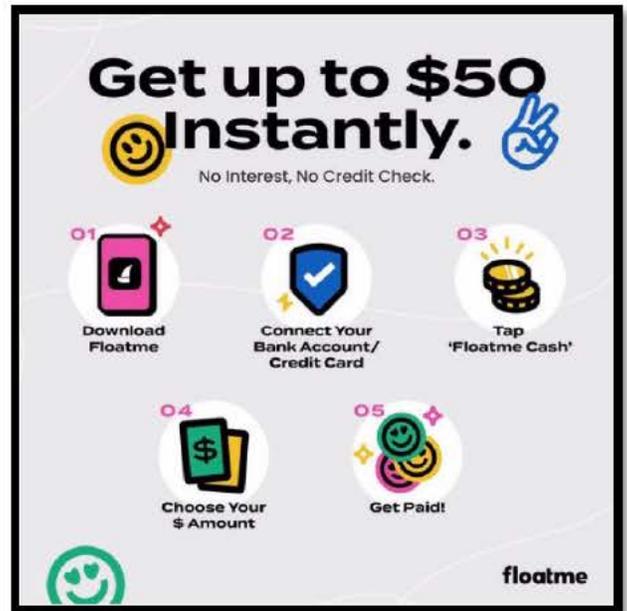
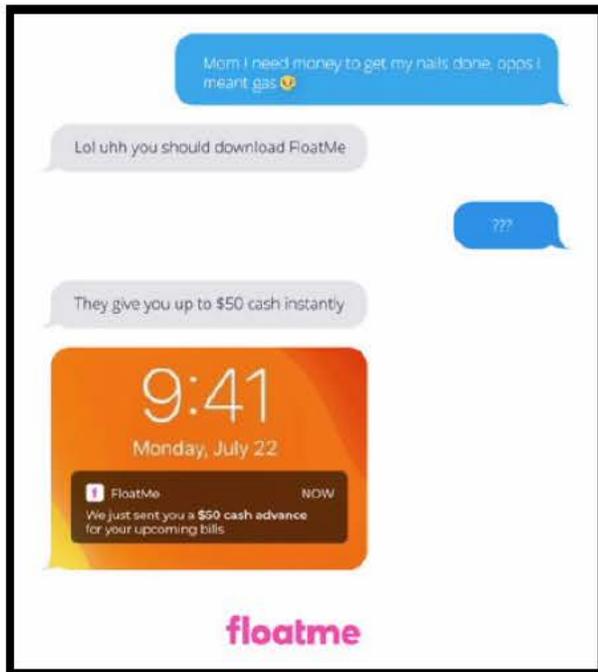
FloatMe’s Misrepresentations About its Cash Advances

16. FloatMe advertises its app to consumers who are living paycheck to paycheck, through social media and its website. FloatMe promises consumers cash advances of up to \$50 whenever they need them. FloatMe tells consumers they can receive cash “instantly,” “now,” and “in minutes.” FloatMe says its cash advances are delivered fast enough that consumers can rely on the advances for any “unexpected emergency.” FloatMe promises that its cash advances are “free money” with “no hidden fees” and “no interest.” FloatMe reinforces these claims on its website and again during the enrollment process, which consumers complete on the app.

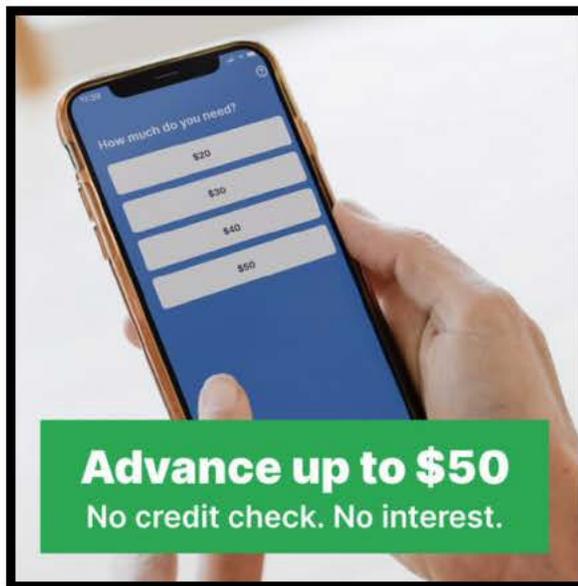
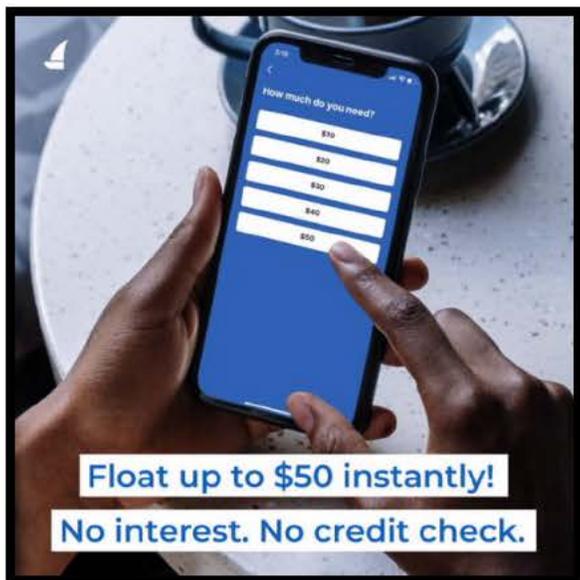
17. But FloatMe does not offer Floats up to \$50 upon enrollment. To keep customers from cancelling, FloatMe tells them that if they stay enrolled, an automated process will increase their cash advance limit. But FloatMe does not have any such automated process, and few



19. FloatMe’s ads emphasize that consumers can get up to \$50 immediately after downloading the app. Some of FloatMe’s ads convey this message by showing fictitious scenarios where consumers learn about FloatMe and get \$50 right after downloading the app. Other FloatMe ads explicitly tell consumers that they need only download the app to get \$50. Examples of these ads are below.



20. FloatMe’s ads also tell consumers they can choose the amount of the cash advance they want to receive. In numerous ads, FloatMe shows consumers selecting their cash advance amounts from \$20 to \$50. Examples of these ads appear below.

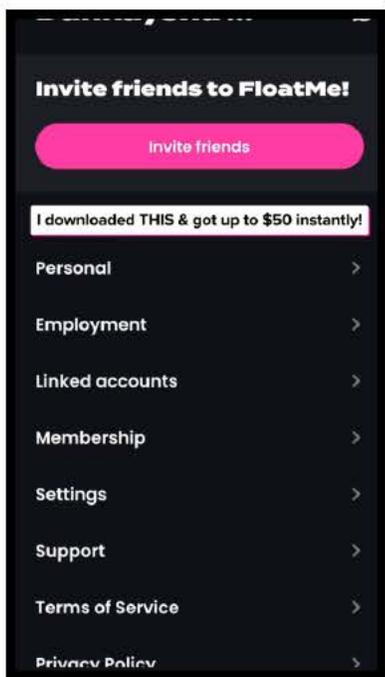


21. FloatMe also uses video ads, typically in the form of mock testimonials, on social media platforms such as TikTok and YouTube. These ads regularly show actors describing an emergency or other situation where they need cash immediately. In the ads, the actor learns about FloatMe, quickly signs up, and gets a \$50 cash advance, instantly and for no additional fees, during their first use of the app. In one such advertisement, for example, the actor says:

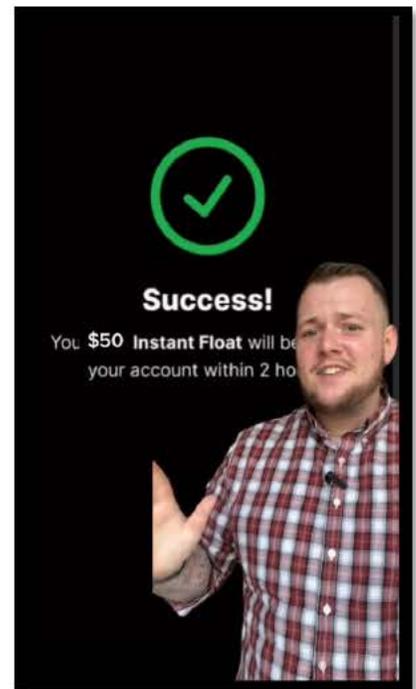
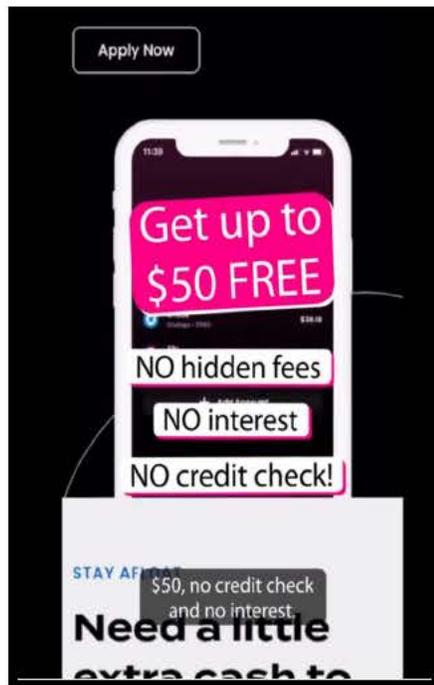
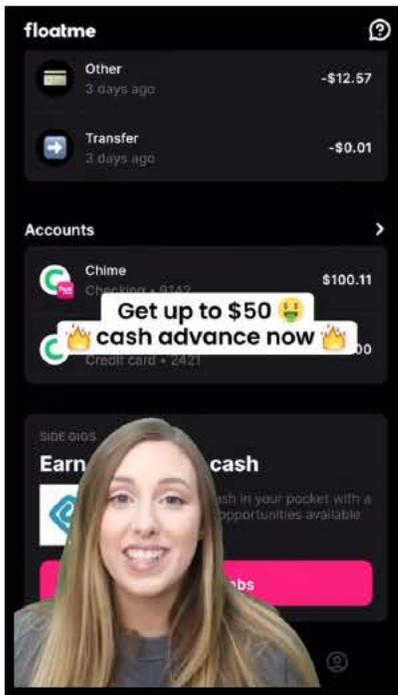
I was low on cash and needed gas. I did not know what to do. I downloaded the FloatMe app and got instant cash. There was no interest and no credit check. I got \$50 instantly and was able to get gas and go about my day. FloatMe is literally a lifesaver for a rainy day and emergency cash.

22. In these video advertisements, FloatMe emphasizes how consumers can get a \$50 cash advance instantly, right after enrolling, for “no hidden fees.” Others say FloatMe’s cash advances are “free” or “free money.” For example, in one such advertisement, the actor

responds to a purported consumer asking how to “get emergency cash deposited instantly.” The actor answers: “All you have to do is download the FloatMe app. It’s free. It’s easy to get to. Sign up for the membership and get \$50, free money.” At the end of the ad, the monthly subscription price of \$1.99 appears in small font on the bottom of the screen. Two screenshots from this video are below. During the first screenshot, the actor verbally claims that she received \$50 instantly after downloading the app. That claim also appears in text on the screen. The second screen, which appears after the actor claims a Float is “free money,” mentions only the \$1.99 subscription fee, and only in tiny font.



23. Below are other screenshots from similar video ads where consumers are told they can receive “up to \$50” “now” for “free” immediately after downloading the app:



Misrepresentations During the Enrollment Process

24. Consumers can download the FloatMe app on the Apple App Store or Google Play Store. To reach FloatMe’s app store listing, consumers can either search the app store or go to FloatMe’s website and request an app store link. As explained below, FloatMe’s website and app store listings repeat FloatMe’s deceptive promises that consumers can receive Floats “up to \$50” within “minutes” for “just \$1.99/month.” As further explained, FloatMe repeats these deceptive claims during the enrollment process in the app.

25. FloatMe’s website, www.floatme.com, has claimed that consumers can get “Floats up to \$50 between paydays” for “\$1.99/month.” FloatMe’s website has also expressly claimed that it charges “No Hidden Fees” for “Instant Cash Advance[s].” Below is a screenshot showing what consumers have seen when navigating FloatMe’s website.

Get up to \$50
Instant Cash Advance

No Hidden Fees, No Interest, NO Credit Check
 Download FloatMe to get instant cash advance when you need it most. *7-day free trial then \$199/month, cancel anytime

Enter Your Phone Number **Get Instant Cash**

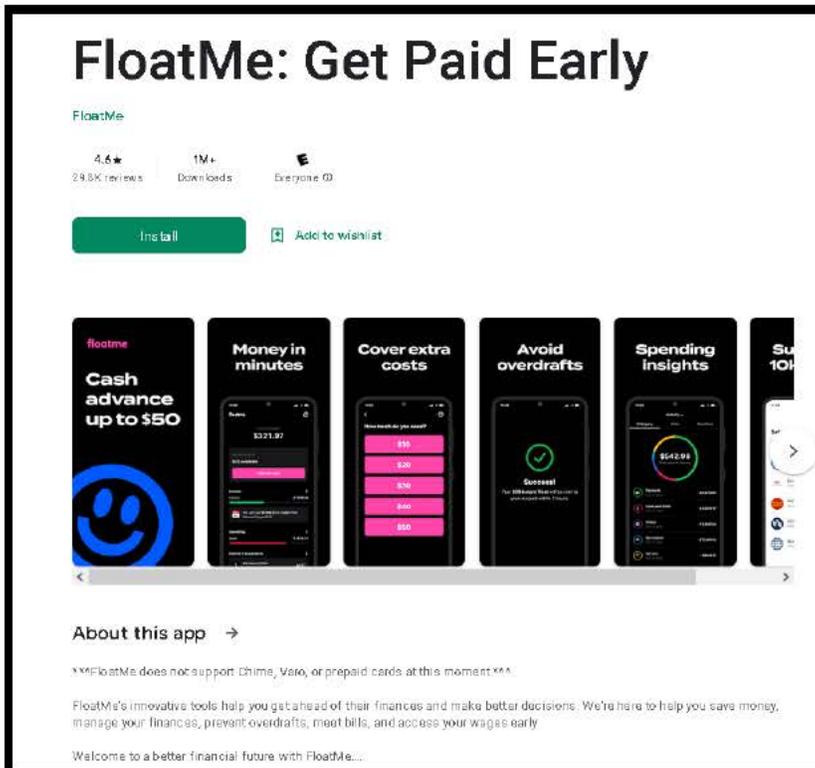
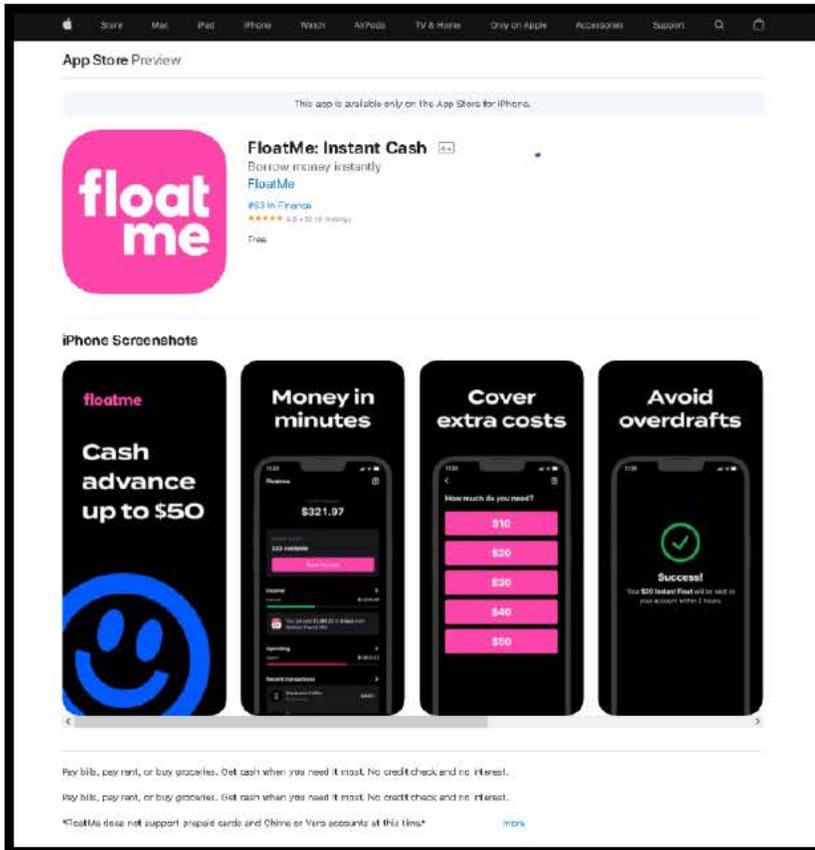
★★★★★ (App Store) ★★★★★ (Google Play)

Why Get Floatme
 Meet your new BFF that's helped our members save over \$80M in overdraft fees with instant cash advances up to \$50 between paydays.
No credit checks. No interest.

Borrow up to \$50 Instantly
 FloatMe helps you make ends until your next paycheck with an instant cash advance up to \$50.

AVAILABLE TO BORROW: \$1,642
 High overdraft risk

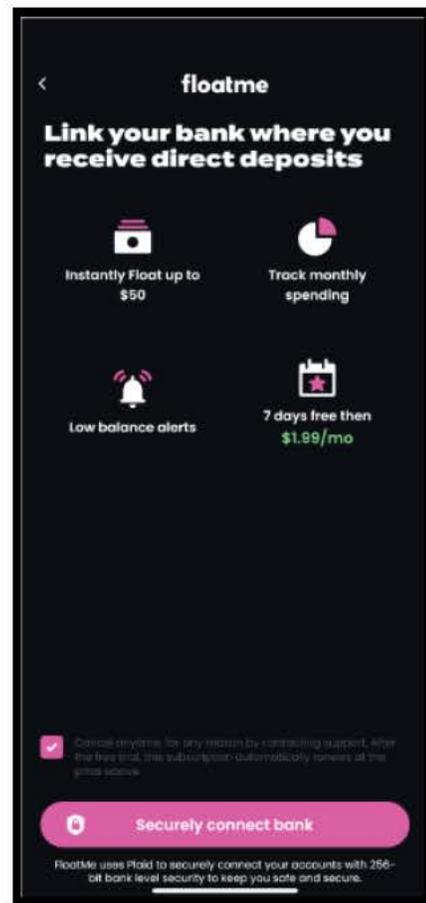
26. FloatMe reinforces these representations on its app store pages. Consumers can download FloatMe’s app from the Apple App Store or the Google Play Store. Both app store pages prominently include featured screenshots from the app that inform consumers they can receive a “Cash advance up to \$50” and “Money in minutes.” One screenshot claims that the app allows consumers to pick their desired cash amount between \$10 to \$50. The next screenshot shows a successful cash advance of \$20 that will be delivered instantly. Below are images of what consumers have seen when navigating the Apple App Store and Google Play Store pages.



27. During the enrollment process, FloatMe continues to tell consumers that they can instantly receive up to \$50 for only the cost of their subscription. After consumers download the app, they are shown a carousel of app features, including one advertising “Instant cash advances” of “up to \$50.”

28. During the signup process, FloatMe tells consumers that they can “Instantly Float up to \$50” for a monthly fee of \$1.99. FloatMe also promises consumers they can “Cancel anytime for any reason by contacting support.”

29. Below are the screens consumers are shown during signup and enrollment. The first screen shows FloatMe’s claims about providing “Instant cash advances” of “up to \$50.” The second screen shows FloatMe’s representation that consumers can “Instantly Float up to \$50” for “\$1.99/mo” and FloatMe’s promise that consumers can cancel by contacting customer support.



FloatMe Does Not Provide Floats up to \$50 Upon Enrollment

30. Despite FloatMe’s numerous and prominent claims that it will provide cash advances of up to \$50, no consumers can receive this amount upon enrollment. FloatMe instead limits the amount consumers can receive at signup to, at most, \$20. And despite its claims that most consumers will see increases if they remain enrolled, *less than 5%* of consumers received a Float of more than \$20 in the most recent quarter, even after paying subscription fees for months or even years. During that same time period, only one half of one percent of consumers received a \$50 Float.

31. For many other consumers, FloatMe deems them ineligible to request a cash advance based on limitations that are hidden from consumers during the enrollment process. For example, after the enrollment process is complete, consumers learn that FloatMe requires consumers to meet certain income thresholds to obtain an advance. In making this assessment, however, FloatMe excludes income from several common sources, including gig work, commissioned or tipped work, pensions, military benefits, and government assistance programs. FloatMe does not tell consumers it does not consider income from these sources. At least tens of thousands of paying consumers have been prevented from even requesting a cash advance because of these undisclosed eligibility requirements. These consumers are still charged subscription fees, even though FloatMe deems them categorically ineligible to receive Floats.

32. Despite its “up to \$50” claims, FloatMe does not disclose that consumers will receive much less than that amount anywhere in its advertising or enrollment process. Not until learning of the FTC’s investigation did FloatMe adjust its website to remove the specific “up to \$50” claim. But FloatMe continues to promote cash advances of “up to \$50” on its app unabated.

33. Many consumers believe FloatMe’s promises that they can get \$50 upon enrolling. As one consumer stated in a complaint to FloatMe, “[w]hy not \$50 as advertised . . . [a]d says I can borrow up to \$50 instantly.” Another consumer told FloatMe, “[w]hen I originally saw the ad for float me, it stated to get a 50.00 float till payday but when I signed up it only allowed me to get 20.”

34. Many other consumers have told FloatMe that they would not have enrolled had they known FloatMe would advance less than promised: for example, one consumer said the “only reason I joined was because I need 50 bucks until payday [but] you are only offering 20.” Another consumer added, “[p]lease close [my account]. Your app is misleading. It said it would float \$50 and you guys only offered \$20. Its not worth it.”

35. FloatMe initially considered providing \$50 cash advances to consumers upon enrollment before deciding on a \$20 maximum limit. Citing “cash constraints,” Defendant Sanchez admitted in a message to Defendant Cleary that FloatMe needed to abandon prior plans to give a \$50 cash advance to consumers upon enrollment.

FloatMe Continues to Deceive Consumers by Promising “Automatic” Float Limit Increases After They Have Enrolled

36. After consumers learn that they can receive only up to \$20 upon enrollment, FloatMe tells consumers their Float limits are likely to increase “automatically” if they stay enrolled. When consumers email FloatMe to inquire about increases, FloatMe reiterates that “Float Limits are set automatically by the Float system” and that “Float limits cannot normally be changed by our support team.” In other communications, FloatMe representatives say they cannot accommodate the consumer, because the “system” or “algorithm” decides. FloatMe also tells consumers who ask for an increase that “[m]ost members see their limit increase over time as we get to know you better.”

37. In reality, cash advance limits are not “automatically” increased by “the Float system” or an “algorithm” as the company “gets to know [consumers] better.” Float limits are increased manually by FloatMe’s support team only in limited instances, based on undisclosed criteria, and only upon an explicit consumer request, despite FloatMe telling consumers who make those requests that “Float limits cannot normally be changed by our support team.”

38. FloatMe acknowledges in internal documents and communications that it is lying to consumers when it claims that consumers’ cash advance limits will be increased “automatically” by “the Float system.” In one such communication, a supervisor described FloatMe’s statements to its consumers as “a lie.” In another internal document, FloatMe acknowledges that even though its “official stance is that [customer] support can’t increase float limits,” support does increase limits for certain consumers if they request an increase.

39. FloatMe also tells consumers, in a support article drafted by Defendant Cleary, that consumers can earn limit increases by, for example, “turning on recurring saving contributions” and “having funds left over each payday.” But FloatMe, in reality, instructs its customer support agents to give a Float increase only if the consumer has been subscribed for at least five months, repaid nine consecutive Floats on time, and averages at least \$600 in their last three paychecks. Indeed, FloatMe’s director of operations instructed support agents to avoid granting increases for newly joined consumers “even if they have a ton of income.”

40. Despite FloatMe’s claims that “the Float system” “automatically” increases cash advance limits for “[m]ost members,” numerous consumers have complained to FloatMe about their cash advance limits not being increased. One consumer noted, “I have been using this app faithfully for a few months now and I bring in way over [\$]1,000 every 2 weeks but my borrow amount has never increased. I’ve read the FAQs and it said your borrowing amount increases as

long as your income is consistent and your [sic] paying the money back in a timely manner and I have been doing both so why hasn't my amount increased?" Another consumer wrote, "[FloatMe] said it wouldn't take long for an increase. . . \$20 not to [sic] much help."

FloatMe Misrepresents that Instant Transfers Are Free

41. As noted above, FloatMe tells consumers that they can receive "emergency cash" and "Money in minutes" for "free" and with "no hidden fees." It doubles down on this representation in the enrollment flow when it tells consumers that they can "Instantly Float" money for only the cost of a subscription—\$1.99 a month.

42. In reality, consumers can receive money "instantly" or "in minutes" only if they pay a hidden \$4 fee. If consumers wish to receive a cash advance without paying an additional fee, they must wait up to three days for the money to be deposited into their account. FloatMe reveals the three-day waiting period only after consumers sign up, give FloatMe access to their bank account, and agree to pay the monthly subscription fee for access to "instant" Floats.

43. FloatMe does not disclose the fee during the enrollment process. Quite the opposite: FloatMe hides it. FloatMe shows the screen-by-screen process for receiving a cash advance in its video advertisements and on its app store listings. But the screenshot sequence omits two screens that FloatMe displays when enrolled consumers request a cash advance—the screens that show the undisclosed \$4 fee that is required to receive the cash advance instantly. Only after the FTC's investigation began did FloatMe add anything about the \$4 fee for instant advances to its website; even then, FloatMe buried any mention of the fee in the bottom half of its website, after multiple links inviting consumers to leave the site to download the app.

44. Consumers regularly complain that FloatMe does not offer cash advances "in minutes" for "free" with "no hidden fees," as it advertises. Many consumers say they would not

have enrolled in the app if they had known they had to pay a fee for a cash advance that was promised “instantly.” Consumers note that the \$4 fee, in addition to the \$1.99 monthly fee, is significant when compared to the true average advance amount of \$20. One such consumer said, “[t]he app is not very helpful for my finances because I’m not paying a \$4 fee to get a measly \$20 instantly deposited in my account.”

45. Other consumers have explained that they would not have enrolled if they knew they could not get instant cash advances without paying extra. As one consumer stated, “[the app is] pointless. They said I could use \$20 then wanted to charge \$4 in order for me to have instant access to it otherwise it would be 2-3 days before it got to my account then the money is due in 5 days from the point you asked for it.” Another consumer wrote that they were “V[ery] FRUSTRATED” because the “\$20 OFFER [was] cut to \$16 after [a] surprise \$4 FEE at [the] last second.”

FloatMe Charges Consumers Without Consent

46. In addition to the fees FloatMe collected from consumers after misrepresenting its service, the company charges many consumers without consent. These charges include multiple subscription fee charges for the same billing period, charges for cash advance repayments earlier than agreed, multiple charges for the same cash advance repayment, and charges after consumers cancel their subscription.

47. FloatMe is aware that it charges consumers without permission. For example, shortly after FloatMe launched its app, Defendants Sanchez and Cleary commented that consumers had been “double or triple” charged by FloatMe. Cleary also acknowledged that FloatMe double-and triple-billed consumers because he and Sanchez were more focused on fundraising than accurate billing. “The issue was us running two instances while fundraising,

while pushing out to members without fixing shit,” Cleary wrote. Yet FloatMe continued this practice for years. Two years after Cleary’s email blaming a fundraising push for the problem, one FloatMe supervisor told another that she was trying to fix billing issues that caused FloatMe to charge consumers multiple times but she “could tell no one cared to solve the issue.” The supervisor explained that she “got the sense [that] no one thinks it’s a big deal . . . because [the subscription fee is] \$2.” Months later, the supervisor told another employee that the “[n]umber one complaint [from consumers] is being charged so many times [o]r randomly on a random month.”

FloatMe “Make[s] it Difficult for [Consumers] to Quit”

48. As Sanchez admitted in internal documents, FloatMe explicitly designed its cancellation processes to thwart consumers’ ability to cancel so that the company could reap more subscription fees. FloatMe’s original cancellation process was manual-only, delay-filled, and error-ridden. And the current processes, as Sanchez explicitly admitted in an internal communication, “make it difficult for someone to quit” and employ “friction.”

FloatMe’s Original Cancellation Process

49. When FloatMe’s app first became available, there was no cancellation mechanism in the app or on the website. Instead, FloatMe required consumers to email customer support to cancel. But when consumers did so, they often faced substantial, unexplained delays or errors in processing before the cancellation was honored. All the while, FloatMe continued to charge those consumers subscription fees.

50. Internal communications show FloatMe was aware that delayed cancellations were endemic. In 2020, for example, Cleary admitted that FloatMe’s customer support department lacked the staff to timely process cancellation requests. Cleary wrote that FloatMe

only had “2 people actively handling customer [support]” despite there being 40,000 consumers on the platform—consumers who could cancel their subscription only through a customer support agent.

FloatMe’s Other “Difficult” Cancellation Paths

51. In 2020, in response to numerous customer complaints and negative app store reviews, and to alleviate “pressing [] support issues,” FloatMe launched two alternative cancellation paths. But, as Sanchez said, both were explicitly designed to “make[] it difficult for someone to quit.”

52. As Sanchez admitted, a friction-filled cancellation path was part of FloatMe’s growth strategy. Around the time the other cancellation paths were developed, Sanchez noted that FloatMe had “**maintained strong user retention by only allowing cancellation via support tickets.**” The other cancellation paths, he said, would be “more automated” but “**still feature[] some friction**” (emphasis added).

53. Under Sanchez and Cleary’s leadership, FloatMe launched two additional cancellation paths that, in Sanchez’s words, “of course make[] it difficult for [consumers] to quit.” These new paths are an online webform and an in-app cancellation process. Along with these two new paths, FloatMe tells consumers they can still contact customer support to cancel. Each of these three paths continue to frustrate customers’ attempts to cancel their subscriptions.

54. First, consumers who attempt to use FloatMe’s in-app cancellation path regularly experience technical issues that prevent them from cancelling their account. Consumers report the in-app cancellation path is “faulty.” For years, consumers have regularly complained to FloatMe that they were unable to cancel on the app because the “cancel” buttons were not working or because other chronic problems with the app prevented cancellation.

55. Second, FloatMe often fails to honor the cancellation requests of consumers who attempt to cancel using the webform. The webform requires consumers to enter the email address that they used to register for a FloatMe account and answer questions about why they are cancelling. After submitting the form, consumers receive a message that says: “Your request is being automatically processed. You will receive a confirmation email shortly if the email matches an open account.” The consumer can then exit the form.

56. But FloatMe rejects the request—*without notifying the consumer*—if the consumer has not repaid all their cash advances or if the email address entered by the consumer does not match exactly the information in FloatMe’s system. In both instances, FloatMe continues to automatically deduct subscription fees from the consumers’ bank accounts.

57. FloatMe is aware that this problem with its webform has led to consumers continuing to be charged after they submitted a cancellation request. In January 2022, for example, a FloatMe employee wrote that “[o]ne of the biggest issues I’ve seen” is that the webform cancellation process causes consumers “to get charged for months without knowing.”

58. Third, attempts to cancel through customer support are similarly plagued by lengthy and friction-filled processes. In almost every case, customer support agents ignore consumers’ cancellation requests. Many times, they send a prewritten script asking the customer to describe their problems with the app. FloatMe refers internally to this script as the “Cancel Prevention macro.” Other times, customer support responds to a cancellation request by telling consumers to cancel another way, even though many consumers say they are contacting support because they tried to cancel through one of the other paths but failed for the reasons stated above.

59. FloatMe’s failure to timely process consumers’ cancellation requests—via the app, the webform, or customer support—frequently results in consumers continuing to pay the monthly membership fee for a service they are not using and do not want.

60. Consumers have complained that FloatMe has ignored their cancellation requests and continued to charge them. As one consumer said, “I contacted you guys [two months ago] and im still getting charged.” Another consumer said she twice attempted to cancel using the webform but had not received a response and was “continuing to be charge[d] for [her] membership.” The support agent who was assigned to these two tickets and was responsible for addressing these consumers’ complaints was Defendant Cleary, who was regularly involved in responding to consumers who contacted FloatMe’s customer support department. Below is a sample of additional consumer complaints regarding FloatMe’s difficult cancellation paths (emphasis added).

- I downloaded the app for this company. I was not eligible for loans so I canceled my membership . . . They have continuously charged me monthly, **I have canceled my subscription three times on the app, emailed them three times, received responses confirming cancellation, and they are still charging me monthly.**
- I closed my account **several months ago** but I woke up yesterday to my account going negative because they billed me for a subscription. . . and **it’s nearly impossible to get ahold of anybody in customer service.** Scam company
- I signed up, wasn’t eligible for whatever reason, then canceled my membership shortly after. The next month, on September 16, the app charged me \$2.99 for a membership fee. I was angry, so I downloaded the app and canceled my membership again. I considered it user error and blamed myself. Then on October 16, I was charged \$2.99 again and my membership was seemingly reactivated. I downloaded the app, canceled my membership again and contacted support. Customer support claims there was no cancelation request until October 16 which I absolutely know is a lie or a fault in their system. Clearly **the developers created a faulty app with a spotty cancelation feature** to pull \$2.99 from unsuspecting accounts.

- I was told the solution to cancelling the membership was a link I could click to fill out a cancellation form, once I clicked the link the page was expired and **I have absolutely no way to get them to stop charging me money. I downloaded this app because I was struggling and needed help and all it has done is make things worse** and never offer remedy.
- I went to go and cancel my subscription and delete the app because it seemed it wasn't worth it. **No buttons are working.** My cancel membership isn't working, neither is the contact support working. I just wish to cancel my membership please.

FloatMe Discriminates Against Consumers Who Receive Public Assistance Benefits

61. FloatMe provides cash advances to its consumers and allows consumers to defer the repayment of the cash advance until their next paycheck, as detailed above. FloatMe's cash advance service is the primary feature of its app, as evidenced by the company's advertisements. When a consumer receives a cash advance from FloatMe, they incur an obligation to repay and provide authorization for FloatMe to debit their bank account to collect repayment.

62. FloatMe ignores income derived from any public assistance program when it evaluates whether consumers are eligible to request a cash advance or the amount consumers can receive as a cash advance. Instead, FloatMe deems consumers ineligible to receive a cash advance if their income derives wholly from public assistance, including Social Security retirement benefits, Social Security Disability Insurance, military benefits, or unemployment benefits. If consumers have income that is a combination of funds from a non-public assistance program and a public assistance program, FloatMe will not consider the income derived from a public assistance program when deciding the amount the user can receive as a cash advance.

63. While refusing to offer cash advances to consumers whose income derives from public assistance programs, FloatMe nonetheless enrolls such consumers and charges them subscription fees. Internal FloatMe records show that tens of thousands of consumers have been

charged fees by FloatMe even though they are categorically unable to receive a cash advance because of FloatMe's blanket (and hidden) policy of refusing to consider income derived from a public assistance program.

64. FloatMe's public assistance policy is not mentioned in its advertisements, website homepage, app store listings, or during enrollment. Instead, FloatMe mentions the policy in the "FAQ" section of its website (which, as noted above, consumers need not visit in order to enroll).

65. Charging consumers a membership fee to obtain cash advances while categorically prohibiting them from receiving cash advances based on a policy of excluding public assistance income has no countervailing benefits to consumers or competition.

66. Consumers have long told FloatMe that they were surprised that FloatMe does not consider income from public assistance programs to be "income" and that FloatMe continues to charge them even though they are categorically ineligible to receive a cash advance. One consumer wrote, "I get social Security and I've been paying that \$1.99 or whatever it is you're charging me and haven't been able to get a [cash advance] so if you can't float me the \$20 that it offered and refund me my money and cancel my membership I'm not paying you for nothing." Another consumer told FloatMe, "your service always denies me because I am disabled and get a steady monthly income from social security once a month since 2012, but according to you[], I have no valid income history."

67. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission.

VIOLATIONS OF THE FTC ACT

68. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

69. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

70. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Deceptive Claims Regarding Cash Advances

71. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their cash advance services, including through the means described in Paragraphs 13-66, Defendants represent directly or indirectly, expressly or by implication, that consumers who enroll in Defendants’ membership program can get cash advances of up to \$50.

72. Defendants’ representations as described in Paragraph 71 are false or misleading or were not substantiated at the time the representations were made.

73. Therefore, Defendants’ representations as described in Paragraph 71 constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Deceptive Claims Regarding the Charge for Instant Cash Advances

74. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their cash advance services, including through the means described in

Paragraphs 13-66, Defendants represent directly or indirectly, expressly or by implication, that consumers who enroll in Defendants' membership program can get cash advances immediately at no extra cost.

75. Defendants' representations as described in Paragraph 74 are false or misleading or were not substantiated at the time the representations were made.

76. Therefore, Defendants' representations as described in Paragraph 74 constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III

Unfair Discrimination

77. In numerous instances, as described in Paragraphs 13-66, Defendants discriminated against consumers whose income was derived from public assistance programs, including by refusing to provide cash advances to such consumers while charging them recurring membership fees.

78. Defendants' acts or practices cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

79. Therefore, Defendants' acts or practices as described in Paragraph 77 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

Count IV

Unfairly Charging Consumers Without Consent

80. In numerous instances, as described in Paragraphs 13-66, Defendants charge consumers without consent.

81. Defendants' acts or practices cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

82. Therefore, Defendants' acts or practices as described in Paragraph 80 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

83. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401 et seq., which became effective on December 29, 2010. Congress passed ROSCA because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.

84. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information, (2) obtains the consumer's express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. 15 U.S.C. § 8403.

85. The TSR defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services "under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

86. As described in Paragraphs 13 to 66 above, Defendant has advertised and sold its FloatMe membership through a negative option feature as defined by the TSR. 16 C.F.R. § 310.2(w).

87. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is treated as a violation of a rule promulgated under the FTC Act regarding unfair or deceptive acts or practices.

Count V

Failure to Provide Required Disclosures

88. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as described in Paragraphs 13 to 66 above, Defendants have failed to clearly and conspicuously disclose before obtaining consumers' billing information all material transaction terms, including the following:

- a) That most consumers cannot obtain cash advances in the amount advertised by the company; and
- b) That consumers cannot obtain cash advances immediately unless they pay an additional fee.

89. Therefore, Defendants' acts or practices, as described in Paragraph 88 above, violate Section 4 of ROSCA, 15 U.S.C. § 8403.

Count VI

Failure to Obtain Express Informed Consent Before Charges

90. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as described in Paragraphs 13 to 66 above, Defendants have failed to obtain a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction.

91. Therefore, Defendants' acts or practices, as described in Paragraph 90 above, violate Section 4 of ROSCA, 15 U.S.C. § 8403.

Count VII

Failure to Provide Simple Mechanisms for Stopping Recurring Charges

92. In numerous instances, in connection with charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature, as described in Paragraphs 13 to 66 above, Defendants have failed to provide simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

93. Therefore, Defendants' acts or practices, as described in Paragraph 92 above, violate Section 4 of ROSCA, 15 U.S.C. § 8403.

VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B

94. Section 701(a)(1) of the ECOA, 15 U.S.C. § 1691(a)(1), and Section 1002.4(a) of Regulation B, 12 C.F.R. § 1002.4(a), prohibit a creditor from discriminating against an applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); because all

or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. Ch. 41.

95. Defendants are creditors as defined in Section 702(e) of the ECOA, 15 U.S.C. § 1691a(e), and Section 1002.2(l) of Regulation B, 12 C.F.R. § 1002.2(l).

96. Defendants extend credit as defined in Section 702(d) of the ECOA, 15 U.S.C. § 1691a(d), and 1002.2(j) of Regulation B, 12 C.F.R. § 1002.2(j).

97. Defendants grant consumers the right to defer payments of debts or to incur debts and defer their payment or to purchase property or services and defer payment therefor.

98. Section 704(c) of the ECOA, 15 U.S.C. § 1691c(c), specifically empowers the Commission to enforce the ECOA. Defendants' violations of the ECOA are deemed to be violations of the FTC Act and are enforceable as such by the Commission under that Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the ECOA by any person, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. This includes the power to enforce a Consumer Financial Protection Bureau regulation promulgated under the ECOA, such as Regulation B, in the same manner as if a violation of that regulation had been a violation of an FTC trade regulation rule.

Count VIII

Discriminatory Financing Practices

99. In numerous instances, Defendants refuse to provide cash advances to applicants whose income derives from public assistance programs, as described in Paragraphs 13 to 66 above.

100. Therefore, Defendants' acts, policies, or practices as described in Paragraph 99 constitute discrimination against applicants with respect to any aspect of a credit transaction because all or part of the applicant's income derives from any public assistance program in violation of Section 701(a)(2) of the ECOA, 15 U.S.C. § 1691(a)(2), and Section 202.4(a) of Regulation B, 12 C.F.R. § 1002.4(a).

CONSUMER INJURY

101. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, ROSCA, and ECOA. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

Wherefore, the FTC requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act, ROSCA, and ECOA by Defendants;
- B. Award monetary and other relief within the Court's power to grant; and
- C. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

Dated: December 29, 2023

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23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 Case No. 2:24-cv-4108

26 CONSUMER FINANCIAL
27 PROTECTION BUREAU,
28 Plaintiff,

v.

SOLO FUNDS, INC.,
Defendant.

**COMPLAINT FOR VIOLATIONS
OF THE CONSUMER FINANCIAL
PROTECTION ACT OF 2010 AND
THE FAIR CREDIT REPORTING
ACT**

Date:
Time:
Room:
Judge:

1 **INTRODUCTION**

2 1. The Consumer Financial Protection Bureau (“Bureau”) brings this
3 action under §§ 1031, 1036(a), 1054, and 1055 of the Consumer Financial
4 Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564 and 5565, and
5 under Section 607(b) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §
6 1681e(b). This court has subject-matter jurisdiction over this action because it
7 is brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1);
8 presents a federal question, 12 U.S.C. § 1331; and is brought by an agency of
9 the United States, 28 U.S.C. § 1345.

10 2. SoLo Funds, Inc. (“SoLo” or “Defendant”) is a fintech company that
11 operates a nationwide website and mobile-application based peer-to-peer
12 marketplace (“SoLo Platform”) through which consumers can obtain small-
13 dollar, short-term loans.

14 3. SoLo markets its online lending platform to prospective borrowers as
15 a consumer-friendly alternative to high-cost, short-term loans. But SoLo
16 misleads borrowers with advertising and disclosures that falsely tout no-
17 interest loans when, in fact, consumers are routinely subject to fees that result
18 in an exorbitant total cost of credit. In addition, Defendant illegally services
19 and collects on loans that are void or uncollectible in numerous states.
20 Defendant also gathers and shares borrowers’ credit information with
21 prospective lenders but fails to take steps to ensure the maximum possible
22 accuracy of that information. Lastly, when loans are overdue, SoLo has
23 repeatedly attempted to coerce payment by falsely threatening to report
24 borrowers to the credit bureaus even though it did not report borrowers to the
25 credit bureaus.

26 4. Defendant invites consumers to apply for loans through its website
27

1 and mobile lending application, falsely stating in advertisements that
2 consumers could obtain financing on terms that included “no interest,” “0%
3 APR,” or “0% interest.” At the same time, SoLo invites consumers to serve as
4 individual lenders to fund loan requests and thereby make a profit, based on
5 the purported “tips” that the borrowers would pay (“Lender tip fee”). During
6 the loan application process, borrowers are prompted to select a Lender tip fee
7 and encouraged to pay larger tips to get funded.

8 5. The Lender tip fee is only one of the fees borrowers are expected to
9 pay to obtain a loan. The loan application process includes an additional step
10 in which the borrower is prompted to select one of three default “donation”
11 fees that goes directly to SoLo (“SoLo donation fee”). SoLo does not provide
12 consumers with a “\$0” SoLo donation fee option during the loan application
13 process or even a way to click through to the next page without selecting a
14 SoLo donation fee. Furthermore, Solo obscures the method by which
15 consumers can opt for no donation fee, hiding it in another section of its
16 mobile application and failing to provide readily available information to
17 consumers about how to disable the donation fee.

18 6. Virtually all consumers who receive loans incur a Lender tip fee, a
19 Solo donation fee, or both.

20 7. Defendant provided borrowers with loan documents that purported
21 to disclose the amounts owed and costs of the loans but failed to disclose fees
22 that SoLo would seek to collect. For example, some of these documents stated
23 that only the principal amount was due, and others failed to include the
24 Lender tip fee and SoLo donation fee in the calculation of the finance charge
25 and annual percentage rate for the loan.

26 8. SoLo also serviced and collected (and attempted to collect) on loans
27

1 that were void and uncollectible under the laws of a number of states because
2 the loans were not made by a licensed person or entity and/or the loans were
3 in excess of state usury limitations. In such states, all the loans brokered were
4 void and uncollectible. SoLo deceptively, unfairly, and abusively represented
5 that these loan amounts were due and attempted to collect and collected on
6 those loans.

7 9. To aid lenders' ability to vet consumers' loan applications, SoLo
8 gathers credit information about prospective borrowers' bank accounts, debit
9 cards, and prior SoLo loans and combines that information received from
10 third parties into a credit score—the "SoLo Score." SoLo then provides this
11 SoLo Score to prospective lenders. However, SoLo failed to maintain
12 reasonable procedures to ensure the maximum possible accuracy of the SoLo
13 Score it shared with prospective lenders.

14 10. Finally, SoLo repeatedly attempted to coerce payment on loans
15 obtained through the SoLo Platform by misrepresenting that if the consumer
16 failed to repay the loan on the due date, it would be reported to the credit
17 bureaus and negatively impact the consumer's credit score, even though SoLo
18 never reported any of its loans to the credit bureaus and was not set up to do
19 so.

20 **VENUE**

21 11. Venue is proper in this district because Defendant is located, resides,
22 or does business in this district. 12 U.S.C. § 5564(f).

23 **PARTIES**

24 12. The Bureau is an independent agency of the United States created by
25 the CFPB and charged with enforcing "Federal consumer financial laws."
26 12 U.S.C. § 5491(a).

1 13. The Bureau is authorized to initiate civil actions in federal district
2 court proceedings in its own name and through its own attorneys to address
3 violations of “Federal consumer financial law,” including the CFPA and FCRA,
4 and to secure appropriate relief for violations of those provisions. 12 U.S.C. §§
5 5564(a)-(b), 5565.

6 14. Defendant is a Delaware corporation with its principal place of
7 business in Los Angeles, California.

8 15. Defendant is a “covered person” pursuant to 12 U.S.C. § 5481(6)(A)
9 because it offers and provides consumer financial products or services, as
10 defined under 12 U.S.C. § 5481, which include: brokering of extensions of
11 credit to consumers and servicing of loans; collecting, analyzing, maintaining,
12 or providing consumer report information or other account information,
13 including information relating to the credit history of consumers, used or
14 expected to be used in connection with any decision regarding the offering or
15 provision of a consumer financial product or service; and collecting debt
16 related to any consumer financial product or service. 12 U.S.C. §
17 5481(15)(A)(i), (ix), and (x).

18 16. Defendant is also a “service provider” pursuant to 12 U.S.C. §
19 5481(26)(A) because it provides a material service to covered persons in
20 connection with extensions of credit. This includes, but is not limited to,
21 participating in designing, operating, or maintaining the extensions of credit.
22 *Id.* § 5481(26)(A)(i).

23 17. Defendant is also a “consumer reporting agency” subject to the
24 Bureau’s jurisdiction under FCRA because it, for monetary fees or on a
25 cooperative nonprofit basis, regularly engages in whole or in part in the
26 practice of assembling or evaluating consumer credit information or other
27

1 information on consumers for the purpose of furnishing consumer reports—in
2 the form of SoLo Scores and number of loans repaid—to third parties. 15
3 U.S.C. § 1681a(f). Defendant assembles or evaluates the consumer information
4 for monetary fees in the form of SoLo donation fees, or alternatively,
5 assembles or evaluates the consumer information on a “cooperative nonprofit
6 basis.”

7 **FACTUAL ALLEGATIONS**

8 **SoLo’s Platform**

9 18. Since 2018, SoLo has operated its rapidly growing SoLo Platform
10 through which consumers can obtain small-dollar, short-term loans.

11 19. SoLo publishes terms for participation in its Platform (“Terms”),
12 which state that a consumer “may submit an application and obtain a personal
13 loan.”

14 20. The maximum SoLo loan amount is \$575, and the minimum is \$20.
15 Prospective borrowers can generally set a single repayment date that is less
16 than a month but as short as a few days after the loan is funded. After 35 days,
17 SoLo assesses late fees if the loan has not been repaid.

18 21. Defendant’s click-through loan application process requires the
19 prospective borrower to set the Lender tip fee—a fee payable to the person
20 who funds the loan request. Although SoLo advertises that a borrower can
21 request a loan with a \$0 tip, such loan requests are unlikely to be funded on
22 the SoLo Platform. As of December 31, 2022, only 0.5% of loans funded on the
23 SoLo Platform did not include a Lender tip.

24 22. The application process also includes a screen for prospective
25 borrowers to select a SoLo donation fee payable to SoLo. SoLo instructs the
26 applicant to select one of three default percentages of the loan amount as the
27

1 SoLo donation fee. A selection is required to submit the loan application. SoLo
2 did not offer a 0% option for the SoLo donation fee on this screen.

3 23. Defendant requires prospective borrowers to provide bank account
4 information during the loan application process. For consumers whose loans
5 are funded, SoLo uses the provided bank information to schedule an
6 automatic payment from the borrower's deposit account on the designated due
7 date.

8 24. A key feature of the SoLo Platform is that individual consumers are
9 invited to review borrowers' loan requests, evaluate the applications, and
10 decide whether to fund the loan requests; those individual consumers who
11 fund loan requests become lenders.

12 25. To facilitate lending, SoLo provides prospective lenders with
13 consumer credit information. Namely, SoLo collects information from other
14 companies, including Apple, Google, and Plaid, concerning an applicant's cell
15 phone, debit card, and deposit account history, as well as loan repayment
16 history from prior loans originated through the SoLo Platform.

17 26. Defendant then assembles and analyzes this information to generate
18 an individual "SoLo Score" and "loans repaid" tabulation for each consumer.
19 SoLo provides this information to third-party prospective lenders reviewing a
20 loan request.

21 27. In the first 90 days after the due date, if the total amount, inclusive of
22 the Lender fee and SoLo donation fee, is not paid when due, SoLo seeks to
23 collect payments on behalf of the lenders, including communicating directly
24 via texts and emails to demand payment from consumers with allegedly
25 overdue loans.

26 28. From approximately March 2018 through December 2022, SoLo
27

1 brokered 543,021 loans on its Platform, resulting in \$12,945,777 in Lender tip
2 fees, \$6,860,642 in borrower-paid Donation fees, and \$2,467,211 in other
3 borrower-paid fees. It continues to broker loans on its Platform, and according
4 to its website, as of May 2024, there have now been 1,047,569 total loans to
5 borrowers on its Platform.

6 **SoLo's Advertising Claims**

7 29. From at least March 2019 through at least October 2021, Defendant
8 repeatedly advertised that consumers could obtain small-dollar loans with “no
9 interest,” “0% APR,” or with “0% interest.”

10 30. Solo's misrepresentations concerning the terms “no interest,” “0%
11 interest loan,” and “0% APR” led prospective borrowers to believe that if they
12 obtained a loan, they would be repaying the principal amount without paying
13 interest or additional fees or charges.

14 31. Borrowers almost never obtained loans with the terms presented in
15 SoLo's advertisements. To have a loan application funded, nearly every single
16 prospective borrower had to pay a Lender tip fee, a SoLo donation fee, or both,
17 and complete the standard, click-through application process.

18 32. In addition, SoLo publicly referred to the Lender tip fee as an
19 “interest rate” on the loan, touting that it was lower than interest charged by
20 other payday lenders.

21 **SoLo's Loan Request Process**

22 33. Contrary to the no-interest representations in its advertisements,
23 when a potential borrower clicks through the loan request process, SoLo
24 shows the borrower a screen with an unfilled box, a description of the
25 maximum tip, and a “Recommendation on Tip Amount.” Borrowers are
26 encouraged not only to leave a tip but to leave the “maximum possible tip” to
27

1 increase the speed and likelihood of the loan request being funded.

2 34. Before consumers can complete a loan transaction, they are
3 instructed to “Select a SoLo Donation amount” and presented with three
4 options—each a percentage of the amount of the loan.

5 35. Between March 2018 and October 2020, for the SoLo donation
6 amounts, consumers were permitted to select payments of 5%, 6%, or 7% of
7 the principal amount requested, and, after October 2020, consumers could
8 select payments of 7%, 8%, or 9% of the principal amount requested.

9 36. SoLo provides no further information or instructions on this page
10 other than the following statement: “SoLo incurs costs to verify each member
11 and process funding and payback transactions. This donation allows us to
12 continue helping others.”

13 37. SoLo does not provide a “No Donation” or “0%” option, or even a way
14 to click through to the next page without selecting a SoLo donation fee,
15 impeding a consumer’s ability to comprehend whether such an option exists.

16 38. To change their donation amount, consumers need to separately go to
17 the “Settings” heading under the consumer’s “Profile,” and toggle off the
18 “donation” setting, which allows the consumer to elect to pay “no donation” on
19 the next loan request. It is the fifth option down buried among “personal info”,
20 “card info”, “share”, and “push notifications.”

21 39. SoLo does not disclose the “no donation” option during the loan
22 request process or provide any information about how to select “no donation”
23 on the “Help” screen on its Platform.

24 40. Contrary to the no-interest representations in its advertisements,
25 unless the user is aware of and makes a certain profile-settings change to the
26 donation setting for that particular loan, the SoLo donation fee is a required
27

1 step in the loan application process.

2 41. Upon consummation of a loan agreement, SoLo facilitates two
3 transfers from the lender: (1) the requested loan principal moves to the
4 borrower's Platform account; and (2) the SoLo donation fee is paid by the
5 lender to SoLo. This way, SoLo receives and retains the SoLo donation fee
6 regardless of whether the borrower ever repays the loan and fees.

7 **SoLo's Disclosures to Borrowers**

8 42. As part of the loan application and funding process, SoLo provides
9 each borrower with documents including a promissory note and a document
10 titled "Truth in Lending Disclosures," both of which purport to describe the
11 specific terms of the transaction, including the cost of credit.

12 43. Between March 2018 and May 2021, SoLo's promissory notes stated
13 that the consumer promised to pay the Lender not just the principal amount,
14 but rather "the principal sum borrowed together with tips and or donations."

15 44. Since May 2021, the promissory notes no longer refer to the Lender
16 tip and SoLo donation fees as "due" or "payable." Instead, the promissory
17 notes suggest that the consumer must repay only the original loan amount.
18 But, in fact, SoLo debits the principal along with Lender tip fee and the SoLo
19 donation fee from the borrower's account on the repayment date.

20 45. The "Truth in Lending Disclosures" document that SoLo provided to
21 borrowers always represented that the "ANNUAL PERCENTAGE RATE,"
22 which it defined as "The cost of your credit as a yearly rate," was 0%. The
23 document represented that the "FINANCE CHARGE," which it defined as
24 "The dollar amount the credit will cost you," was \$0.

25 46. Since May 2021, SoLo's "Truth in Lending Disclosures" document
26 does not include the Lender tip fee or the SoLo donation fee in the "total of
27

1 payments” box. Instead, SoLo lists only the principal amount and inputs “\$0”
2 as the “amounts paid to others on your behalf,” even though almost all SoLo
3 Platform loans include additional payments beyond the loan amount.

4 47. This description of the cost of credit is not accurate because, in the
5 vast majority of loans made on SoLo’s Platform, the amounts of the Lender tip
6 fee or the SoLo donation fee (or both) are set before the disclosure document
7 is generated. Such fees are costs of credit and result in APRs in excess of 300%
8 in most of the loans extended on the SoLo Platform.

9 **Providing SoLo Score to Lenders for Borrower Loan**
10 **Applications**

11 48. When a consumer applies for a loan on the SoLo Platform, that
12 applicant must authorize SoLo to be able to “utilize data contained in [the]
13 Application, including supporting documentation provided, information
14 related to your social media accounts, and a credit report, to develop a
15 proprietary score (the ‘SoLo Score’).”

16 49. On the SoLo App’s “SoLo Marketplace” screen, Lenders receive
17 several pieces of information from SoLo to help decide whether to fund a loan.
18 Alongside the consumer’s first name and last name’s first initial, requested
19 loan amount, Lender tip fee, and proposed repayment date, SoLo’s consumer
20 report provides two notable components: (1) the SoLo Score—SoLo’s
21 “assign[ed] . . . score of between 0-100”; and (2) a statement listing the
22 number of repaid SoLo Platform loans.

23 50. SoLo claims its proprietary credit score, the SoLo Score, “measure[s] .
24 . . . ability to repay. The score . . . predicts . . . ability to repay loans on time.”

25 51. To compose the SoLo Score, SoLo factors in information gathered
26 from third parties as well. For borrowers using Apple’s iPhones, SoLo gathers
27

1 information about the borrower’s mobile device model and cellular service
2 plan. It gathers similar information from Google for Android mobile phone
3 users. SoLo also collects information from Plaid, Inc. Plaid’s product is a
4 platform that enables applications to connect to users’ bank accounts. SoLo
5 uses Plaid to gather a borrower’s deposit bank information, including the
6 deposit account history, current and historical balances, insufficient funds
7 fees, transaction frequency, and length of depository account history.

8 52. After aggregating this consumer financial information, SoLo develops
9 a SoLo Score as a tool for lenders to determine the borrower’s ability to repay
10 the loan, sometimes describing the SoLo Score as an “in app credit score” or a
11 “social credit score.”

12 53. In the process of producing and calculating the SoLo Score, SoLo
13 failed to implement reasonable procedures to assure maximum possible
14 accuracy of this consumer report in at least three respects: (1) SoLo did not
15 have procedures to verify whether the SoLo score reflected all loans that the
16 consumer had repaid on the SoLo Platform; (2) it did not have procedures to
17 detect where either fraud or lender account problems resulted in a borrower
18 appearing overdue on a loan that the borrower had repaid; and (3) it did not
19 have procedures to verify whether the number of repaid loans included in and
20 appearing below the SoLo Score was accurate.

21 54. Consumers have complained to SoLo about their SoLo Score and
22 number of loans repaid not being accurate. Nonetheless, SoLo did not make
23 changes to its policies and procedures to monitor whether loans on the
24 platform have been repaid and the exact number of loans repaid, so as to
25 ensure that the consumer’s SoLo Score and listed number of loans repaid is as
26 accurate as possible.

1 55. Since 2018, SoLo has failed to follow reasonable procedures to assure
2 maximum possible accuracy of its consumer reports.

3 56. In multiple instances, SoLo's failure to have, implement, and follow
4 reasonable procedures to assure maximum possible accuracy of the SoLo
5 Score and number of loans repaid may have led to loan rejections or to loans
6 on worse terms (i.e., higher Lender tip fees, shorter repayment periods, lower
7 dollar amounts) than consumers would have otherwise received.

8 **SoLo Brokers High-Cost Loans Throughout the United States**

9 57. SoLo has solicited, arranged, facilitated, brokered, procured, received
10 fees in connection with, serviced, and collected on debts arising from high-
11 cost, small-dollar single-repayment loans in nearly all fifty states.

12 58. Consumers can borrow between \$20 and \$575 from lenders on
13 SoLo's Platform. The maximum amount a first-time borrower can borrow is
14 \$100. These minimum and maximum amounts are all set by SoLo.

15 59. SoLo previously had not obtained—and, for the most part, still has
16 not obtained—a license to lend, broker, arrange, or provide credit services in
17 any of the States listed in Paragraph 80 that require that such a license to lend
18 to or collect from borrowers in that state. SoLo does not require its lenders to
19 obtain necessary licenses or track whether its lenders have required state
20 licenses.

21 60. Almost all of SoLo's loans carry an annual percentage rate of over
22 36% APR, and many loans carry an APR in excess of 300%.

23 **SoLo's Collection Practices**

24 61. According to its Terms, only SoLo or its agents can attempt to collect
25 on an unpaid loan; Platform lenders are not permitted to communicate with
26 the borrower.

1 67. In addition to express misrepresentations, many SoLo debt collection
2 communications imply that SoLo furnishes negative information to the credit
3 bureaus unless the consumer makes a payment.

4 68. SoLo sent emails to borrowers stating, “[w]e’d like to give you another
5 opportunity to settle your loan before it negatively affects your credit score,”
6 implying that SoLo *will* report “negative” information about an allegedly
7 unpaid loan, thereby affecting the consumer’s credit score.

8 69. These SoLo emails are false—SoLo does not make reports to any of
9 the three nationwide consumer reporting agencies. SoLo continued to make
10 similar misrepresentations into 2022. According to email templates used
11 between at least October 5, 2021 to at least February 22, 2022, SoLo told
12 consumers with alleged unpaid debts that, “[f]ailing to pay off your loan could
13 cause derogatory marks to appear in your credit history.”

14 70. This statement implies that “failing to pay off” the loan will cause
15 SoLo to furnish negative information to the credit bureaus, negatively
16 impacting the consumer’s creditworthiness. SoLo’s statement is false because
17 SoLo had a practice of never reporting any information to the three
18 nationwide consumer reporting agencies.

19 71. Throughout SoLo’s collection activities and communications with
20 borrowers, it also never disclosed that any of the loans or related fees may be
21 void or uncollectible if made to borrowers in states for which the loan violated
22 state-law usury limits or violated laws requiring licenses for lenders or
23 brokers.

24 **State Laws Protecting Consumers on Small-Dollar Loans**

25 72. Many states protect consumers from harmful practices associated
26 with originating, brokering or arranging, servicing, and collecting of certain
27

1 loans.

2 73. Such legal protections include licensing requirements, civil and
3 criminal usury limits, and restrictions on the types of entities that may engage
4 in these types of transactions.

5 74. In some states, loans that violate these laws are declared void, in part
6 or in whole, meaning that the borrower is not obligated to pay some or all the
7 principal, interest, or fees on the loan.

8 75. SoLo brokered, arranged, facilitated, serviced, solicited, procured,
9 received fees in connection with, serviced, and collected on loans made by
10 unlicensed parties that consumers are not obligated to pay, in whole or in part,
11 based on state licensing regulations or usury caps that render non-compliant
12 loans, such as those offered on SoLo's Platform, void *ab initio*. The States are
13 listed in Paragraphs 77 and 80 and are referred to as Subject States.

14 **Interest-Rate Caps**

15 76. Interest under state law typically is defined to include the
16 compensation paid to a lender for the use of money or the forbearance of a
17 debt. If the required Lender tip fee and SoLo donation fee are included in the
18 state interest calculations, most loans in the states listed below would have
19 been void for charging interest in excess of the state usury limitation.

20 77. The following states have enacted laws that render installment loans,
21 even with a single installment payment, void if they exceed the usury limit:

22 a. Arkansas, in which the state constitution provides that all
23 contracts with interest in excess of 17% "shall be void as to principal and
24 interest" Ark. Const. amend. 89, §§ 3, 6(b);

25 b. Connecticut, which voids loans under \$5,000 made after July 1,
26 2016, with interest rates in excess of "the maximum annual percentage rate
27

1 for interest that is permitted with respect to the consumer credit extended
2 under the Military Lending Act, 10 U.S.C. 987 et seq.,” Conn. Gen. Stat.
3 Ann. § 36a-558(c)(1), (d)(1), meaning a consumer cannot be charged more
4 than the 36% Military Annual Percentage Rate;

5 c. New Hampshire, which prohibits annual interest rates above
6 36% for loans of \$10,000 or less, N.H. Rev. Stat. §§ 399-A:1(XX), 399-
7 A:16(I); and loans that do not comply with those restrictions are void, and
8 the lender has no right to collect any principal, charges, or recompense,
9 N.H. Rev. Stat. 399-A:23(VIII);

10 d. New York, which prohibits any person or corporation not
11 licensed by the state of New York from “directly or indirectly charg[ing],
12 tak[ing] or receiv[ing] any interest . . . at a rate exceeding” annual interest
13 of 16% on covered loans, N.Y. Gen. Oblig. Law § 5-501; N.Y. Banking Law §
14 14-a(1), and loans that exceed the rate are void, N.Y. Gen. Oblig. Law § 5-
15 511; *see also Szerdahelyi v. Harris*, 490 N.E.2d 517, 522-23 (N.Y. 1986)
16 (“[A] usurious transaction is void ab initio . . .”);

17 e. North Carolina, which imposes a cap on loans \$25,000 and
18 under, which is the greater of 16% or the latest published noncompetitive
19 rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day
20 of the month plus six percent (6%) rounded to the nearest one-half of one
21 percent, N.C. Gen. Stat. § 24-1.1(a)(1), (c); and loans \$15,000 and under
22 that violate those provisions are void, and the lender has no right to collect,
23 receive, or retain any principal or charges. N.C. Gen. Stat. § 53-166(a), (d);

24 f. Rhode Island, which imposes a cap of 21% per annum or an
25 alternate rate of 9% per annum plus an index that is the domestic prime
26 rate as published in the Money Rates section of the Wall Street Journal on
27

1 the last business day of each month, whichever is greater, R.I. Gen. Laws §
2 6-26-2, and loans in excess of the applicable limit are usurious and void,
3 R.I. Gen. Laws § 6-26-4;

4 g. South Dakota, in which loans made by money lender licensees
5 with an annual percentage rate above 36% are void and uncollectible, and
6 any person evading the usury cap, including by offering loans through the
7 internet or any electronic means, is subject to the same penalties as
8 licensees, S.D. Codified Laws §§ 54-4-44, 54-4-44.1; and

9 h. Virginia (since January 1, 2021), which voids loans made with
10 interest rates in excess of 36%, and the lender has no right to collect,
11 receive, or retain any principal, interest, fees, or other charges. Virginia
12 Code § 6.2-303.

13 78. These state usury statutes reflect each state's strong public policy
14 interest in ensuring that consumers who lack negotiating power are protected
15 from loans with excessive interest rates.

16 79. Loans on the SoLo Platform do not comply with the usury statutes in
17 subparagraphs 77(a) through 77(h).

18 **Licensing Requirements**

19 80. The following states have implemented licensing regimes that include
20 measures aimed at preventing and penalizing harmful consumer lending
21 practices: Alabama, Arizona, Connecticut, Idaho, Illinois, Indiana, Maryland,
22 Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New
23 York, North Carolina, Ohio, and Oregon. The licensing regimes in these states
24 reflect substantive consumer-protection concerns by, for instance:

25 a. ensuring that licensees possess the requisite character,
26 integrity, and experience (Ariz. Rev. Stat. § 6-603(F)(2); Ind. Code § 24-
27

1 4.5-3-503(2); 209 Mass. Code Regs. 20.03(2); N.C. Gen. Stat. § 53-
2 168(a)(2); N.H. Rev. Stat. § 399-A:5(I); N.Y. Banking Law § 342); and

3 b. ensuring compliance with loan-term and disclosure regulations
4 by requiring compliance examinations and investigations by state
5 regulators as well as recordkeeping and annual reports (Ariz. Rev. Stat. §§
6 6-607, 6-608(A), 6-609(A)-(D); Ind. Code § 24-4.5-3-505; Mass. Gen. Laws
7 ch. 140 §§ 97-99; N.H. Rev. Stat. §§ 399-A:10, 399-A:11; N.Y. Banking Law
8 §§ 348, 349; N.C. Gen. Stat. §§ 53-184).

9 81. These state licensing statutes reflect each state's strong public policy
10 interest in ensuring that persons or entities seeking to make loans, arrange or
11 broker loans, or otherwise engage in the consumer-lending business in those
12 states are vetted and supervised by the regulators of those states for
13 compliance with consumer protection and other laws.

14 82. The following state laws render covered loans void if they are made
15 without the appropriate license(s) and (i) the unlicensed person or entity has
16 no right to collect from consumers or (ii) the consumers have no obligation to
17 repay certain loan amounts:

18 a. Alabama, which voids loan contracts of less than \$1,500 that
19 are made by a person in the business of lending and who contracts for,
20 exacts or receives, directly or indirectly, on or in connection with any such
21 loan any charges, including those who seek to evade the licensing
22 requirement by any device, including by receiving or charging
23 compensation for goods or services, whether or not sold, delivered, or
24 provided through negotiation, arrangement, or procurement of a loan
25 through any use of activity of a third person, and the lender has no right to
26 collect, receive, or retain any principal, interest, or charges whatsoever, AL

1 Stat. § 5-18-4;

2 b. Arizona, which voids covered loans of \$10,000 or less that are
3 made or procured without a license, and provides that the lender has no
4 right to collect any principal, finance charges, or other fees in repayment of
5 such loans, Ariz. Rev. Stat. §§ 6-601(5)-(7), 6-602(B), 6-603(A), 6-613(B);

6 c. Connecticut, which since June 19, 2015, voids loans directly or
7 indirectly arranged in the amount of \$15,000 or less and that charge
8 interest in excess of 12%, when made without a license, Conn. Gen. Stat.
9 Ann. § 36a-558(c);

10 d. Illinois, which voids consumer-installment loans for principal
11 amounts not exceeding \$40,000 made after January 1, 2013, without a
12 license and at interest rates higher than 99% APR for loans up to \$1,500,
13 and the person who made the loan shall have no right to collect, receive, or
14 retain any principal, interest, or charges related to the loan, 205 Ill. Comp.
15 Stat. §§ 670/1, 670/17.2(a)(1), 670/20(d);

16 e. Idaho, which voids covered loans made by persons who offer or
17 make a payday loan, or arrange a payday loan for a third-party lender
18 without a license; and provides that such loans shall be uncollectible and
19 unenforceable, Idaho Code Ann. §§ 28-46-401 and -402;

20 f. Indiana, which voids covered loans made without a license, and
21 the debtor has no obligation to pay either the principal or finance charges
22 on such loans, Ind. Code §§ 24-4.5-5-202(2), 24-4.5-3-502(3);

23 g. Maryland, which voids contracts for credit services by
24 unlicensed credit services businesses and makes such contracts for services
25 from a credit services business void and unenforceable as contrary to the
26 public policy of the state, Md. Code Ann., Com. Law § 14-1903; Md. Code
27

1 Ann., Com. Law § 14-1907(b);

2 h. Massachusetts, which voids covered loans of \$6,000 or less if
3 interest and expenses on the loan exceed 12% a year and the loan is made or
4 purchased without a license; a license is also required of those in the
5 business of negotiating, arranging, aiding or assisting the borrower, or
6 lending, procuring, or making loans; and the lender or purchaser has no
7 right to collect money in repayment of such loans, Mass. Gen. Law. Ch. 140,
8 §§ 96, 110;

9 i. Minnesota, which voids regulated loans made or arranged
10 without a required license or that include prohibited loan provisions or
11 interest rates, and requires lenders of up to \$100,000 to hold a license in
12 order to issue loans in excess of 21.75% APR, or the total of 33% a year on
13 the part of the unpaid balance up to \$1,350 and 19% a year on the part of
14 the unpaid balance above \$1,350, Minn. Stat. Ann. §§ 56.01(a), 56.19;
15 Minn. Stat. Ann. §§ 47.59, 47.60, 47.601;

16 j. New Hampshire, which voids covered loans of \$10,000 or less
17 that are made without a license, and provides that the lender has no right to
18 collect such loans, N.H. Rev. Stat. §§ 399-A:1(XX), 399-A:2(I), 399-A:23
19 (VII);

20 k. New Jersey, which voids consumer loans of \$50,000 or less that
21 are made without a license, and provides that the lender has no right to
22 collect or receive any principal, interest, or charges on such loans, unless
23 the act was the result of good faith error, N.J. Rev. Stat. §§ 17:11C-2, 17-11C-
24 3, 17-11C-33(b);

25 l. New Mexico, which voids loans of \$5,000 or less made by a
26 person with no license, and provides that the lender has no right to collect,
27

1 receive, or retain any principal, interest, or charges whatsoever on such
2 loans, N.M. Stat. § 58-15-3;

3 m. New York, which voids personal loans of \$25,000 or less that
4 are made without a license and where the interest or other charge exceeds
5 that permitted to a licensee, and provides that the lender has no right to
6 collect such loans, N.Y. Banking Law §§ 340, 355;

7 n. North Carolina, which voids covered loans of \$15,000 or less
8 that are made or secured for repayment without a license and in excess of
9 the state's general usury law, and provides that any party in violation shall
10 not collect, receive, or retain any principal or charges with respect to such
11 loans, N.C. Gen. Stat. § 53-166(a), (d); and

12 o. Ohio, which from March 2018 through March 26, 2019, voided
13 loans of \$5,000 or less that were made without a small-dollar loan license,
14 and provided that the lender had no right to collect, receive, or retain any
15 principal, interest, or charges on such loans, Ohio Rev. Code Ann. §
16 1321.02; and, from March 27, 2019 through present, voids covered loans
17 made without a short-term loan license, and provides that the lender has no
18 right to collect, receive, or retain any principal, interest or charges on such
19 loans, Ohio Rev. Code Ann. § 1321.36;

20 p. Oregon, which voids covered loans brokered by an unlicensed
21 person and such loans are void, Or. Rev. Stat. Ann. § 725A.020(2);

22 83. SoLo brokered, arranged, facilitated, serviced, solicited, procured,
23 received fees in connection with, serviced, and collected on loans, including
24 amounts that borrowers were not obligated to repay, made by unlicensed
25 persons and entities in the states described above in Paragraphs 80 and 82.

1 **VIOLATIONS OF LAW**

2 **The CFPA**

3 84. Sections 1031 and 1036 of the CFPA prohibit a “covered person” or
4 “service provider” from engaging in any “unfair, deceptive, or abusive act or
5 practice” in connection with any transaction with a consumer for a consumer
6 financial product or service, or the offering of a consumer financial product or
7 service. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

8 85. An act or practice is unfair if it causes or is likely to cause substantial
9 injury to consumers, which is not reasonably avoidable by consumers and such
10 substantial injury is not outweighed by countervailing benefits to consumers
11 or to competition. 12 U.S.C. § 5531(c).

12 86. An act or practice is deceptive if it misleads or is likely to mislead
13 consumers acting reasonably under their circumstances, and the misleading
14 act or practice is material, or likely to affect a consumer’s choice of, or conduct
15 regarding, the product or service.

16 87. An act or practice is abusive if it (1) materially interferes with the
17 ability of a consumer to understand a term or condition of a consumer
18 financial product or service; or (2) takes unreasonable advantage of (A) a lack
19 of understanding on the part of the consumer of the material risks, costs, or
20 conditions of the product or service; (B) the inability of the consumer to
21 protect the interests of the consumer in selecting or using a consumer
22 financial product or service; or (C) the reasonable reliance by the consumer on
23 a covered person to act in the interests of the consumer. 12 U.S.C. § 5531(d).

24 **FCRA**

25 88. FCRA was enacted in 1970, became effective on April 25, 1971, and
26 has been in force since that date. The Fair and Accurate Credit Transactions
27

1 Act amended FCRA in December 2003, and the Dodd-Frank Act amended
2 FCRA in July 2010.

3 89. The Bureau is authorized to enforce compliance with FCRA as one of
4 the enumerated consumer laws under the CFPA. 12 U.S.C. § 5481(12)(F); 15
5 U.S.C. § 1681s(b)(1)(H).

6 90. Under FCRA, a “consumer reporting agency” includes any person
7 which, (1) “for monetary fees, dues, or on a cooperative nonprofit basis,”
8 regularly engages “in whole or in part” in (2) “the practice of assembling or
9 evaluating consumer credit information or other information on consumers”
10 (3) “for the purpose of furnishing consumer reports to third parties,” and
11 which “uses any means or facility of interstate commerce for the purpose of
12 preparing or furnishing consumer reports.” 15 U.S.C. § 1681a(f).

13 91. The term “consumer report” includes any written, oral, or other
14 communication of any information by a consumer reporting agency bearing on
15 a consumer’s credit worthiness, credit standing, credit capacity, character,
16 general reputation, personal characteristics, or mode of living which is used or
17 expected to be used or collected in whole or in part for the purpose of serving
18 as a factor in establishing the consumer’s eligibility for, among other things,
19 credit or insurance to be used primarily for personal, family, or household
20 purposes. 15 U.S.C. § 1681a(d).

21 92. One of FCRA’s stated purposes is to promote fair and accurate
22 reporting about consumers. 15 U.S.C. § 1681(a)–(b). To that end, it imposes
23 various requirements on consumer reporting agencies. One of those
24 requirements is that consumer reporting agencies “follow reasonable
25 procedures” to ensure “maximum possible accuracy” of information in
26 consumer reports. 15 U.S.C. § 1681e(b).

1 **Count I: Violation of the CFPA**

2 **Deceptive Advertising**

3 93. The Bureau incorporates and re-alleges by reference Paragraphs 1-47,
4 57-60, and 84-87.

5 94. From at least March 2019 to October 2021, Defendant represented to
6 consumers that they could obtain loans on SoLo's Platform with "no interest,"
7 "0% APR," or "0% interest."

8 95. However, SoLo's Platform loans almost uniformly required a Lender
9 tip fee, a SoLo donation fee, or both to be funded.

10 96. Defendant's representations in the advertisements were material and
11 likely to mislead consumers acting reasonably under the circumstances.

12 97. As a result, Defendant engaged in deceptive acts or practices when it
13 advertised that borrowers could get "no interest," "0% interest," or "0% APR"
14 loans on its Platform, in violation of Sections 1031 and 1036 of the CFPA. 12
15 U.S.C. §§ 5531(a), 5536(a)(1)(B).

16 **Count II: Violation of CFPA**

17 **Deceptive Disclosures and Documents**

18 98. The Bureau incorporates and re-alleges by reference Paragraphs 1-47,
19 57-60, and 84-87.

20 99. As part of the loan application and funding process, Defendant
21 provides the borrower with a promissory note and a "Truth in Lending
22 Disclosures" document, both of which purport to describe the specific terms of
23 the transaction, including the cost of credit. Defendant's statements include,
24 but are not limited to:

25 a. The loan amount due at the repayment date is the principal
26 amount only;

- b. The cost of credit is 0%;
- c. The finance charge is \$0; and
- d. No amounts were to be paid to others on the consumer's behalf.

100. These inaccurate statements regarding the costs associated with a SoLo loan are likely to mislead consumers acting reasonably because the vast majority of SoLo Platform loans include Lender tip fees or SoLo donation fees or both, and:

- a. SoLo debits not only the principal loan amount on the repayment date but also any Lender tip fee and SoLo donation fee;
- b. These fees render the cost of credit in excess of 0%;
- c. These fees constitute finance charges and thus the finance charge is not \$0; and
- d. Solo receives a donation fee and transmits Lender tip fees to lenders.

101. As a result, Defendant engaged in deceptive acts or practices when it issued promissory notes and "Truth in Lending Disclosures" documents that did not include the Lender tip fee and SoLo donation fee in the finance charge, the APR, or the total of payments, in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Count III: Violation of CFPA

Abusive Act or Practice of Obscuring "No Donation" Option

102. The Bureau incorporates and re-alleges by reference Paragraphs 1-47 and 84-87.

103. An act or practice is abusive under the CFPA if it, among other things, "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service." 12 U.S.C. § 5531(d)(1).

1 104. Defendant designed and implemented a loan request process that: (1)
2 pre-populated three options for payment of a “donation amount;” (2) required
3 borrowers to choose one of those three options to request a loan; and (3)
4 obscured whether and how borrowers can select “no donation.”

5 105. SoLo’s loan request process materially interfered with consumers’
6 ability to understand that the donation fee term or condition on each loan,
7 including whether payment of that fee was required to request a loan from a
8 lender.

9 106. As a result, Defendant engaged in abusive acts or practices, in
10 violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and
11 (d)(1), 5536a(1)(B).

12 **Count IV: Violation of the CFPA**

13 **Deceptive Collection of Amounts Consumers Did Not Owe**

14 107. The Bureau incorporates and re-alleges by reference Paragraphs 1-47
15 and 57-87.

16 108. Defendant represented expressly in loan documents or by implication
17 through its servicing practices that consumers had an obligation to repay loan
18 amounts when that obligation did not exist because the loans violated Subject
19 States’ lender-licensing or usury laws that declared such loans void *ab initio* or
20 limited consumers’ obligation to repay.

21 109. Defendant reinforced the misrepresentations that consumers were
22 obligated to pay debts that were void or that consumers otherwise were not
23 obligated to repay by actions such as sending collection emails and texts
24 demanding payment from consumers; debiting money from consumers’ bank
25 accounts through ACH transactions; and threatening to report nonpayment to
26 the credit bureaus.

1 110. For loans governed by laws in states that void the legal obligation to
2 repay a loan in whole or in part, Defendant's repayment demands and
3 collection efforts are deceptive acts or practices because Defendant falsely tells
4 consumers that they are obligated to make payments on their loans.

5 111. In its communications with consumers, Defendant fails to inform
6 them that neither SoLo nor the lenders have a legal right to loan repayments
7 and that borrowers have no legal obligation to repay a loan in whole or in part
8 originated in the Subject States.

9 112. To the extent a borrower is not under any legal obligation to repay a
10 void loan or a portion of it, Defendant's misrepresentations are material and
11 likely to mislead consumers acting reasonably under the circumstances.

12 113. As a result, Defendant engaged in deceptive acts or practices by
13 debiting borrowers' bank accounts and demanding, collecting, or attempting
14 to collect void loans or fees, in violation of Sections 1031 and 1036 of the
15 CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

16 **Count V: Violation of CFPA**

17 **Unfair Collection of Amounts Consumers Did Not Owe**

18 114. The Bureau incorporates and re-alleges by reference Paragraphs 1-47
19 and 57-87.

20 115. By arranging payments on and collecting on loans that consumers
21 were not obligated to repay, Defendant caused or is likely to cause consumers
22 substantial injury by demanding and obtaining payments from consumers—
23 including not only principal payments, but also payment of significant Lender
24 tip fees and SoLo donation fees (in addition to other fees)—on void or
25 otherwise uncollectible loans, in whole or in part.

26 116. These substantial injuries were not reasonably avoidable by
27

1 borrowers who were unlikely to know that the usury or licensing requirements
2 in their respective Subject States rendered the loans obtained through the
3 SoLo Platform void or uncollectible in whole or in part. Thus, consumers were
4 unable to avoid paying amounts that SoLo and lenders on its Platform would
5 otherwise not be entitled to receive.

6 117. The substantial injuries caused by Defendant's collection of debts that
7 consumers were not obligated to repay are not outweighed by any possible
8 countervailing benefits to consumers or competition.

9 118. As a result, Defendant engaged in unfair acts or practices by
10 arranging payments on, collecting, and attempting to collect on loans that
11 consumers were not obligated to repay as void under borrowers' state usury or
12 licensing laws, in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§
13 5531(c), 5536(a)(1)(B).

14 **Count VI: Violation of the CFPA**

15 **SoLo's Abusive Demands for**

16 **and Collection of Amounts Consumers Did Not Owe**

17 119. The Bureau incorporates and re-alleges by reference Paragraphs 1-47
18 and 57-87.

19 120. A consumer's legal obligation to repay is a material term, cost, and
20 condition of a loan.

21 121. Consumers residing in Subject States likely were unaware that SoLo
22 lacked the legal authority to collect because the loans violated their own State's
23 usury or licensing requirements.

24 122. Defendant took unreasonable advantage of consumers' lack of
25 understanding regarding the void or uncollectible nature of the loans or the
26 limited obligation to repay by telling consumers that they are obligated to
27

1 make payments on void loans, by arranging payments on those void loans, and
2 by collecting debts, or portions thereof, to which SoLo was not legally entitled.

3 123. As a result, Defendant engaged in abusive acts or practices by taking
4 unreasonable advantage of consumers' lack of understanding of the material
5 risks, costs, or conditions of their SoLo loans—here, the impacts on their loans
6 of Subject States' usury and lender licensing laws, in violation of Sections 1031
7 and 1036 of the CFPA. 12 U.S.C. §§ 5531(d)(2)(A), 5536(a)(1)(B).

8 **Count VII: Violation of CFPA**

9 **Deceptive Use of False Credit Reporting**

10 **Threats to Consumers**

11 124. The Bureau incorporates and re-alleges by reference Paragraphs 1-47,
12 61-71, and 84-87.

13 125. Since at least March 2018, while engaged in debt collection,
14 Defendant has repeatedly misled consumers that it would report their failure
15 to repay loans originated on SoLo's Platform to "credit bureaus" which might
16 affect the consumers' credit scores.

17 126. In addition to making express misrepresentations, Defendant
18 misleadingly implies that it will furnish negative information to the credit
19 bureaus unless the consumer makes a payment.

20 127. Despite threatening to furnish negative information to the credit
21 bureaus, Defendant did not take, and had no intention of taking, any such
22 action. Defendant reported zero information to the credit bureaus, and it was
23 never equipped to furnish consumer credit information.

24 128. Defendant's misrepresentations were material because they
25 compelled consumers to believe that Defendant would report an unpaid loan
26 on behalf of the SoLo Platform lenders, and those misrepresentations were
27

1 likely to mislead consumers acting reasonably under the circumstances.

2 129. As described, Defendant's unfounded collections-related
3 misrepresentations were deceptive acts and practices in violation of the CFPA,
4 12 U.S.C. § 5536(a)(1)(B).

5 **Count VIII: Violation of FCRA**

6 **SoLo's Failure to Follow Reasonable Procedures to Ensure**
7 **Maximum Possible Accuracy of Consumer Report Information**

8 130. The Bureau incorporates and re-alleges by reference Paragraphs 1-56,
9 61-71, and 88-92.

10 131. Defendant is a consumer reporting agency under FCRA because,
11 either for monetary fees, or alternatively, on a "cooperative nonprofit basis," it
12 regularly engages in whole or in part in the practice of assembling or
13 evaluating consumer credit information or other information on consumers
14 (from Plaid, Apple, Google, and prior Platform loans) to create a "SoLo score"
15 and number of loans repaid for the purpose of providing that information to
16 third parties to be used as a factor in establishing creditworthiness. SoLo uses
17 any means or facility of interstate commerce for the purpose of preparing or
18 furnishing consumer reports.

19 132. Section 607(b) of FCRA, 15 U.S.C. § 1681e(b), requires that, for every
20 consumer report prepared, a consumer reporting agency must "follow
21 reasonable procedures to assure maximum possible accuracy of the
22 information concerning the individual about whom the report relates."

23 133. Since 2018, Defendant has failed to follow reasonable procedures to
24 assure maximum possible accuracy of its consumer reports.

25 134. As a result, Defendant has violated FCRA, 15 U.S.C. § 1681e(b).

1 **Count IX: Violation of the CFPA**

2 **SoLo’s Violation of Federal Consumer Financial Law**

3 135. The Bureau incorporates and re-alleges by reference Paragraphs 1-56,
4 61-71, 84-92, and 130-134.

5 136. With limited exceptions not relevant here, the CFPA defines “Federal
6 consumer financial law” to include FCRA. 12 U.S.C. § 5481(14).

7 137. Under the CFPA, covered persons’ or service provider’s violations of
8 Federal consumer financial law are violations of Section 1036 of the CFPA. 12
9 U.S.C. § 5536(a)(1)(A).

10 138. As a result, SoLo’s violation of FCRA, as described in Count VIII,
11 constitutes a violation of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

12 **DEMAND FOR RELIEF**

13 139. The Bureau requests, pursuant to Sections 1054 and 1055 of the
14 CFPA, 12 U.S.C. §§ 5564 and 5565, that the Court:

- 15 a. Permanently enjoin Defendant from committing future
16 violations of the CFPA, the FCRA, or any other provision of “Federal
17 consumer financial law,” as defined by 12 U.S.C. § 5481(14);
- 18 b. Grant additional injunctive relief as the Court may deem just
19 and proper;
- 20 c. Award monetary relief against Defendant, including restitution,
21 refund of moneys, disgorgement or compensation for unjust enrichment,
22 and payment of damages;
- 23 d. Award a civil money penalty;
- 24 e. Award costs against Defendant; and
- 25 f. Award additional relief as the Court may determine is just and
26 proper.

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Dated: May 17, 2024

Respectfully submitted,

Eric Halperin
Enforcement Director
Deborah Morris
Deputy Enforcement Director
Michael Favretto
Assistant Deputy Enforcement Director

/s/ Joseph M. Lake
Joseph M. Lake
Bradley H. Cohen (*pro hac vice*
pending)
Trishanda L. Treadwell (*pro hac vice*
pending)

Consumer Financial Protection
Bureau
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*Attorneys for the Consumer Financial
Protection Bureau*

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA
a municipal corporation
400 6th Street, NW, 10th Floor
Washington, DC 20001

PLAINTIFF,

v.

ActiveHours Inc. d/b/a Earnin
200 Portage Ave.
Palo Alto, CA 94306

DEFENDANT.

Case No.:

Judge:

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT

Plaintiff District of Columbia (the “District”), through the Office of the Attorney General, brings this consumer protection action against ActiveHours Inc., d/b/a Earnin (“Earnin”) under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.* In support of its claims, the District states as follows:

1. Earnin operates a website and mobile phone application through which consumers (“Borrowers”) can request an advance of the pay that they have already earned but have not yet received from their employer—what the company calls an “Earned Wage Advance” or “EWA.” Earnin then withdraws the amount of the loan, plus any tips or fees, from the Borrower’s bank account or debit card on the Borrower’s next payday. Throughout this process, Earnin takes advantage of Borrowers in numerous ways.

2. Earnin deceptively lures in Borrowers by advertising that the advances are *not loans* and that Borrowers can “access [their] pay *within minutes* of earning it” with “*no*

mandatory fees” and “*no interest*” (emphases added). None of this is true. First, these transactions *are* loans, and Earnin acts as a classic lender. It provides money directly to Borrowers and secures repayment. Second, to receive the promised access to funds “within minutes,” there *are* mandatory fees. These are called “Lightning Speed” fees, and they quickly add up based on the limits Earnin places on the amount users can borrow per day and per pay period. Third, the loans Earnin makes are *not* “no interest.” As a result of the Lightning Speed fees alone, the average interest rate on Earnin’s instant loans is over 300%.

3. By charging Borrowers Lightning Speed fees that result in high interest rates, Earnin violates the District’s 24% usury cap. The District Council established that cap to deter the very type of predatory lending Earnin engages in. Indeed, Earnin takes advantage of a population that faces extreme financial challenges—those who are in such tight financial straits that they cannot even live “paycheck-to-paycheck,” needing funds in between pay periods to meet their daily living expenses. Although Earnin promotes itself as an alternative to payday lending, it employs the same model, providing short-term loans at high interest rates and requiring repayment on the Borrower’s next payday.

4. Earnin also provides its loans to District Borrowers without having obtained the required District money lending license, thus evading necessary regulatory oversight and accountability for its business practices.

5. Through this conduct, Earnin has repeatedly violated the CPPA. The District brings this case to permanently enjoin Earnin from engaging in its unlawful activities, to obtain restitution for District consumers and civil penalties, and to recover the District’s fees and costs.

JURISDICTION AND PARTIES

6. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.

7. This Court has personal jurisdiction over Earnin pursuant to D.C. Code § 13-423(a). Earnin has offered, advertised, and provided loans to District residents since at least 2016.

8. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

9. Defendant ActiveHours Inc. d/b/a Earnin is a Delaware corporation, based in Palo Alto, California, that offers loans based upon pay that consumers have already earned but not yet received from their employers, as well as other related services.

FACTUAL ALLEGATIONS

I. Earnin Lures Consumers to Its Platform Through Promises of Instant Access to Earned Wages with “No Interest” and “No Fees.”

10. Since at least 2016, Earnin has used a mobile application (“app”) available for download on consumers’ phones, as well as a website earnin.com, to market and provide EWA loans. Earnin markets these loans through a variety of media, including YouTube, Snapchat, radio, mailings, television, Facebook/Instagram, and TikTok.

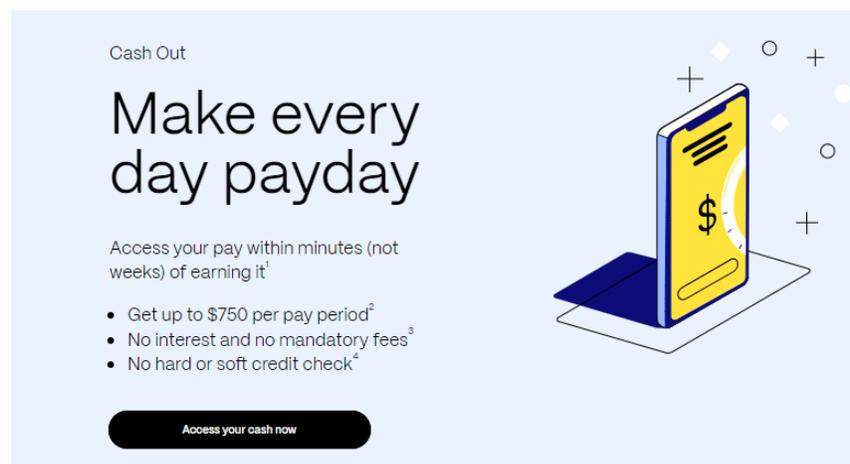
11. Borrowers located in the District started obtaining loans from Earnin around 2016. Since that time, over 20,000 District Borrowers have engaged in more than a million transactions with Earnin.

12. Earnin draws Borrowers to its app and website through promises of a fast, no-fee advance, which it calls a “Cash Out.”

13. Earnin advertises that its advances are not loans, that they are free and available immediately with no fees or interest, and that Borrowers can obtain “up to \$100 every day:”

- “[C]ontrol and access to your pay as soon as you’ve worked with no fees, interest or hidden costs,”
- “[N]o loan, no interest, \$0 mandatory fees,”
- “[T]he no interest way to up to \$100 every day.”
- “Get paid the minute you leave work with no loans, interest or fees.”

14. As recently as September 2024, Earnin’s website claimed that consumers could access their pay “within minutes” for “no interest and no mandatory fees.”



15. Elsewhere on its website, Earnin likewise prominently asserts that earnings can be accessed instantly—“right when you need it”—without “mandatory fees.” As shown in the

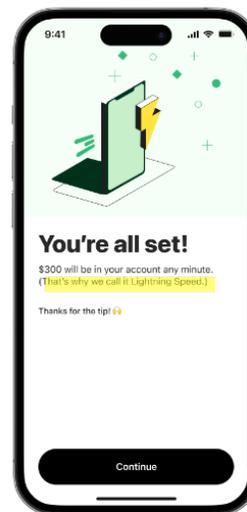
graphic below, these statements appear next to scrolling images of a phone showing a Lightning Speed transfer without any mention of a fee.

Go from start to paid in just a few steps

Tap into the money you've already worked for, **right when you need it**. From monthly bills to weekly thrills, your earnings are ready when you are.

- 01 Add your info to verify your paycheck.
- 02 Transfer up to \$100/day [up to \$750/pay period] to a linked bank.
- 03 No interest and **no mandatory fees**³ — just tip what you think is fair.
- 04 Any earnings & optional tips are repaid when your paycheck hits.

Get started



Downloaded from <https://www.earnin.com/products/cashout>, on September 13, 2024. (highlighting added.)

16. Earnin similarly promises “instant[] access” with “no loans, no borrowing money, no interest, [and] no mandatory fees” in the descriptions of its app on app stores—like the Apple App Store and Google Play Store—from which Borrowers can download the platform, and on social media.

17. Earnin’s promises that Borrowers can immediately obtain up to \$100 every day without fees or interest (“it’s *always* payday—up to \$100/day, no interest, no credit check”; “Get up to \$100 per day whenever you need”) are also heavily featured in its advertising, as reflected in the advertisements above and immediately below.

Life before Earnin:

It's never payday. 😞

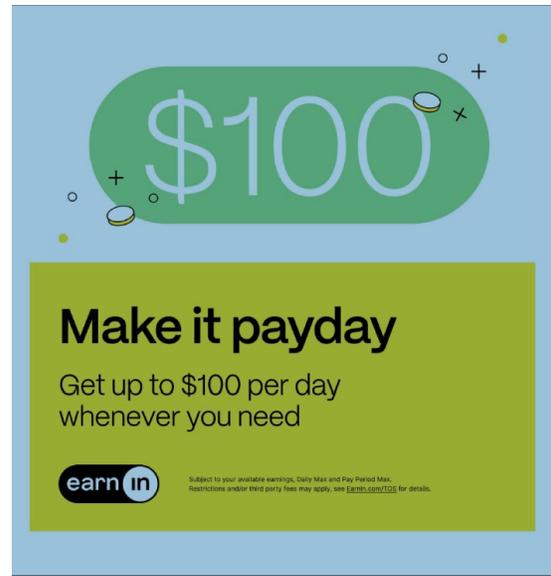
Life after Earnin:

It's *always* payday. Up to \$100/day,
no interest, no credit check. 😊

Download now →



Earnin is a financial technology company, not a bank. Earnin does not charge interest on Cash Outs. Subject to your available earnings, Daily Max, and Pay Period Max. Restrictions and/or third-party fees may apply; see [Earnin.com/TOS](https://earnin.com/TOS) for details.



18. For most Borrowers using EWA products, Earnin’s extensive advertisement of fast access to earned wages—without taking out a loan or incurring interest or fees—is what draws them to the product. As the Consumer Financial Protection Bureau recently noted, “Speed of access to funds is an integral and defining aspect of earned wage products. They are designed to address—and marketed as addressing—the liquidity problem that arises between the accrual of wages and their actual payment. That problem necessarily occurs in a very short period, so the value of this type of credit to the consumer includes the rapid availability of funds.”¹

II. Earnin’s Earned Wage Advances Are Loans, and Earnin Establishes Multiple Means to Secure Repayment.

19. Earnin repeatedly advertises that its advances are not loans. This is false. Earnin *does* provide loans. It is not, as it insinuates in its advertisements, somehow advancing payroll directly from employers to Borrowers. Rather, Earnin provides Borrowers funds that it expects the Borrowers to pay back—and which Borrowers agree to pay back on their upcoming payday—and has created multiple mechanisms through which it ensures repayment.

¹ Notice of proposed interpretive rule (Docket No. CFPB-2024-0032) (“Proposed Rule”).

20. When Borrowers set up their accounts with Earnin, they are directed to download the app in Google Play or the Apple App Stores. They are then asked to link the bank account where they receive their pay as well as any debit cards linked to their bank account. Then, as part of their agreement to the Terms of Service, Borrowers agree to allow Earnin to charge their bank account and debit cards for any charges due to the company.

21. Earnin also directs Borrowers, through two separate documents, to agree to recurring electronic debits in their linked bank account as a condition of using both the app and Lightning Speed. Borrowers must accept one agreement for ACH transfers and another for Lightning Speed transfers. If there is insufficient money in the Borrower's bank account on payday to repay the loan, Earnin will reschedule the debit for a future date, usually a Borrower's next pay date.

22. If the debits from the consumer's bank account fail to go through, Earnin reserves the right to charge the consumer's linked debit card through a "Transfer Out Authorization Agreement."

23. Additionally, Borrowers on the Earnin app are strongly encouraged to set up a no-interest deposit account with a third-party bank, Evolve Bank & Trust ("Evolve"), to deposit their paychecks. If the Borrower does so, Earnin reserves the right to withdraw funds to repay itself from this Evolve account.

24. In enticing Borrowers to set up accounts at Evolve, Earnin has misrepresented the benefits those accounts provide. Earnin has advertised the Evolve account as a way for Borrowers to receive their paycheck faster, with statements such as "your paycheck may arrive up to 2 days early." In reality, District Borrowers with Evolve accounts at best have received their paychecks *one day* earlier as a result of setting up an account at Evolve, and only 55% of

District Borrowers received even that nominal benefit. Hundreds of District consumers who have set up accounts at Evolve have been subjected to this additional deceptive conduct.

25. As yet another repayment mechanism, Earnin encourages Borrowers using Evolve accounts to set up “tip jars” for themselves. These tip jars are subaccounts at Evolve that Borrowers create to save money for some future goal. Earnin has created various incentive programs to encourage Borrowers to create and fund tip jars, such as a sweepstakes only available to app users who establish a tip jar. Earnin can access these “savings” funds to obtain repayment of its loans.

26. In sum, Earnin ensures repayment of its loans through linked external bank accounts, linked external debit cards, deposit accounts set up at Evolve, “tip jar” accounts set up at Evolve, and agreements for recurring debits.

27. Because it has established all these methods of ensuring repayment, Earnin has only a 1% risk of loss on its loans, as it boasts to its investors. The average rate of delinquency on all consumer loans at commercial banks was 2.74% in the second quarter of 2024,² almost triple the Earnin rate.

III. Borrowers Must Pay Undisclosed “Lightning Speed” Fees to Receive the Promised Instant Access to “No Interest” and “No Fee” Loans.

28. Although Earnin promises no-fee instant loans, Borrowers must pay Lightning Speed fees to obtain an instant loan, a practice that began in March 2022. Otherwise, Earnin claims that the Borrower will have to wait one to two *business days* to get their advance—completely at odds with Earnin’s promises of *instant* access for no fees.

² <https://www.federalreserve.gov/releases/Chargeoff/delallsa.htm>

29. At the time that Borrowers sign up for Earnin, they have no information about the actual cost of Lightning Speed transfers. Earnin only informs Borrowers of the Lightning Speed fees once Borrowers, facing a need for fast cash, complete a number of intrusive steps required to set up an account.

30. These steps include disclosing a significant amount of personal and financial information that Earnin uses to track Borrowers' earnings. Earnin verifies some Borrowers' wages through their work email addresses and requires some Borrowers to upload their weekly timesheets to verify hours worked. Earnin even asks some Borrowers to allow Earnin to track their physical location through GPS so that Earnin can estimate how many hours the Borrower has worked based on their physical location.

31. It is not until the Borrower has gone through over a dozen different screens in the app, has shared extensive personal and financial information with Earnin, and finally initiates a Cash Out that Earnin discloses to a Borrower that there is a mandatory Lightning Speed fee if the Borrower wants instant access to their wages, as Earnin has promised.

32. The amount of this hidden Lightning Speed fee has changed over time. Earnin initially charged a Lightning Speed fee for instant transactions of between \$1.99-\$3.99 based upon the amount of the Cash Out. Since at least July 2024, it has increased the Lightning Speed fee to \$3.99 for all instant Cash Out transactions, although first time use of Lightning Speed is free.

33. Earnin has charged a fee for all Lightning Speed transfers since March 2022, with the only exception being first time use. And paying this purportedly "non-mandatory" fee is the *only* way Borrowers can guarantee the "instant access" to their pay "within minutes," as Earnin repeatedly promises.

34. Because Borrowers must pay these Lightning Speed fees to receive the instant access they signed up for, it is no surprise that the vast majority of District Borrowers have paid a Lightning Speed fee (89.7% since March 2022), and the vast majority of transactions in the District have included the Lightning Speed fee (83% for the same time period).

35. From March 2022 through January 2024, District Borrowers who completed at least 10 transactions with Earnin paid an average of \$12.81 to borrow an average of \$293.80 during a typical biweekly pay period. Considering only the Lightning Speed fees, these payments resulted in loans with an average APR of 315%.

36. Earnin compounds the deception from its advertisements that instant loans are “no fee” by asserting that Lightning Speed fees are imposed by a “third party,” when in fact they are imposed by Earnin. Moreover, Earnin keeps almost all of these fees, paying only a small fraction to third parties for processing them. Specifically, Earnin incurs a fee of approximately seven- and one-half cents when a Lightning Speed transfer is processed through the financial system’s real-time payment network and a fee of approximately 20 cents when a Lightning Speed transfer is instead processed as a debit. Thus, based on a \$3.99 Lightning Speed fee, Earnin—not a “third party”—retains approximately \$3.91 of every Lightning Speed transfer processed through the real-time payment network and approximately \$3.79 of every Lightning Speed transfer processed as a debit. Indeed, before March 2022, Earnin offered Lightning Speed loans without a separate fee at all—requiring only that Borrowers linked a debit card to their Earnin account—underscoring that the fee is not necessitated by any “third party” charges.

37. In July 2024, Earnin rolled out a new business model to some District customers, requiring them to set up an account at Evolve in order to get a loan. For these accounts, it has increased the fee for each Lightning Speed transfer to \$5.99. Given the small dollar amounts that

are typical for Earnin’s instant loans, this increase in Lightning Speed fees is significant and is likely to lead to further consumer harm.

38. On top of being charged fees for fast access, when a consumer requests a Cash Out, they are also asked to leave a “tip” that is paid to Earnin. Unlike the Lightning Speed fees, Earnin prominently advertises the tipping option, creating the reasonable impression that the only fees associated with Earnin’s services are purely voluntary—stating, for example: “no mandatory fees — just tip what you think is fair.” Moreover, Earnin heavily encourages tipping through its messaging—which suggests that the Borrower is helping other Borrowers—and through a prominent tip button, which ranges from \$1-\$14 as a default.

IV. Earnin’s Lending Model Results in Many Borrowers Incurring Multiple Lightning Speed Fees Within a Single Pay Period.

39. Because Earnin collects Lightning Speed fees on every instant Cash Out transaction, it is incentivized to encourage Borrowers to engage in as many transactions as possible. Indeed, Earnin encourages repeated transactions through prompts it sends to individual Borrowers within the app, such as: “We’ve added \$100 to your Earnin account. Activate now!” It also has a “repeat activation” button that allows Borrowers to repeat a request to Cash Out with one click if the Borrower has sufficient funds available.

40. Earnin structures its business model to require financially strapped Borrowers to repeatedly pay fees by imposing low loan limits on each Cash Out. Each transaction is subject to three different limits: a daily limit of up to \$100, a pay period max of up to \$750, and a limit based upon Earnin’s calculation of available earnings. Earnin’s website fails to explain what available earnings are, or how they calculate this amount, although it is less than the amount that the Borrower has earned.

41. Together, these limits require multiple fee-bearing transactions for Borrowers seeking to immediately obtain loan amounts above their daily max.

42. For instance, a Borrower who needs \$200 as soon as possible and is eligible for the maximum daily withdrawal of \$100 would need to pay the Lightning Speed fee for two withdrawals of \$100 over two days (\$3.99 fee x 2 = \$7.98), rather than for a single withdrawal of \$200 (at a \$3.99 fee), even if their available earnings were over \$200.

43. Furthermore, many District Borrowers are unable to even get a loan of \$100 in a single Cash Out, as Earnin sets lower daily limits for some Borrowers depending on their bank balance, spending behavior, repayment history, and earned income amount.³ Thousands of District Borrowers have paid Lightning Speed fees to receive loans of either under \$25, \$25-\$50, or \$50-\$75 per Cash Out. Hundreds of District Borrowers have received loans of only \$1. The average amount that District Borrowers have obtained through each individual Cash Out using Lightning Speed is only \$84.

44. District Borrowers who pay Lightning Speed fees on average borrow three to four times in each biweekly pay period. These Borrowers rack up Lightning Speed fees each time and thus incur numerous Lightning Speed fees in any given pay period just to obtain the supposed “no fee” instant loans to access amounts that they have already earned.

45. In addition to daily Cash Out limits and available earnings limits, Earnin restricts the amounts that Borrowers can access within a single pay period with a “pay period max.” The pay period max amount has varied over time. As of July 2024, the pay period max was \$750. The pay period max also varies between users.

³ In its Terms of Service, Earnin reserves the right to “adjust the factors that impact [a Borrower’s] daily Max or Pay Period Max at any time.”
<https://www.earnin.com/privacyandterms/cash-out/terms-of-service>

46. New customers generally start with a much lower pay period max that ranges between \$50 and \$250. Many District Borrowers have complained about their low pay period maxes.

47. A Borrower's pay period max can also fluctuate from one pay period to the next based upon a number of factors, including the Borrower's bank balance, overdraft fees, spending behavior, failed debits, repayment history, and paycheck amount.

48. The pay period max undermines Earnin's repeated representations that Borrowers can obtain "up to \$100 every day" through Cash Outs. Given the current overall pay period max, *no* Borrower would ever be able to obtain the advertised \$100 a day in a 14-day pay period (\$1400) but would be limited to roughly half of that at best (\$750).

V. Earnin Is an Unlicensed Lender that Makes Usurious Loans in the District.

49. Under District law, all entities that offer loans in the District at any interest rate must obtain a money lending license from the D.C. Department of Insurance, Securities, and Banking. District licensing requirements are designed to ensure that consumers are protected from unscrupulous and deceptive businesses.

50. Earnin has never possessed a money lending license in the District of Columbia, despite offering loans to Borrowers in the District.

51. The District, like most states, has enacted legal limits on the interest rates for lending to prevent lenders from preying upon the District's most vulnerable residents. The District's interest rate cap for most loans in which the interest rate is expressed in the contract is 24%.

52. Since Borrowers must pay Lightning Speed fees to obtain immediate access to the loans that they have signed up for, which are advertised as available "as soon as they've worked"

“within minutes” or “instant[ly],” the Lightning Speed fees are a condition of the loans. As such, the Lightning Speed fees constitute interest on the loans. As alleged above, when Lightning Speed fees are included in the calculation of the finance charges on District Borrowers’ loans, the APRs on these loans average more than 315%—well in excess of the District’s usury cap.

COUNT ONE
(Violations of the Consumer Protection Procedures Act)

53. The District re-alleges and incorporates by reference all previous paragraphs.

54. The CPPA is a remedial statute that is to be construed broadly. It establishes a right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

55. The funds consumers obtain through Earnin’s app and website are for personal, household, or family purposes and, therefore, are consumer goods and services.

56. Earnin, in the ordinary course of business, offers to sell or supply, either directly or indirectly, consumer goods and services and is therefore a merchant.

57. The CPPA prohibits unfair and deceptive trade practices in connection with the offer, sale, and supply of consumer goods and services, including:

- a. Representing that goods or services have a source, characteristics, or benefits that they do not have, D.C. Code § 28-3904(a);
- b. Misrepresenting as to a material fact which has a tendency to mislead, D.C. Code § 28-3904(e);
- c. Failing to state a material fact if such failure tends to mislead, D.C. Code § 28-3904(f);
- d. Using innuendo or ambiguity as to a material fact, which has a tendency to mislead, D.C. Code § 28-3904(f-1); and

- e. Advertising or offering goods or services without the intent to sell them or without the intent to sell them as advertised or offered. D.C. Code § 28-3904(h).

58. By engaging in the acts and practices alleged in this Complaint, Earnin has engaged, and continues to engage, in deceptive acts and practices in violation of the CPPA, including the following:

- a. Misrepresenting to consumers that Cash Outs are not loans and failing to disclose that they are in fact loans, in violation of D.C. Code § 28-3904(a), (e), (f).
- b. Misrepresenting to consumers that instant Cash Outs carry no interest, failing to disclose that instant Cash Outs carry interest in excess of 0%, and failing to provide instant Cash Outs with no interest as advertised, in violation of D.C. Code § 28-3904(a), (e), (f), (h).
- c. Misrepresenting that instant Cashout Outs have no fees, and no hidden fees, and that the fees are charged by third parties, and failing to provide instant Cash Outs with no fees as advertised, in violation of D.C. Code § 28-3904(a), (e), (h).
- d. Misrepresenting that consumers can access up to \$100 of their wages per day, every day in violation of D.C. Code § 28-3904(e), (f-1).
- e. Misrepresenting that consumers will be able to access their paychecks up to two days earlier if they set up an account at Evolve, rather than receiving their paycheck in their customary bank account, in violation of D.C. Code § 28-3904(a), (e), (f-1).

- f. Misrepresenting that consumers are accessing the pay that they have earned from their employer, in violation of D.C. Code § 28-3904(f-1), (h).
- g. Failing to disclose that Earnin does not have a money lending license from the D.C. Department of Insurance, Securities, and Banking, in violation of D.C. Code § 28-3904(f).

59. Each of these deceptive acts or practices constitutes a separate violation of the CPPA.

COUNT TWO
(Violations of Title 16 of the DCMR as Violations of the Consumer Protection Procedures Act)

60. The District re-alleges and incorporates by reference all previous paragraphs.

61. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating “any provision of Title 16 of the District of Columbia Municipal Regulations.” D.C. Code § 28-3904(dd).

62. “A person is ‘engaged in the business of loaning money’ in the District if that person holds out by the maintenance of a place of business in the District or in any other manner, that a loan or loans of money may be effected by or through the person so holding out, plus the performance in the District by that person of one or more acts which result in the making or in the collection of a loan of money.” 16 DCMR § 200.4.

63. Earnin has engaged in the business of loaning money in the District without obtaining a license as a money lender as required under 16 DCMR § 201.1 and 16 DCMR § 200.4.

64. Earnin’s violations of Title 16 of the District of Columbia Municipal Regulations are unlawful trade practices in violation of D.C. Code § 28-3904(dd).

COUNT THREE
(Violations of D.C. Code § 28-3301(a) as Violations of the

Consumer Protection Procedures Act)

65. The District re-alleges and incorporates by reference all previous paragraphs.

66. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating the District's interest rate cap. D.C. Code § 28-3904(ff).

67. The District's interest rate limit is 24% if the interest rate is expressed in the contract. D.C. Code § 28-3301(a).

68. Under District law, "interest" is defined broadly to include any compensation imposed by a lender for the extension of credit. D.C. Code § 28-3311(a) (defining "interest," as "any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee, origination fee, service and carrying charge, investigator's fee, and any amount payable as a discount . . . , or point, or otherwise payable for services.")

69. Earnin has offered loans in the District at interest rates that average more than 315%, well in excess of the District's 24% interest rate limit.

70. Earnin's violations of the District's interest rate cap are unlawful trade practices in violation of D.C. Code § 28-3904(ff).

PRAYER FOR RELIEF

WHEREFORE, the District of Columbia respectfully requests that the Court enter a judgment in its favor and grant relief against Earnin as follows:

- a. Permanently enjoin Earnin, in accordance with D.C. Code § 28-3909(a), from violating the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.*;
- b. Order Earnin to pay restitution or damages pursuant to D.C. Code § 28-3909;

- c. Order the payment of civil penalties as permitted by D.C. Code § 28-3909(b);
- d. Award the District the costs of this action and reasonable attorney's fees pursuant to § 28-3909(b); and
- e. Grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: November 19, 2024

Respectfully submitted,

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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15

)	Case No. 2:24-cv-09566-MRA-AGR
21 UNITED STATES OF AMERICA,)	
)	
22 Plaintiff,)	AMENDED COMPLAINT FOR
)	PERMANENT INJUNCTION,
23 v.)	MONETARY JUDGMENT, CIVIL
)	PENALTY JUDGMENT, AND
24 DAVE, INC., a Delaware corporation,)	OTHER RELIEF
25 and JASON WILK, an individual,)	
)	DEMAND FOR JURY TRIAL
26 Defendants.)	
)	
)	

1 Plaintiff, the United States of America, acting upon notification and referral
2 from the Federal Trade Commission (“FTC” or “Commission”), for its Amended
3 Complaint alleges:

4 **SUMMARY OF THE CASE**

5 1. Defendant Dave, Inc. (“Dave”), under the leadership and direction of
6 its co-founder and CEO, Defendant Jason Wilk, operates a personal finance mobile
7 application (the “app”) and markets it to consumers Dave considers “financially
8 vulnerable” or “financially coping,” including those whose spending exceeds their
9 income, who have minimal savings, and who overdraft their bank accounts
10 frequently.

11 2. Much of Dave’s advertising is dominated by text and images urging
12 consumers to “get up to \$500” with Dave “instantly,” simply by downloading the
13 app. In reality, however, Dave takes consumers’ bank account information and
14 charges them for an automatically renewing monthly subscription and other fees
15 while failing to clearly disclose important information about what Dave users will
16 be receiving, what they will be paying, and what those payments are used for. Few
17 consumers who download Dave’s app and give it access to their bank accounts
18 receive amounts anywhere near \$500. During the first 14 months after Dave began
19 advertising advances of up to \$500, when determining whether and in what amount
20 to offer an advance to a new user, Dave offered a \$500 advance only 0.002% of the
21 time: a rate of less than 1 in 45,000. When Dave did offer an advance, its most
22 common offer was \$25. More than three-quarters of the time, however, Dave did
23 not offer a new user any advance at all. And despite Defendants’ claims about
24 “instant” cash, consumers who are offered an advance must pay an “Express Fee”
25 of \$3 to \$25 that is not fully disclosed upfront to avoid waiting two to three
26 business days for the advance.

27 3. On many advances, Dave takes an additional charge—by default, 15%
28 of the advance—that Dave refers to as a “tip.” Due to the app’s design, many

1 consumers are either unaware that Dave is charging them or unaware that there is
2 any way to avoid being charged. Dave also falsely suggests that, based on how
3 much the consumer “tips,” Dave will donate enough to charity to provide a
4 specified number of meals to feed hungry children. In truth, however, Dave does
5 not donate to charity as claimed, but instead makes only a token charitable
6 donation—usually \$1.50 or less—while keeping the bulk of the “tips” for itself.

7 4. Dave also uses its access to consumers’ bank accounts to charge a \$1
8 monthly membership subscription fee, frequently without their knowledge or
9 consent, and regardless of whether Dave has given the consumer a cash advance.
10 Consumers who realize that Dave has been charging them and seek to stop the
11 charges or cancel the subscriptions often find that Dave’s mechanisms for doing so
12 are unavailable or effort-intensive.

13 JURISDICTION AND VENUE

14 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
15 §§ 1331, 1337(a), 1345, and 1355.

16 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2),
17 (c)(2), and (d), 1395(a), and 15 U.S.C. § 53(b).

18 PLAINTIFF

19 7. Plaintiff, the United States of America, brings this action for
20 Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
21 Section 4 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C.
22 § 8403. For these violations, the United States seeks relief, including a permanent
23 injunction, monetary relief, civil penalties, and other relief, pursuant to Sections
24 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(m)(1)(A), 53(b), and
25 57b, and ROSCA, 15 U.S.C. § 8404.

26 8. The United States brings this action upon notification and referral
27 from the FTC, pursuant to Section 16(a)(1) of the FTC Act, 15 U.S.C. § 56(a)(1).
28 The FTC is an agency of the United States Government created by the FTC Act.

1 On November 5, 2024, the FTC as plaintiff filed the original complaint in this
2 action, without a demand for civil penalties, against Dave, Inc., only. The FTC
3 subsequently referred to the Department of Justice an amended complaint alleging
4 ROSCA violations and seeking civil penalties. The Department of Justice has
5 accepted the referral and hereby files this Amended Complaint, which adds Jason
6 Wilk as a defendant under all counts and demands civil penalties and other
7 appropriate relief. The Amended Complaint substitutes plaintiff the United States
8 for the FTC as the real party in interest.

9 **DEFENDANTS**

10 9. Defendant Dave, Inc., is a Delaware corporation with its principal
11 place of business at 1265 South Cochran Avenue, Los Angeles, California. Dave
12 transacts or has transacted business in this District and throughout the United
13 States. At all times relevant to this Amended Complaint, acting alone or in concert
14 with others, Dave has advertised, marketed, distributed, or sold a personal finance
15 mobile app that offers short-term cash advances to consumers throughout the
16 United States.

17 10. Defendant Jason Wilk is Dave's co-founder, Chief Executive Officer,
18 President, and Chairman of the Board of Directors. Wilk has served as Dave's
19 CEO since 2016, and he controls and has a key role in directing numerous
20 decisions for Dave's operations, including the mobile app's digital content and
21 design and how Dave presents itself and its offerings to consumers. Wilk also
22 holds 60% of the voting power of Dave's executive stock, allowing him to control
23 any matter submitted to shareholders, including but not limited to the election of
24 directors. At all times relevant to this Amended Complaint, acting alone or in
25 concert with others, Wilk formulated, directed, controlled, had the authority to
26 control, or participated in the acts and practices of Dave, including acts and
27 practices set forth in this Amended Complaint.

28 11. Wilk, in connection with the matters alleged in this Complaint,

1 transacts or has transacted business in this District and throughout the United
2 States.

3 **COMMERCE**

4 12. At all times relevant to this Amended Complaint, Defendants have
5 maintained a substantial course of trade in or affecting commerce, as “commerce”
6 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

7 **DEFENDANTS’ BUSINESS ACTIVITIES**

8 13. Dave operates a personal finance mobile app available for download
9 through the Apple App Store and Google Play Store. Dave advertises its app as a
10 tool that offers short-term cash advances to cover unexpected emergencies and that
11 avoids the financial penalties (such as overdraft fees) that can attend them. Dave
12 calls its advances “Extra Cash” and says consumers can receive amounts “up to
13 \$500.” Dave has also promised that there are no “hidden fees.”

14 14. Dave requires consumers who use its app to provide information
15 about their bank accounts to “link” them to the Dave app. Dave uses its access to
16 consumers’ bank accounts to analyze their finances and banking history, and to
17 directly debit consumers’ bank accounts to collect on advances and other charges.

18 **Dave Deceptively Advertises “Instant” Cash Advances of “Up to \$500” with**
19 **“No Hidden Fees”**

20 15. Dave advertises its app to consumers through multiple channels,
21 including online and through social media. Its advertising claims that consumers
22 can obtain cash advances of up to \$500 whenever they need them. That amount
23 has increased over time; in earlier periods, Dave advertised advances of up to \$75,
24 \$100, and \$250. Dave’s ads emphasize that consumers can receive cash
25 “instantly,” “on the spot,” “now,” and “in under 5 minutes,” telling consumers that
26 “[a]ll you have to do is download this app,” and that they will pay “no interest”
27 and “no hidden fees.” Dave reinforces these claims in the Apple App and Google
28 Play Stores, where consumers download the app, and on the app itself, during the

1 process of enrolling with Dave.

2 16. In reality, only a miniscule number of the consumers who respond to
3 Dave’s advertising by downloading the app are offered cash advances in amounts
4 anywhere close to the amounts advertised, and many are not offered any cash
5 advance at all. And the advance is not “instant” as promised: those consumers
6 who are offered an advance must pay an “Express Fee” of \$3 to \$25 to avoid a
7 delay of two to three business days in receiving the funds.

8 *Misrepresentations Online and in Social Media*

9 17. Since at least 2020, Dave has advertised its cash advance product on
10 social media platforms such as Facebook, Instagram, and TikTok. Dave’s new
11 users frequently find the app through an ad. Dave’s ads expressly and prominently
12 tell consumers that they will be able to receive cash advances of up to \$500,
13 “instantly,” or “in under 5 minutes,” if they download the Dave app. Examples of
14 these ads appear below.

15 16 **Get Up To**
17 **\$500 instantly**

18 Simulated product experience. Terms apply. Click here for more info or visit <http://dave.com/legal>. **Designed by Dave, not a bank.** Evolve Bank & Trust, Member FDIC, holds all deposits and issues the Dave Debit Card, pursuant to a license from Mastercard®.



19
20 Advertisement 1

21 22 **Get up to \$500**
23 **in under 5 minutes**

24 Simulated product experience. Terms apply. Click here for more info or visit <http://dave.com/legal>. **Designed by Dave, not a bank.** Evolve Bank & Trust, Member FDIC, holds all deposits and issues the Dave Debit Card, pursuant to a license from Mastercard®.



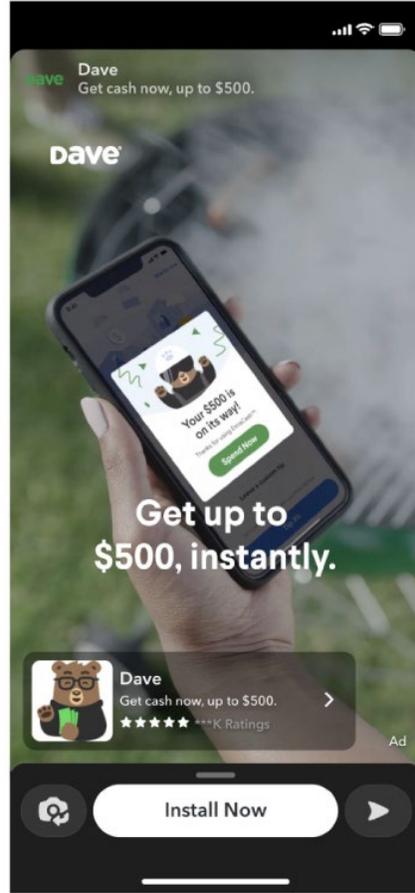
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26 Advertisement 2

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Advertisement 3

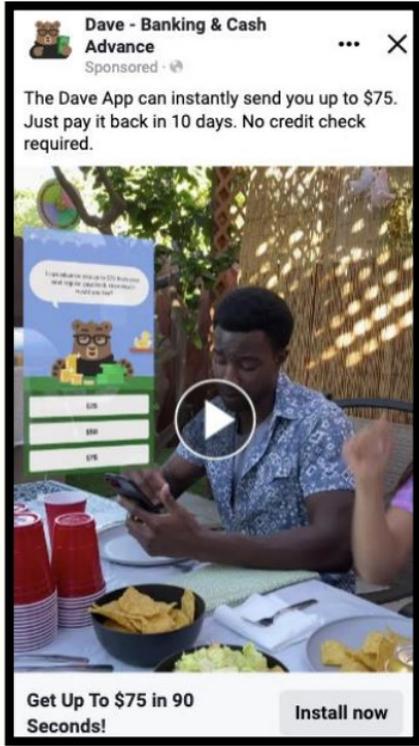


Advertisement 4

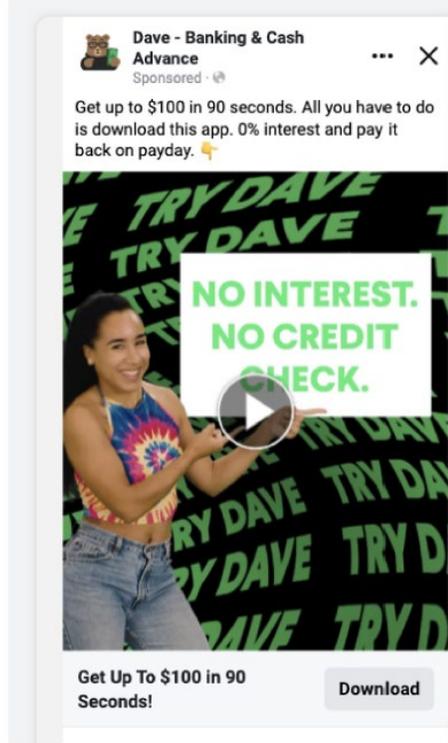
Dave’s ads emphasize that consumers can get up to \$500 immediately after downloading the app. Dave’s video ads often feature fictitious scenarios in which a stuffed bear representing Dave appears before an actor facing a difficult financial situation and, often through a zap of green lightning, appears to transfer \$500 to the actor’s smartphone. Phrases like “Tap for up to \$500,” “Get up to \$500 on the spot,” “instantly,” and “Get cash now” appear onscreen throughout a typical ad of this type. A voiceover in these ads typically states, “Download Dave and get up to \$500 instantly. No interest. No credit check.”

18. Dave’s ads have contained similar messages for years. When the maximum amount Dave offered was \$75 and later \$100, Dave’s ads told consumers Dave could “instantly send [them] up to \$75. Just pay it back in 10 days.” And that “All [they] need to do is download this app” to receive up to the

1 maximum amount “in 90 seconds.” Examples of these ads appear below.



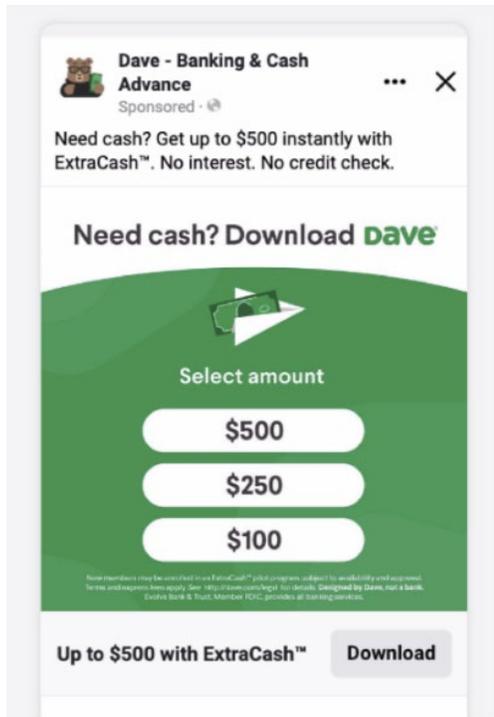
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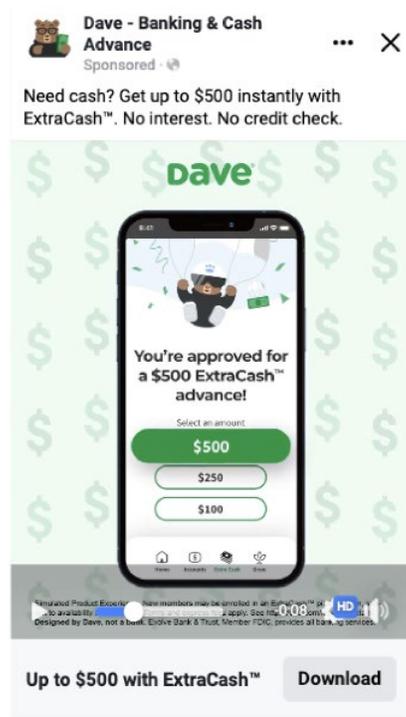
Advertisement 6

19. Many of Dave’s ads promoting instant cash show screens from the user experience inviting consumers to select an amount up to \$500. Examples of these ads appear below.

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Advertisement 7

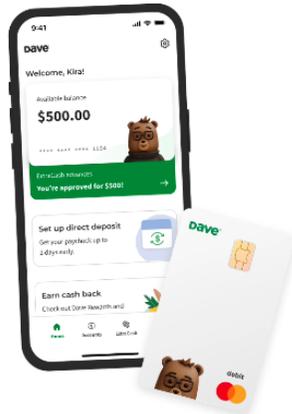


Advertisement 8

20. Other Dave advertisements depict fictitious scenarios in which actors are shown learning about the Dave app and immediately receiving \$500. In one ad, for example, an actor is shown at a gas pump, unable to afford gas for his car. A stuffed bear appears, holding a phone that prominently shows “\$500” on its screen. The bear introduces himself as “Dave” and explains that it can get the actor “up to \$500 of your future money, now.” The actor asks, “\$500? Instantly?” The bear confirms: “instantly.” When the actor looks at his phone, the screen reads, “Your \$500 is on its way.” A voiceover in ads states, “Download Dave and get up to \$500 instantly. No interest. No credit check.”

21. In another video ad, a stuffed bear sits silently under two lines of text that read “Get up to \$500 instantly” and “Download Dave now.” Next, a door falls off a cabinet in the background. The bear then says, “Expect the unexpected. Download Dave. Get up to \$500 instantly, when you need it most.” The next screen contains a smartphone prominently displaying the text “\$500,” the Dave logo, and the text “Get your future money now. No interest. No credit check.”

1 displaying an available balance of \$500. This screen includes a large, prominent
2 green button that invites consumers to “Sign up for Dave.” An example of this
3 screen follows:



Simulated product experience.

**Get up to \$500 when
you need it***

No interest, no credit check.

[*See terms](#)

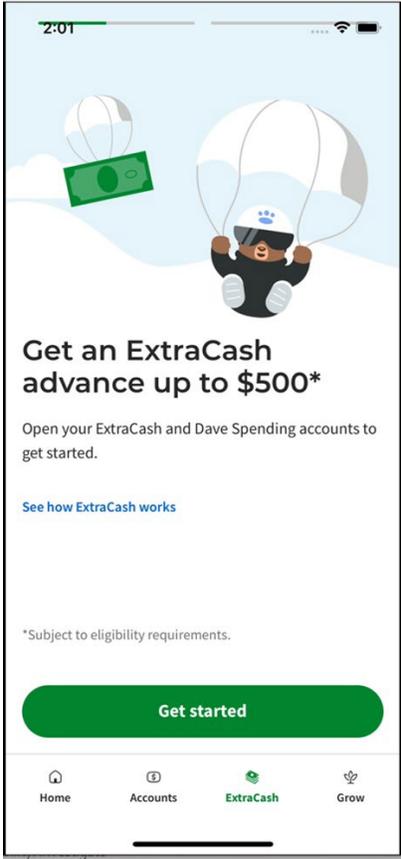
Sign up for Dave

Already have an account? [Login](#)

App Screenshot 1

20 26. The app ushers consumers through a series of enrollment screens in
21 which consumers must, among other things, create a sign-in ID using their email
22 address and enter their name and phone number. Dave then presents many
23 consumers with a prompt—“What can we help you with today?”—for which one
24 of the responses is “Accessing up to \$500.” A consumer who selects that option is
25 taken to a screen which states, “Get an ExtraCash advance up to \$500*.” An
26 example of this screen follows:

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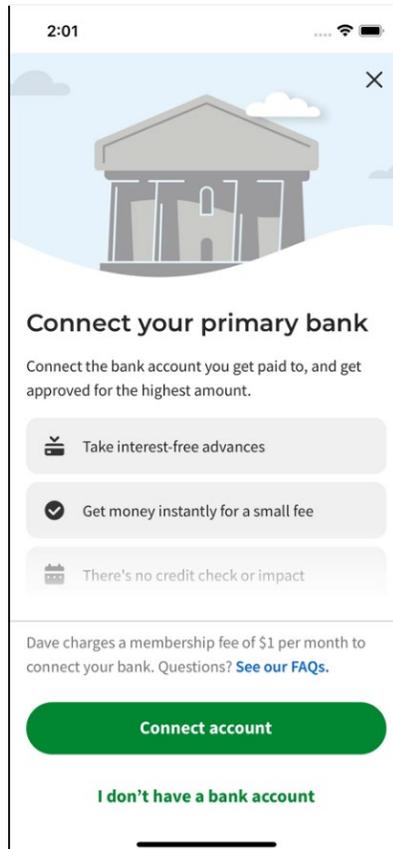


App Screenshot 2

27. Dave also prompts app users to provide their bank account information. In the example screen shown above, a prominent green button at the bottom of the screen invites consumers to “Get started.” After a consumer taps “Get started,” Dave has displayed a screen headed “Connect your primary bank,” with a bright green button at the bottom labeled “Connect account”:¹

¹ In the spring of 2024, while aware of the FTC’s investigation, Dave changed the button on the screen headed “Connect your primary bank” to “Agree and continue” and made other minor changes to this screen.

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App Screenshot 3

28. Dave’s user interface draws consumers’ attention toward continuing with Dave’s services, and away from the terms of those services, including by using design elements such as placement, color, text size, and action buttons to guide the consumer through the app. In the above image of a screen from Dave’s app, for example, attention is drawn to the bright action button “connect account,” while many consumers easily overlook the small, light-colored font text above it.

29. Even in instances where Dave accompanies its promotional claims with footnotes or additional text behind links, consumers who actually locate and review the inconspicuous text still are not informed of key information. For example, if consumers were to tap on and review the content hidden behind either the “See terms” link on the screen depicted above headed “Get up to \$500 when you need it*” or on the “See how ExtraCash works” link on the screen depicted above headed “Get an ExtraCash advance up to \$500*,” they would not be shown

1 any of the following information: (i) that Dave offers cash advances at or near the
2 amounts advertised to very few consumers with some being offered no advance;
3 (ii) that consumers cannot obtain cash advances without waiting two to three
4 business days unless they pay an additional fee, and the details of that fee; (iii) the
5 steps consumers must take to avoid being subject to an additional charge that Dave
6 refers to as a “tip”; and (iv) that Dave will charge an automatically recurring
7 membership subscription fee which is difficult to cancel. Dave does not clearly and
8 conspicuously disclose that information to consumers.

9 30. Dave solicits information about consumers’ bank accounts to “link”
10 the accounts to Dave. When a consumer is shown the screen with the heading
11 “Connect your primary bank” and presses the green “Connect account” button,
12 Dave collects the bank account information immediately. Dave uses this
13 information to make decisions about how much (if any) to advance the consumer,
14 frequently deciding not to offer a cash advance. Dave further uses its access to
15 consumer bank accounts to collect on advances and take other charges directly
16 from consumers’ bank accounts.

17 31. After a consumer grants Dave access to their bank account and
18 completes the enrollment process, Dave determines whether it will offer the
19 consumer an advance, and the Dave app shows the consumer different screens
20 depending on that determination. But regardless of whether Dave offers or
21 declines to offer an advance to the consumer when they first complete the
22 enrollment process, Dave continues to represent to enrolled app users—both
23 through the app and through other channels like emails it sends such users—that
24 they can return to the app to get cash advances of “up to \$500.” Each time the
25 consumer later uses the app and accesses either the home screen or the “Extra
26 Cash” section of the app, Dave makes a fresh determination of whether to offer the
27 consumer an advance. If Dave does offer the consumer an advance, it displays the
28 advance amount on the screen.

1 **Dave Actually Offers Far Less in Cash Advances Than Advertised**
2 **and Charges Multiple Undisclosed Fees**

3 32. After enrolling, the overwhelming majority of consumers discover
4 that Dave either will not offer them a cash advance at all, or will only offer them
5 advances that are much smaller than advertised.

6 33. Making matters worse, despite claiming “no hidden fees,” Dave
7 charges consumers at least three types of fees that it does not clearly and
8 conspicuously disclose before it obtains access to their bank accounts:

- 9 a. an “Express Fee” of \$3 to \$25 to obtain an advance instantly, as
10 advertised, instead of two to three business days later;
11 b. an additional charge—imposed in many instances without the
12 consumer’s knowledge or consent—that Dave refers to as a
13 “tip” and falsely claims will cause it to donate a specific
14 number of meals to feed hungry children; and
15 c. a \$1 monthly membership fee, also frequently imposed without
16 consumers’ knowledge or consent, because Dave’s disclosure
17 of it is designed to be easily overlooked.

18 *Dave Provides Far Less Than the Advertised Cash Advance*

19 34. Despite Dave’s numerous prominent claims that consumers will
20 receive cash advances of up to \$500, few customers are offered anything close to
21 that, if Dave offers them anything at all. For example, in the first 14 months after
22 Dave began advertising advances of up to \$500, Dave offered new users a \$500
23 advance only 0.002% of the time: a rate of less than 1 in 45,000. To other new
24 users, Dave did not offer an amount even close to the amount advertised – only
25 0.13%, or a rate of less than 1 in 750, were offered even half of the advertised
26 \$500. When Dave did offer an advance, its most common offer was \$25.

27 35. More than three-quarters of the time, Dave did not offer first-time
28 customers any advance at all. In fact, on average more than 40% of new users

1 were unable to obtain even a single offer of a cash advance from Dave in a
2 calendar month. Of those new users who did receive advance offers, about 0.009%
3 of those offers—or less than 1 in 10,000—were for \$500 and only 0.56%, or about
4 1 in 175, were for at least \$250.

5 36. Repeat Dave users also receive offers that are much less than
6 advertised. In the first 14 months after Dave began advertising advances of up to
7 \$500, on average, more than a third of existing (not “new”) Dave users were not
8 offered a cash advance at all in a calendar month. When determining whether and
9 in what amount to offer an advance to an existing user, Dave offered a \$500
10 advance less than 1% of the time.

11 37. Neither Dave’s ads nor its app store content inform consumers that
12 very few consumers receive cash advances for the advertised \$500. Other than
13 prominent representations such as “Get up to \$500,” the only references to the
14 amount of consumers’ advances in Dave’s advertising or app store listings
15 typically are in small print, are buried in block text, use vague or confusing
16 language, and/or are found in obscure locations.

17 38. Many consumers believe Dave’s claims that they will get up to \$500
18 upon enrolling. One consumer reported that Dave “[c]laims you can borrow up to
19 500.00 dollars. But, I only was able to get 25.00. Not very helpful.” Another
20 consumer wrote that they “have not been able to do any advances at all[;] my
21 advance amount stays at zero but yet I get emails daily with lies that they do \$500
22 advances[;] just a scam in my opinion.” Yet another consumer complained that
23 Dave’s advertising was “[m]isleading. . . . you’re not guaranteed \$400 or \$500.”

24 39. Many consumers make clear that they would not have signed up for
25 Dave if they had known Dave would offer far less than promised. One consumer
26 tried to cancel because “[d]espite making decent money, they wouldn’t loan me
27 more than \$5.” Another consumer complained they “got 2 small cash advances
28 and paid them OFF ON TIME. They kept promising 500 for the past month and

1 NEVER delivered. I Uninstalled this useless app from this useless company.” Yet
2 another consumer said “I downloaded Dave because I needed some money[;] they
3 say u can get up to 500 well they only allowed me 25 . . . to me it was just a waste
4 of my time. . . . I paid them back and will be deleting this account.” Still another
5 consumer reported, “Every time you’ll tell me you’re going to give me \$500[]
6 Advance I put in my bank Information And then you never do it. . . . Stop
7 with the lies.”

8 40. Internal documents reflect that consumers believe they will be offered
9 Dave’s advertised advance amounts and are surprised to receive less. A Dave
10 internal analysis of customer service data found that “Low advance amount,” “Low
11 advance limits and approval,” and “Advance request denied” were among the top
12 “drivers” of consumer contacts with customer service. Similarly, a Dave internal
13 survey found that “Not enough money” was a top source of dissatisfaction for all
14 Dave users, new and old. Jason Wilk received and reviewed many consumer
15 complaints and internal Dave analyses showing the consumer dissatisfaction
16 arising from Dave’s deceptive representations.

17 41. Thousands of consumers contact Dave each month to cancel their
18 accounts because the offered advance amounts are smaller than promised or
19 because Dave offers them nothing. Multiple analyses Dave has performed on its
20 customer service data have found that of customers who reach out to cancel their
21 accounts, “most don’t qualify for an advance or get a smaller than expected
22 advance.”

23 *Dave Charges an Undisclosed Fee to Get Cash Advances “Instantly,” as*
24 *Advertised*

25 42. Although Dave prominently advertises that consumers will receive
26 funds “instantly,” “on the spot,” “now,” and “in under 5 minutes,” Dave in fact
27 requires consumers to wait two to three business days before receiving their
28 advance unless they pay Dave an “Express Fee” of \$3 to \$25.

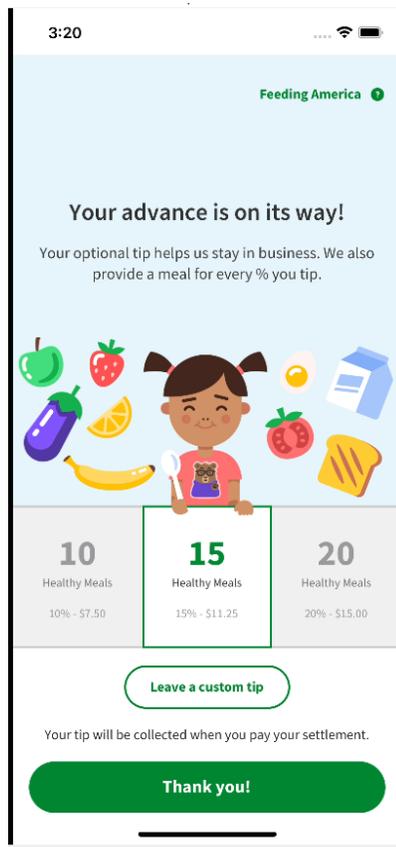
1 43. Consumers find out that they must pay an “Express Fee” to avoid
2 waiting several days to receive their advance only after they give Dave access to
3 their bank accounts and try to collect an offered advance. An internal Dave
4 presentation received by Wilk and others at the company noted in a discussion of
5 the screen that demands an Express Fee in order to receive “money now,” that
6 “[w]hat we promised [to consumers] is not what they see.” The presentation
7 recommends that Dave should “[s]et expectations much earlier on the true cost of
8 the money [consumers] are borrowing.” Defendants did not adopt that
9 recommendation.

10 44. Instead, prior to collecting bank account information and offering a
11 cash advance, Dave presents a consumer with, at most, only a vague statement on
12 this topic. For example, the screen headed “Connect your primary bank,” pictured
13 in Paragraph 27 above, contains in text that is smaller and fainter than either the
14 screen’s bold-print heading or the large green button labeled “Connect account,”
15 the statement “Get money instantly for a small fee.” This statement does not
16 inform consumers that, if they do not pay the unspecified “small fee,” Dave will
17 require them to wait two to three business days before receiving their advanced
18 funds. This statement also does not inform consumers of the amount of the fee,
19 which often ranges between \$3 and \$25.

20 45. Similarly, neither Dave’s ads nor its app store content inform
21 consumers that consumers must pay this Express Fee to receive their advance
22 quickly, as advertised, rather than wait several days. While Dave prominently
23 represents that consumers will receive funds “instantly,” “on the spot,” “now,” and
24 “in under 5 minutes,” Dave’s only references to Express Fees in its advertising or
25 at the app stores typically appear in small print, are buried in block text, use vague
26 or confusing language, and/or are found in obscure locations, and do not state that
27 unless consumers pay an Express Fee, Dave will require them to wait two to three
28 business days before receiving their advance.

1 *Defendants Deceive Consumers About Whether They Are Being Charged for a*
2 *“Tip” and Whether the Charge Is Avoidable*

3 46. After accepting an advance offered by Dave and selecting a transfer
4 method, Dave typically presents consumers with a screen that it uses to charge
5 them a “tip.” Dave does not make clear to consumers that they are agreeing to this
6 additional charge or that they have any way to avoid agreeing to it. An example of
7 this screen is below, headed “Your advance is on its way!”:



23 App Screenshot 4

24 47. A large green button labeled “Thank you!” appears at the bottom of
25 the screen. Dave charges consumers who simply tap the “Thank you!” button an
26 extra 15% of their advance. Dave calls this charge a “tip,” and it is an important
27 revenue source for Dave. Indeed, “tipping” was implemented by Wilk for the
28 purpose of generating additional revenue from consumers, and Wilk controls the

1 design of “tipping” in the app. As Wilk knows, many consumers who tap the
2 “Thank you!” button are surprised to later learn that Dave has charged them an
3 extra 15% of their advance. Dave does not mention the charge in its advertising,
4 and consumers who open the Dave app for the first time and proceed directly to
5 attempt to take an advance do not encounter any mention of this charge, or how to
6 avoid being subject to it, before granting Dave access to their bank accounts.

7 48. Many consumers did not realize they were paying the extra charge
8 that Dave calls a “tip.” Many others understood this extra charge to be an
9 unavoidable part of Dave’s advance process. Consumer complaints include the
10 following:

- 11 a. “They will add a tip without your knowledge.”
- 12 b. “[I]t forces you to tip.”
- 13 c. “[M]akes you tip them”
- 14 d. “[I]t does not give me an option to not leave a tip.”
- 15 e. “Don’t hit ‘thank you’ on tip screen, you’ll see many ppl say
16 this. It counts as agreeing to high tip & IS SNEAKY.”
- 17 f. “The interface is set up to trick you into giving the tip. . . . I
18 feel cheated/scammed by this whole process.”
- 19 g. “[T]hey make you give a tip when you don’t want to give
20 one”
- 21 h. “App is very deceptive and impossible to get help. It asks for a
22 ‘tip’ when you get an advance, and it’s not obvious or clear
23 how NOT to tip.”
- 24 i. “Deceptive, riddled with fees and default 15% tip. This app is
25 toxic and exploiting those who want honest financial products.
26 Shame on you.”
- 27 j. “Absolute awful app, tricks you into giving them a tip
28 whenever you advance money. DO NOT USE!!!!”

1 49. Internal Dave documents acknowledge both that Dave charges
2 consumers for “tips” without their awareness and that Dave’s interface leads
3 consumers to believe that such charges are unavoidable. For example, an internal
4 analysis of customer service data states that “[m]embers are still unaware they left
5 a tip when they advance” and that consumers are “upset” about these charges. The
6 analysis notes that consumers are “having a hard time” avoiding being charged
7 Dave’s preset “tip” of 15% and recommends that Dave “provide better visibility”
8 about how to avoid the charge. Defendants did not implement the recommendation
9 to make clear to consumers how to avoid the charge.

10 50. An internal Dave presentation describes these screens as a “[d]ark”
11 user interface and states that “selecting custom tip is unnoticeable and some didn’t
12 know this was possible.” The presentation recommends that Dave “[m]ake sure to
13 have the option to not tip be clear.” Defendants did not implement this
14 recommendation to create a clear option for consumers to avoid the charge for a
15 “tip.”

16 51. An internal Dave study found that “Didn’t want to pay tip” was one of
17 the top sources of Dave user dissatisfaction. Another internal Dave document lists
18 “[n]o clear option to not tip” as a “Pain-Point[.]” for consumers. The document
19 also recommends, as the top of a list of “Future Initiatives,” adding a “[n]o tip
20 button.” Defendants did not add this button.

21 52. In an online chat between two Dave employees who collected and
22 examined app store reviews that mention “tipping,” one commented that
23 “customers do not understand on how to edit their “tip” amount or how to add no
24 tip and this is the biggest customer pain.” The other agreed, adding that app
25 reviews state that Dave “do[es]n’t give you a chance not to tip.” The second Dave
26 employee also observed that “[p]eople expect an obvious ‘no tip’ button.” The
27 employee described Dave’s interface as a “dark pattern” that had been criticized by
28 “designers and members.”

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App Screenshot 5

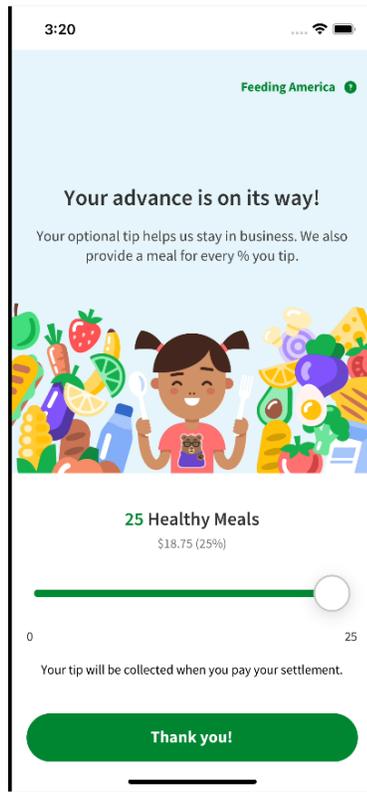
56. Beneath the images of the child and nine food items are three boxes labeled “10 Healthy Meals,” “15 Healthy Meals,” and “20 Healthy Meals.” If the consumer taps on “20 Healthy Meals,” the number of food items around the child increases to twelve. If the consumer taps on “10 Healthy Meals,” the number of food items around the child drops.

57. Many consumers tap the prominent green “Thank you!” button on this screen. Dave charges these consumers between 10% and 20% of their advance amount.

58. To avoid paying a “tip,” consumers must figure out that they need to tap the “Leave a custom tip” button, which is about half as long as the “Thank you!” button and—unlike the “Thank you!” button, which is colored green against a white background—is colored white against a white background. If consumers tap this button, the three labeled boxes are replaced with a horizontal “slider.”

1 Initially, above the slider in large, bold-print text appear the words “15 Healthy
2 Meals” and an image of the cartoon child holding a spoon and surrounded by ten
3 food items.

4 59. If the consumer moves the slider to the right, the number of “Healthy
5 Meals” displayed increases incrementally up to 25. As the count of “Healthy
6 Meals” increases, more food items appear around the cartoon child, with twenty-
7 five items filling the screen when the count of “Healthy Meals” reaches 25:



21 App Screenshot 6

22 60. If the consumer moves the slider to the left, the number of “Healthy
23 Meals” displayed decreases incrementally down to 0. As the slider moves to the
24 left and the count of “Healthy Meals” decreases, food items disappear from around
25 the child. If the count of “Healthy Meals” reaches 2, the only items around the
26 child are bread and water.

27 61. To avoid paying any tip, the consumer must move the slider fully to
28 the left to reduce the count of “Healthy Meals” to zero. The slider then turns from

1 green to red, the text of the large green button at the bottom of the screen changes
2 from “Thank you!” to “No tip,” and the image of the child is replaced by an image
3 of an empty plate with a fork and spoon.

4 62. The combination of the prominent imagery of multiple food items
5 surrounding the cartoon child and the bold-print language about the provision of
6 10, 15, or 20 “Healthy Meals” leads consumers to believe that, if the consumer
7 permits Dave to charge a large “tip,” Defendants will donate that money to charity
8 or pay for or donate a specified number of meals to children in need, based on the
9 size of the “tip.”

10 63. Defendants further misrepresent their use of the “tips” elsewhere,
11 including on their website. For example, “frequently asked questions” material on
12 Dave’s website poses the question “What are tips and who do they benefit?”
13 Defendants’ answer states that “Dave has partnered with” a “hunger-relief
14 organization to maximize your impact.” It continues to claim, “This year, Dave is
15 working to provide at least \$250,000” for the charity’s “network of food banks
16 serving every county in America. . . . Your contribution will help feed 44 million
17 people including more than 13 million children facing hunger in the U.S.”
18 Defendants’ answer does not mention that they themselves benefit from “tips.”

19 64. In truth, Dave does not pay for or donate a specified number of meals
20 to children in need based on its user “tips.” Instead, for each percentage point of a
21 “tip” charged to a consumer, Dave donates only 10 cents and keeps the rest. For
22 example, in App Screenshot 5 above, if the consumer were to tap the “Thank you!”
23 button, Dave would not pay for or donate “15 Healthy Meals” as stated in bold
24 print surrounded by images of numerous food items, but would instead donate only
25 \$1.50 to a hunger relief organization: far less than it would cost to buy 15 meals or
26 to purchase and prepare the food for 15 meals.

27 65. Dave internal documents acknowledge this “Healthy Meals” screen
28 content is misleading. For example, a Dave executive described the “Healthy

1 Meals” content of these screens to Wilk as involving a “dark / guilt inducing
2 design pattern” that helps drive revenue. Similarly, two Dave executives discussed
3 this interface as a “dark pattern.” The two agreed that the “hungry child
4 def[initely] leaves us open for criticism” and exhibits “very questionable design
5 decisions.” An internal document further notes that the “Healthy Meals” content
6 of Dave’s interface “has been called out by industry advocates and media
7 publications as manipulative and misleading.” Despite this, Defendants continue
8 to subject Dave users to the “Healthy Meals” content.

9 66. Defendants’ deceptive “Healthy Meals” content succeeds in affecting
10 consumer behavior. Dave ran an experiment in which some consumers used a
11 version of the app’s interface that did not include the “Healthy Meals” content.
12 Without this content, the percentage of new users who were charged for a “tip”
13 dropped by about a third and overall “tip” revenue dropped by almost a quarter. A
14 Dave internal analysis found that, although Dave allowed only a small minority of
15 its users to encounter versions of the interface that did not involve the “Healthy
16 Meals” content, the experiment nonetheless caused a substantial fall in Dave’s
17 monthly revenue. The analysis recommended that Dave immediately resume
18 showing all users the “Healthy Meals” content.

19 67. Similarly, Dave ran an experiment in which some users used a version
20 of the interface that did not include the initial screen, shown at Paragraph 55, with
21 three “Healthy Meals” boxes. Instead, the consumers in this experiment were
22 taken directly to one of several variations of the “slider” screen shown at Paragraph
23 59. Some variations included Dave’s “Healthy Meals” content, while others did
24 not.

25 68. A Dave internal analysis of this experiment found that, when the
26 initial screen with the three “Healthy Meals” boxes was eliminated, the number of
27 consumers charged for a “tip” and the amounts of those charges both fell. These
28 numbers fell most dramatically for the variations that also eliminated the “Healthy

1 Meals” content from the “slider” screen. A subsequent Dave internal analysis
2 expressed concern about the drop in Dave’s revenue resulting from the
3 experimental changes and recommended that Dave resume showing “Healthy
4 Meals” content to all users included within the experiment.

5 69. Wilk concluded that Dave’s experimentation showed its strategy of
6 presenting “tips” as connected to the provision of healthy meals was important to
7 preserving the company’s revenue. Defendants have continued to present screens
8 with “Healthy Meals” representations to the overwhelming majority of consumers
9 to whom they give cash advances.

10 *Dave Takes a Monthly Charge from Consumers’ Accounts without Clearly and*
11 *Conspicuously Disclosing the Charge*

12 70. Dave charges consumers who connect their bank accounts to its app
13 an automatically recurring monthly fee, without first clearly disclosing that fee or
14 obtaining the consumer’s informed consent to it. Dave does not allow users to get
15 a cash advance without first enrolling in this automatically recurring charge. Dave
16 continues to charge a consumer this unavoidable fee each month, until the
17 consumer takes affirmative action to cancel it.

18 71. As shown in App Screenshot 3, *supra* paragraph 27, immediately
19 before obtaining access to consumers’ bank accounts, Dave typically displays a
20 screen headed “Connect your primary bank,” with a bright green button at the
21 bottom labeled “Connect account”.

22 72. Many consumers do not notice small light-colored text over the large
23 green action button that mentions Dave’s membership fee and FAQs. They are
24 then surprised when Dave enrolls all consumers who tap the “Connect account”
25 button in a subscription that automatically renews each month, whether or not they
26 are offered a cash advance. Dave charges these consumers \$1 monthly on a
27 recurring basis unless the consumer takes affirmative action to stop the charge. As
28 Dave has acknowledged in an internal document, “[p]eople don’t know they’re

1 paying [the] \$1” subscription fee and it can be “a surprise to members” to discover
2 that Dave has taken \$1 each month from their bank accounts. Similarly, an
3 internal Dave analysis of a customer survey notes that “our members say” that
4 Dave “doesn’t tell you it’s going to charge a monthly fee when you first sign
5 up” Dave’s customer service has received, on a monthly basis, hundreds of
6 communications from consumers on the topic “What is the \$1 charge?”

7 73. Wilk and others at Dave have received complaints from consumers
8 that they did not agree to be charged the membership fee and did not know it
9 existed until after they were charged. Examples of consumer complaints include
10 the following:

- 11 a. “They charge a \$1 a month ‘membership fee’ which is never
12 disclosed to you once while setting up the account.”
- 13 b. “DON’T SIGN UP Unknowingly started charging me \$1 a
14 month”
- 15 c. “They just started charging me a monthly fee with no notice.
16 Watch any card you have used in this app.”
- 17 d. “Huge SCAM. After signing up and realizing they would loan
18 me \$50[,] I used another source. Then they announced they
19 decided to charge a fee, After the fact. Without my consent.”
- 20 e. “[N]oticed they are charging me a membership fee. Its only \$1
21 but I didn’t know about it and had never taken any loan from
22 them. Maybe if they had told me upfront I would be opted into
23 their membership system . . . I would have been able to cancel
24 it with no hard feelings after”
- 25 f. “screw your app I never asked to get charged a subscription fee
26 and then I later got charged for it . . . I never asked to get
27 charged this at all and you otherwise authorized it without my
28 permission”

1 g. “Never agreed to a membership, but they used my checking
2 account information to take a membership fee even when my
3 debit card was locked. Very dissatisfied with this.”

4 74. Such complaints are unsurprising, as consumers who open the Dave
5 app for the first time and proceed directly to attempt to take an advance only
6 encounter any mention of the existence of the membership fee on a screen like the
7 one depicted above headed “Connect your primary bank,” where it appears in text
8 that is smaller, lighter, and/or less prominent than either the heading or the bright
9 green button labeled “Connect account.”

10 **Dave Fails to Provide Simple Mechanisms for Consumers to Stop the**
11 **Recurring Charge**

12 75. Dave fails to provide simple mechanisms for consumers to stop the
13 recurring “membership” charge. In the words of one consumer, “I’ve tried leaving,
14 but they literally will not let me go. I had to fight with them to delete my account,
15 and I kept getting charged the membership fee. . . . LEAVE ME ALONE. I
16 HATE DAVE.”

17 76. Consumers who realize that Dave is charging them every month and
18 want to stop it have often been unable to find an in-app process to do so, either
19 because Dave has not provided one, because Dave does not prominently inform
20 consumers how to stop the charge, or for both reasons.

21 77. Dave has failed to provide many of its users with an in-app process
22 for users to stop the recurring charge. From at least August 2021 through
23 November 2022, Dave did not allow *any* consumers to stop the recurring charge
24 through an in-app process if they had also opened a Dave bank account (which
25 Dave, beginning in early 2022, required all new consumers to have if they wanted
26 advances). And even after November 2022, Dave failed to give many users an in-
27 app cancellation option.

28 78. Additionally, Dave does not prominently inform consumers how to

1 stop the recurring charge, including what options exist for stopping the charge,
2 what rules apply to those options, or where any in-app processes for stopping the
3 charge can be found. Instead, consumers are forced to hunt instructions on how to
4 close their account. Even consumers who successfully figure it out do not
5 necessarily succeed in ending their subscriptions, particularly because Dave may
6 refuse to cancel the subscription unless the consumer’s account is settled.

7 79. Some consumers are convinced that there is no way to stop the
8 recurring charge. For example, consumers have complained that “[t]hey continue
9 to charge me \$1 every single month with no way to opt out” and “[t]here is no way
10 to unsubscribe and they keep charging me.” An internal Dave analysis of
11 consumer complaints made to the Better Business Bureau flagged “inability to
12 cancel easily within the app” as a top driver of complaints, noting that consumers
13 are “upset that there isn’t a self-cure option in-app.”

14 80. Dave has obscured information about mechanisms for stopping the
15 recurring charge to such a degree that even Dave managers struggle to understand
16 and use them. In an exchange on a messaging platform, two Dave senior managers
17 discussed the option to temporarily stop the recurring charge by “pausing” an
18 account, including their uncertainty about what it means to “pause” an account and
19 whether one of them had been able to successfully find a pause function within the
20 app. In part of their exchange, the two attempted to guess why one of them
21 seemed to be unable to find or use “pause”:

22 “we can’t pause if we have a dave spending accou[nt] with money?”

23 “seems like a weird thing”

24 “I have no idea”

25 “lol”

26 81. Some consumers who are unable to find an in-app process send a
27 message to Dave customer service asking to cancel the charge. Dave does not
28 simply stop the recurring charge in response to such messages. Instead, Dave will

1 do one or more of the following: (a) point the consumer to an in-app process that
2 may or may not be available for the consumer; (b) deny that Dave customer service
3 has the ability to stop the charge for the consumer; or (c) demand, in order to
4 cancel or “pause” the charge, that the consumer provide multiple points of personal
5 and/or financial account information. The information demanded by Dave has
6 varied but has included date of birth, phone number used to sign up for Dave, full
7 mailing address, last four digits of the consumer’s social security number, and
8 details about the last two transactions on the consumer’s external bank account.

9 82. Dave has frequently failed to respond to requests to stop the recurring
10 charges. One consumer warned, “DO NOT DOWNLOAD THIS. EXTREMELY
11 HARD TO CONTACT ANYONE. THEY DON’T DELETE YOUR ACCOUNT
12 WHEN ASKED.” Another consumer wrote that “[t]he Dave app won’t let me
13 close my account I’ve literally been trying everyday for the last 2 weeks, I
14 have emailed no response, reached out for assistance no help, why won’t it let me
15 close it? . . . They just want to keep me locked in so that can continue to take 1\$ a
16 month from me.”

17 83. Dave’s demands for sensitive information from consumers are another
18 roadblock to stopping the charge. As noted in an internal Dave analysis of
19 consumer complaints made to the Better Business Bureau, consumers who want to
20 stop the charge often abandon these efforts in the face of Dave’s demands for
21 sensitive information. One consumer stated that “[t]hey refuse to cancel my
22 account and just tell me that I need to send more and more sensitive personal
23 information in a sloppy email to someone named ‘Ambear.’ ” For another
24 consumer who wanted to “pause” her account, it took twenty-seven days, nine
25 messages to customer support, and a threat to contact the Better Business Bureau
26 to get Dave to stop charging her.

27 84. Moreover, consumers who do identify Dave’s in-app processes for
28 stopping the recurring charge often find that these processes are not simple. For

1 example, Dave requires a consumer starting on the app’s main screen to take at
2 least nine separate steps to reach and complete Dave’s current in-app cancellation
3 process. In parts of this process, consumers are diverted from cancellation if they
4 select the most prominent option on the screen. Indeed, a Dave executive, in
5 considering a colleague’s description of Dave’s “account close, cancel” app
6 functionality as a “dark pattern” that is “purposefully confusing and hard,” wrote
7 that “I’m sure it’s not good (I remember looking at it a long time ago and it was
8 bad).” And an internal Dave analysis of its customers identified “Cancellation” as
9 a driver of negative customer perceptions of Dave’s app, noting that “our members
10 say” that it is “[h]ard to cancel.”

11 85. Beyond all this, in some instances, Dave has denied consumers any
12 mechanism for stopping the recurring charge, let alone simple mechanisms.
13 Specifically, Dave at times has refused to stop the recurring charge when,
14 according to Dave, the consumer has not yet fully repaid an advance. In July 2020,
15 Dave informed its customer service team that consumers who are eligible to pause
16 are those “who *do not* have an open advance or an advance with pending
17 advance payment.” And, in the following years, customer service representatives
18 have repeatedly informed consumers that they cannot “pause” or cancel to stop the
19 recurring charge because Dave is claiming that they have an unpaid advance.

20 86. Defendants have received consumers’ complaints and are aware of the
21 hurdles that consumers face in attempting to cancel, but they have nonetheless
22 chosen not to provide consumers with a simple mechanism to cancel.

23 87. Recognizing that it operates in a highly regulated space, Dave
24 purportedly runs a compliance management system to address legal and regulatory
25 scrutiny pursuant to the FTC Act and other laws against unfair and deceptive
26 practices. Defendants are aware of government scrutiny into their business
27 practices. In January 2023, the FTC issued Dave a Civil Investigative Demand that
28 stated the FTC was investigating Dave’s potential violations of the FTC Act and

1 ROSCA in connection with the company’s sale and promotion of its cash advance
2 products. Defendants also had numerous other indications that their practices
3 misled consumers, including the consumer complaints and internal analyses and
4 discussions referenced in this Complaint. Consumers complained that Dave
5 deceived them, that it was breaking the law, and that it was violating ROSCA.
6 Despite all of this, Defendants chose to continue engaging in and profiting from
7 unfair, deceptive, and unlawful practices, as described in this Complaint.

8 88. Based on the facts and violations of law alleged in this Amended
9 Complaint, the United States has reason to believe that Defendants are violating or
10 are about to violate the law because, among other things:

- 11 a. Defendants have engaged in their unlawful acts and practices
12 repeatedly over a period of years;
- 13 b. Defendants have earned significant revenues from participating
14 in these unlawful acts and practices;
- 15 c. Defendants have continued their unlawful acts or practices
16 despite knowledge of numerous consumer complaints and
17 related government investigation and enforcement action; and
- 18 d. Defendants have an incentive to continue to engage in
19 violations and retain the means and ability to do so.

20 **VIOLATIONS OF THE FTC ACT**

21 89. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
22 deceptive acts or practices in or affecting commerce.”

23 90. Misrepresentations or deceptive omissions of material fact constitute
24 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

25 **Count I: Misrepresentations Regarding Cash Advances**

26 91. Paragraphs 1 through 90 are incorporated as if set forth herein.

27 92. In numerous instances in connection with the advertising, marketing,
28 promotion, offering for sale, or sale of its cash advance services, Defendants

1 represent and have represented, directly or indirectly, expressly or by implication,
2 that the consumer can obtain a cash advance of up to an advertised amount, and
3 that consumers will receive cash advances instantly or within a matter of minutes
4 without being charged any hidden fees.

5 93. Defendants’ representations as described above are false or
6 misleading or were not substantiated at the time the representations were made.

7 94. Therefore, Defendants’ representations as described above constitute
8 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
9 § 45(a).

10 **Count II: Misrepresentations Regarding “Tipping” Charges**

11 95. Paragraphs 1 through 94 are incorporated as if set forth herein.

12 96. In numerous instances in connection with the advertising, marketing,
13 promotion, offering for sale, or sale of its cash advance services, Defendants
14 represent, directly or indirectly, expressly or by implication, that

15 a. making a selection such as tapping the “Thank you!” button on
16 a screen headed “Your advance is on the way!” merely concludes the
17 transaction;

18 b. the charge that Defendants refer to as a “tip” is unavoidable;
19 and

20 c. based on the consumer’s payment of a charge that Defendants
21 refers to as a “tip,” Defendants will pay for or donate a specified number of
22 meals for children in need.

23 97. Defendants’ representations as described above are false or
24 misleading or were not substantiated at the time the representations were made.

25 98. Therefore, Defendants’ representations as described above constitute
26 deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
27 § 45(a).

28

1 **VIOLATIONS OF THE**
2 **RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

3 99. In 2010, Congress passed the Restore Online Shoppers' Confidence
4 Act, 15 U.S.C. §§ 8401 *et seq.*, which became effective on December 29, 2010.
5 Congress passed ROSCA because “[c]onsumer confidence is essential to the
6 growth of online commerce. To continue its development as a marketplace, the
7 Internet must provide consumers with clear, accurate information and give sellers
8 an opportunity to fairly compete with one another for consumers’ business.”
9 Section 2 of ROSCA, 15 U.S.C. § 8401.

10 100. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging
11 consumers for goods or services sold in transactions effected on the Internet
12 through a negative option feature, as that term is defined in the Commission’s
13 Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller
14 (1) clearly and conspicuously discloses all material terms of the transaction before
15 obtaining the consumer’s billing information, (2) obtains the consumer’s express
16 informed consent before making the charge, and (3) provides a simple mechanism
17 to stop recurring charges. 15 U.S.C. § 8403.

18 101. The TSR defines a negative option feature as a provision in an offer or
19 agreement to sell or provide any goods or services “under which the customer’s
20 silence or failure to take an affirmative action to reject goods or services or to
21 cancel the agreement is interpreted by the seller as acceptance of the offer.”
22 16 C.F.R. § 310.2(w).

23 102. Defendants sell Dave memberships as described above, through a
24 negative option feature as defined by the TSR. 16 C.F.R. § 310.2(w). Dave
25 automatically charges a consumer monthly membership fees and charges the
26 consumer’s bank account for those fees until the consumer affirmatively acts to
27 cancel his or her membership.

28 103. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, and

1 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of ROSCA
2 constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the
3 FTC Act, 15 U.S.C. § 45(a).

4 104. Defendants' violations are willful and knowing.

5 **Count III: Failure to Provide Clear and Conspicuous Disclosures**

6 105. Paragraphs 1 through 104 are incorporated as if set forth herein.

7 106. In numerous instances, in connection with charging consumers for
8 goods or services sold in transactions effected on the Internet through a negative
9 option feature, as described above, Defendants have failed to clearly and
10 conspicuously disclose before obtaining consumers' billing information all
11 material transaction terms, including the following:

12 a. that Defendants offer cash advances at or near the amounts
13 advertised to very few consumers, and do not offer any cash advances to
14 some customers;

15 b. that consumers cannot obtain cash advances without waiting
16 two to three business days unless they pay an additional fee, and the details
17 of that fee;

18 c. that Defendants charge consumers an additional fee that they
19 refer to as a "tip," and the steps consumers must take to avoid being charged;
20 and

21 d. that Defendants charge consumers a recurring membership
22 subscription fee that will automatically recur until the consumer takes action
23 to cancel it, and details about how the consumer can cancel.

24 107. Therefore, Defendants' acts or practices described above violate
25 Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 5(a) of the FTC Act, 15
26 U.S.C. § 45(a).

27 108. Defendants have engaged in these unlawful acts knowingly, with
28 knowledge of applicable regulations and with knowledge of numerous consumer

1 complaints.

2 **Count IV: Failure to Obtain Express Informed Consent**

3 109. Paragraphs 1 through 108 are incorporated as if set forth herein.

4 110. In numerous instances, in connection with charging consumers for
5 goods or services sold in transactions effected on the Internet through a negative
6 option feature, Defendants have failed to obtain a consumer's express informed
7 consent before charging the consumer's credit card, debit card, bank account, or
8 other financial account for products or services through such transaction.

9 111. Therefore, Defendants' acts or practices described above violate
10 Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 5(a) of the FTC Act, 15
11 U.S.C. § 45(a).

12 112. Defendants have engaged in these unlawful acts knowingly, with
13 knowledge of applicable regulations and with knowledge of numerous consumer
14 complaints.

15 **Count V: Failure to Provide Simple Mechanisms to Stop Recurring Charges**

16 113. Paragraphs 1 through 112 are incorporated as if set forth herein.

17 114. In numerous instances, in connection with charging consumers for
18 goods or services sold in transactions effected on the Internet through a negative
19 option feature, as described above, Defendants have failed to provide simple
20 mechanisms for a consumer to stop recurring charges from being placed on the
21 consumer's credit card, debit card, bank account, or other financial account.

22 115. Therefore, Defendants' acts or practices violate Section 4 of ROSCA,
23 15 U.S.C. § 8403, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 116. Defendants have engaged in these unlawful acts knowingly, with
25 knowledge of applicable regulations and with knowledge of numerous consumer
26 complaints.

27 **CONSUMER INJURY**

28 117. Consumers are suffering, have suffered, and will continue to suffer

1 substantial injury as a result of Defendant’s violations of the FTC Act and
2 ROSCA. Absent injunctive relief by this Court, Defendants are likely to continue
3 to injure consumers and harm the public interest.

4 **CIVIL PENALTIES**

5 118. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A),
6 authorizes this Court to award civil penalties for each violation of ROSCA.

7 119. Defendants violated ROSCA with actual knowledge or knowledge
8 fairly implied on the basis of objective circumstances, as required by Section
9 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

10 **PRAYER FOR RELIEF**

11 120. Wherefore, Plaintiff requests that the Court:

12 A. Enter a permanent injunction to prevent future violations of the
13 FTC Act and ROSCA;

14 B. Award monetary and other relief within the Court’s power to
15 grant;

16 C. Impose civil penalties for each violation of ROSCA; and

17 D. Award any additional relief as the Court determines to be just
18 and proper.

19
20
21 Dated: _____

Respectfully submitted,

22 **FOR THE UNITED STATES OF**
23 **AMERICA:**

24 BRIAN M. BOYNTON
25 Principal Deputy Assistant Attorney
26 General, Civil Division

27 BURDEN H. WALKER
28 Deputy Assistant Attorney General

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the State of
New York,

Petitioner,

- against -

DAILYPAY, INC.,

Respondent.

VERIFIED PETITION

Index No. _____

Petitioner People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG”), as and for her Verified Petition, respectfully avers:

INTRODUCTION

1. Beginning when it was still just a colony, decades before declaring Independence, New York adopted usury legislation to protect its most vulnerable residents from high-cost lending that preys on economic fragility and weakened bargaining positions. In the centuries that followed, strengthened prohibitions on usury have been enacted on multiple occasions, including laws that overrode judicially imposed usury limits and the addition of criminal penalties for usury, among other enhancements. This long and unbroken history reflects a clear declaration of public policy by New York’s legislature: lending at usurious rates, even where freely entered into, is financially unhealthy and destructive, and therefore is not permitted within the state of New York.

2. Efforts by lenders to circumvent New York public policy are almost as old as the prohibition on high-cost lending itself. New York’s highest court “has recognized for more than a century that the economy changes” and that, as these changes occur, new opportunities come about for “lenders to extract unlawful interest rates through novel and increasingly sophisticated

instruments.” *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 342 (2021). Thus, the Court of Appeals instructs: “if the court can see that the real transaction was the loan or forbearance of money at usurious interest, its plain and imperative duty is to so declare.” *Id.* Embracing this call to action, New York courts have repeatedly applied usury prohibitions to loansharks, payday lenders, and others who exploit New Yorkers through illegal, abusive lending practices.

3. This action concerns a modern, technology-driven attempt to evade New York’s usury laws. In the transactions at issue here, workers obtain small-dollar advances, usually for less than \$100, and pay fees of \$2.99 or \$3.49, reflecting exorbitant and plainly usurious costs of credit. In exchange, workers agree to have their next paycheck deducted to cover all amounts owed before they receive the remaining balance. As collateral, they assign all rights and title to their wages owed and promise to not interfere with repayment. That assigned collateral also is secured by employers’ obligations to pay, supported by extensive credit underwriting regarding employers’ ability to make payroll. This is secured lending, plain and simple—and usurious lending at that. Such activity contravenes centuries of New York law and policy, and it should be barred.

* * *

4. Respondent DailyPay, Inc. (“DailyPay” or “the Company”) is a New York-based payday lender that makes small-dollar, short-term, high-cost loans (each, a “Paycheck Advance”) to workers nationwide, including tens of thousands in New York. In a typical transaction, an employee obtains around \$75 from DailyPay eight days before her payday; then, on payday, DailyPay deducts about \$77.99 from her paycheck to recoup amounts lent plus \$2.99, an annualized percentage rate, or APR, of nearly 200%. And the single most common loan—a seven-day, \$20 Paycheck Advance for \$2.99—reflects an APR above 750%. Through transactions like these, DailyPay has extracted tens of millions of dollars in fees from New Yorkers’ wages.

5. DailyPay reaches workers by first contracting with their employers, who agree to make the Company their exclusive lender and to tout DailyPay's program as a benefit to their employees. Through these exclusive arrangements, DailyPay obtains real-time payroll data that the Company uses to offer Paycheck Advances in amounts that ensure that it will collect every dollar that it lends out and all fees that it charges. The Company also contracts with employers to send their workers' paychecks directly to DailyPay on payday, from which the Company deducts all amounts it is owed before passing on any remaining balance to employees.

6. DailyPay partners with employers to promote its Paycheck Advances, which the Company claims will provide workers financial freedom through the ability to obtain pay early—supposedly without interest. DailyPay's marketing materials, which contrast its program with payday lending, tell employees to enroll and download the app for free. DailyPay also promotes employees' ability to get money when needed, such as to cover unexpected expenses or bills, and regularly touts the Company's on-demand Paycheck Advances without mentioning fees.

7. DailyPay is what has come to be known as an "earned wage access" provider. The Company purports to offer hourly workers who are paid on fixed schedules "early access" to wages that have been "earned" during the pay period but not yet paid. Though terms may vary, these lenders all share certain characteristics: (i) they lend based on real-time payroll data or algorithmic estimates of future deposits; (ii) they charge transaction fees, charge more for loans with terms that begin immediately, or extract tips; and (iii) they carry on as though they are not making loans and not collecting interest because they say that they will not sue or engage in debt collection.

8. These claims are false, DailyPay's Paycheck Advances are loans, and its fees are interest. Though DailyPay promises that it will not sue or engage in debt collection, the Company has no need to do so. When an employee obtains a Paycheck Advance, she assigns wages to the

Company sufficient to repay her loan and all fees. DailyPay then employs layers of protection—extensive credit underwriting, direct recourse against employers, and employees’ obligations to assist in collection—to ensure a collections rate above 99.99%. Even the Company’s promise not to sue is illusory, as its loan agreements impose obligations on employees to repay DailyPay when employers pay workers directly or make payroll errors. Employees who fail to make these payments are in breach of their loan agreements, relieving DailyPay of its “no recourse” promise. Meanwhile, workers who obtain Paycheck Advances are saddled with outsized fees that do not correspond to DailyPay’s expenses and impose costs that are nearly always greater than 50% APR, including tens of thousands of Paycheck Advances with APRs in excess of 500%.

9. DailyPay’s business model also is fundamentally abusive. The engine that drives DailyPay’s revenue and makes the Company profitable is its cultivation of a subset of employees who are utterly dependent on the ability to regularly and repeatedly obtain Paycheck Advances for fees, thereby depleting their future paychecks and making them dependent on access to more loans. DailyPay touts employees’ addiction to potential investors, proclaiming that it will be able to consistently extract hundreds of dollars in wages on average each year from hourly workers. And the Company facilitates destructive lending by: (i) obscuring risks of dependency while promising financial freedom; (ii) leaning on exclusive relationships with trusted employers to promote the Paycheck Advance program as a benefit to their employees; and (iii) taking advantage of its right of first access to workers’ paychecks to ensure its own repayment while being indifferent to the harm that paycheck depletion causes to employees’ overall financial wellbeing.

10. The facts summarized above and set forth in this Petition are based on: the OAG’s review of advertisements, agreements, and produced documents, as well as other publicly available materials, cited as “Ex. ___” to refer to exhibits to the accompanying Affirmation of Christopher L.

Filburn (“Filburn Aff.”); the sworn testimony of Jane Levine, DailyPay’s former chief compliance officer who was designated to provide testimony (cited to throughout as the “Levine Tr.”), Filburn Aff. Ex. 2; and data analyses performed on transaction-level data for New York employees from October 1, 2020 to December 31, 2024 (the “Data Period”) memorialized in the Affidavit of Akram Hasanov (cited to throughout as the “Hasanov Aff.”), Filburn Aff. Ex. 1.

11. As established herein, DailyPay has continued to engage in repeated and persistent fraud and illegality in violation of New York’s Executive Law § 63(12), General Business Law (“GBL”) §§ 349 and 350, General Obligations Law § 5-501, Penal Law § 190.40, Personal Property Law § 46-F, and the Consumer Financial Protection Act, 12 U.S.C. § 5531 *et seq.*

PARTIES, JURISDICTION, AND VENUE

12. Petitioner Letitia James is the Attorney General of the State of New York. She is responsible for enforcing New York’s laws, including Executive Law § 63(12).

13. Respondent DailyPay is a Delaware corporation (Ex. 7) with its principal place of business located at 55 Water Street, New York, New York 10041 (Ex. 39).

14. Petitioner brings this special proceeding on behalf of the People of the State of New York under the authority granted in Executive Law § 63(12), which authorizes the Attorney General to bring a proceeding for injunctive and other equitable relief “[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.”

15. Venue is properly set in New York County because Petitioner is resident in New York County and has selected New York County, because Petitioner is a public authority whose facilities involved in the action are located in New York County, and because Respondent’s principal place of business is in New York County. *See* CPLR §§ 503, 505, 509.

FACTS

16. DailyPay is an app-based lender that makes Paycheck Advances to employees whose employers have enrolled in the Company's program. (Ex. 40; Levine Tr. 17:4–10.)

17. DailyPay targets employees who earn hourly wages and are paid on fixed cycles such as every two weeks or monthly, promoting Paycheck Advances as providing “wages” that employees have “earned” during the pay period but not yet received. (Ex. 40.)

18. Companies that have contracted with DailyPay to provide its Paycheck Advance program to employees include fast food chains such as Burger King and McDonald's, retailers such as Kroger and Target, and healthcare providers such as HCA and United Healthcare (Ex. 17, at 2189; Levine Tr. 201:20–24), many of whom pay wages at or near minimum wage.

19. DailyPay facilitates Paycheck Advances through an app-based platform that allows employees to obtain funds via electronic transfer from DailyPay to their bank accounts in amounts up to what DailyPay permits based on its analysis of payroll data. (Ex. 31; Ex. 40.)

20. The fee structure employed by DailyPay varies by employer. (Levine Tr. 159:13–60:5.) The Company today employs the following dual fee structure: DailyPay (i) charges \$0.00 to \$1.99 for Paycheck Advances with loan terms, meaning the period between payment of the Paycheck Advance and repayment on the next payday, that begin in 24 to 48 hours; and (ii) charges up to \$3.99 for Paycheck Advances with terms that begin immediately with immediate disbursement. (Ex. 5, § 2, at 0463). For employees of certain employers, this means that a fee is mandatory whether the employee chooses a Paycheck Advance with a term that begins in 24 to 48 hours or a Paycheck Advance with a term that begins immediately. (*See generally* Ex. 36.)

21. DailyPay collects the Paycheck Advances it sends employees, along with all associated fees, by requiring employers to route employees' direct deposits to a bank account held

by DailyPay. (Ex. 31.) Once the Company deducts everything it is owed by the employee, DailyPay deposits remaining amounts in employees' bank accounts. (Ex. 31.)

I. DailyPay Solicits Employers to Enter into Agreements that Facilitate DailyPay's Marketing and Offering of Paycheck Advances to Employees

22. To offer Paycheck Advances to employees, DailyPay solicits employers to enroll in its Paycheck Advance program (Levine Tr. 17:11–18:6; 28:18–29:4), after which DailyPay works with employers to market its Paycheck Advance program to employees. (Ex. 40.)

A. DailyPay Entices Employers to Enter into Master Services Agreements by Claiming that DailyPay Will Benefit Employers and their Employees

23. DailyPay's marketing of its Paycheck Advance program targets potential new employers. The Company's website, for example, promises that the program "can help you recruit more employees, increase employee engagement, and improve retention." (Ex. 38.)

24. DailyPay also circulates a newsletter-like document that markets its Paycheck Advance program to chief financial officers and other senior executives at prospective employers, touting the supposed benefits of the program. (Ex. 32; Levine Tr. 25:5–27:9.)

25. According to the newsletter, the program "will provide tremendous benefits to the employer – reduced turnover, increased employee productivity and engagement, and seamless integration across the tech stack – all for a price tag of \$0 to the business." (Ex. 32, at 0207.)

26. That same newsletter also warns employers to be wary of DailyPay's competitors who purport to offer free short-term advances to employees who sign up for paycards by pointing to a study that an employee who uses a paycard "typically pays an average of \$300/year in cardholder fees" through paycard fees. (Ex. 32, at 0207–0211.)

27. In other employer-facing ads, DailyPay similarly claims that its program will keep employees "engaged and working more efficiently than ever before." (Ex. 30, at 0157.) And

DailyPay's employer "Quickstart Guide" touts the Company's "life-changing" Paycheck Advance program that will result in "[r]educed absenteeism" among employees. (Ex. 21.)

28. In addition to benefits that DailyPay promises to employers, the Company also touts supposed benefits to employees. DailyPay tells employers that the Paycheck Advance program will help employees "pay bills on time, meet unexpected expenses and avoid racking up overdraft and late fees or resorting to having to take out predatory payday loans." (Ex. 32, at 0207.) The result, according to the Company, will be a "new financial system that ensures that money is always in the right place at the right time for everyone." (Ex. 30, at 0156.)

29. DailyPay similarly represents to prospective employers that their "employees will benefit" from the Paycheck Advance program "by having greater financial stability in their lives." (Ex. 32, at 0212.) The Company also claims that nearly all "transfers are used to pay bills and avoid late fees" and that nearly all employees "will receive over half of their paycheck on payday." (Ex. 30, at 0156.) And DailyPay ultimately promises employers that its program "creates permanent and positive changes in financial behavior." (Ex. 30, at 0156.)

30. Many of DailyPay's claims regarding its Paycheck Advance program rely on a single, 2021 survey conducted by the Aite Group. DailyPay paid for that survey to be conducted. (Ex. 12, at 0283.) The Company also worked closely with the Aite Group to design the survey (*e.g.*, Ex. 12; Ex. 14), while DailyPay management both discussed preliminary conclusions with the Aite Group immediately after the survey (*e.g.*, Ex. 15), and reviewed preliminary drafts of the final report for red flags before distribution (*e.g.*, Ex. 16). Employees who agreed to participate in the survey were promised an opportunity to win \$100. (Ex. 11, at 0257.)

31. The Aite Group's conclusions were based on a single survey of about 1,000 users (Ex. 11, at 0257), a miniscule slice of the more than 2 million users today. Key conclusions were

based on even fewer responses—findings regarding payday loan use, for example, were based on just over 200 users’ responses—a *de minimis* fraction of its user base. (Ex. 11, at 0265.) And only 24 employees who participated in the survey were from New York. (Filburn Aff. ¶ 12.) The Aite Group also acknowledged that the earned wage access market was “in its early stages” and that further “efforts to understand usage and outcomes” was needed. (Ex. 11, at 0273.)

B. DailyPay Markets to Employees, through their Employers, the Ability to Immediately Obtain Fee- and Interest-Free Paycheck Advances

32. Employers who ultimately agree to make DailyPay’s Paycheck Advance program available to their employees enter into DailyPay’s form Master Services Agreement (“MSA”). (Ex. 6; Levine Tr. 52:16–20; 56:25–57:14.) The MSAs require that DailyPay be the exclusive provider of Paycheck Advances to employers’ employees. (Ex. 6, ¶ 7(b), at 0230.)

33. Under their MSAs, participating employers agree to use “commercially reasonable efforts to promote” DailyPay’s Paycheck Advance program to their employees, including by identifying the program as “a benefit” offered by the employer, distributing marketing materials created by DailyPay to the employer’s employees, and taking steps to ensure that DailyPay’s own advertising and communications sent by email do not get routed to employees’ spam or junk email folders. (Ex. 6, ¶ 2(a)(ii), at 0223–24; Levine Tr. 66:9–67:22; *id.* at 108:25–09:10.)

34. The “Quickstart” guide provided by DailyPay, for example, tells employers to help roll out the program by displaying “posters in break rooms” and handing out “FAQ cards to employees at the beginning of shifts or during team huddles.” (Ex. 21.)

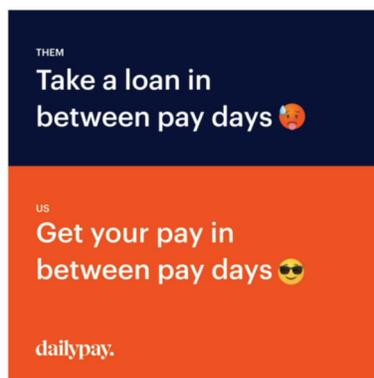
35. DailyPay licenses its marketing materials to participating employers to promote the Paycheck Advance program. (Ex. 6, ¶ 1(a), at 0223.) Through DailyPay materials, employers tell their employees that “[w]e’ve partnered with DailyPay to give you more control over your pay!” (Ex. 29, at 0135.) The communications describe the benefits as “no more waiting for payday, no

more late fees, and no more interest charges!” and informs employees that they should “[k]eep an eye out for a customized Welcome Email directly from DailyPay.” (Ex. 29, at 0136.)

36. Employers also are provided posters and flyers announcing “DailyPay Coming Soon!” that can be posted in the workplace, along with QR codes that employees can scan to “get a head start and download the free app.” (Ex. 18; Levine Tr. 107:5–10.) Other ads displayed in the workplace provide workers with website links to get started with DailyPay. (Ex. 19.)

37. DailyPay’s employee-facing marketing materials also stress the partnership between the Company and the employer. For example, DailyPay’s welcome email to potential new users states that DailyPay and the employer “have teamed up so you can control when you get paid.” (Ex. 27.) Another DailyPay employee message states that “DailyPay and [Employer Name] have teamed up so you can get paid before payday,” describing the Paycheck Advance program as “a new [Employer Name] benefit.” (Ex. 28.) And another ad states that DailyPay’s Paycheck Advance program is offered “in partnership with your employer.” (Ex. 26.)

38. DailyPay’s employee-facing ads frequently portray the Company’s Paycheck Advance program as being free or no cost. For example, one employee-facing ad points employees to DailyPay’s “free app” and tells employees to get “started for free today” in order to obtain money “in the right place, at the right time!” (Ex. 20.) DailyPay ads also expressly contrast its Paycheck Advance program with traditional payday loans (Ex. 23):



39. In addition to the supposedly free or no-cost nature of its Paycheck Advance program, DailyPay also markets the ability for employees to obtain immediate funds through its program. DailyPay’s electronic ads to workers, for example, contain links with the words: “Get paid today.” (Ex. 24; *see also* Ex. 22 (“Get paid on the SAME DAYS you work”).)

40. Ads for Paycheck Advances posted in the workplace likewise declare: “Access your pay when you need it!” (Ex. 18.) One such poster also includes a screenshot of the DailyPay app that identifies various amounts available for transfer but says nothing about any associated fees. (Ex. 18.) That poster also declares: “Money in the right place, at the right time.” (Ex. 18.)

41. DailyPay similarly markets the ability for a worker to access earnings “when you need it.” (Ex. 28.) For example, one ad asks “HAVE TO FUND ANOTHER GROCERY RUN???” and then tells the reader that DailyPay will be able to “save the day.” (Ex. 25.)

42. The combination of DailyPay’s marketing of a no cost program and the immediate availability of funds creates a false impression that immediate advances are free. In one flyer provided to employers to share with employees, DailyPay touts the ability to “access your pay on-demand” and declares that employees can get started “for free” (Ex. 19):

Access your pay when you need it.

<p>What is DailyPay?</p> <p>-----</p> <p>DailyPay is a voluntary benefit that allows you access to your earned pay when you need it, with additional ways to help you save.</p> <p>Get started for free today!</p> <p>-----</p> <p>Go to dailypay.tm/digital-faq</p> <p> </p> <p>or text START to 66867.</p> <div style="display: flex; align-items: center;">  <p>Point your camera here to get the free app</p> </div> <p><small>dailypay.tm/digital-faq</small></p>	<p>Why should I sign up for DailyPay?</p> <p>-----</p> <p>When you sign up for DailyPay, you can access your pay on-demand. No more waiting for payday!</p> <p>How can I reach DailyPay?</p> <p>-----</p> <p>You can contact DailyPay by phone, email or chat 24/7</p> <p>Phone: (866) 432-0472 Email: employee.support@dailypay.com</p>
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43. Template communications that DailyPay provides to employers to use when launching the program similarly tell employees they can “[t]ransfer your earnings instantly when they need it,” without any reference to costs. (Ex. 29; Levine Tr. 111:6–12:20.)

44. And welcome communications to newly enrolled employees highlight the ability to “instantly” transfer funds to bank accounts, stressing the ability to “[a]ccess your money when you need it” without any acknowledgment of the associated costs. (Ex. 27.)

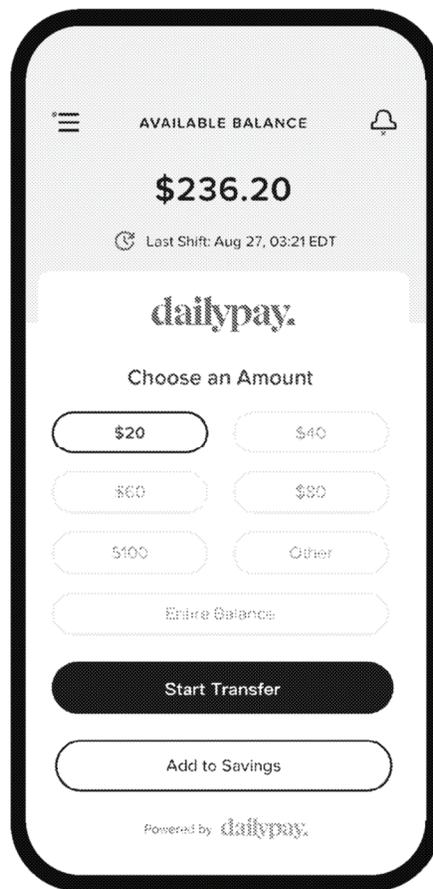
45. DailyPay’s form communications for employers to send to their employees also suggest that the program will allow an employee to “[a]ccess your pay instantly” without mention of fees or costs. (Ex. 29; *see* Ex. 32 (“Instantly transfer your earned pay.”).)

46. And in an electronic ad, DailyPay shows a user obtaining a \$100 Paycheck Advance, clicking the “Now” delivery option, and indicating that the reason was to pay a phone bill—all without ever showing any fee incurred. (Filburn Aff. ¶ 10; Exs. 33, 34, 35.)

II. DailyPay Profits from its High-Cost, Short-Term Paycheck Advances to Employees

47. Employees who enroll in the DailyPay program are presented “Program Terms.” (Ex. 3, at 0214.) The Program Terms provide that, by using DailyPay’s app to access Paycheck Advances, the employee agrees to be bound by the Program Terms. (Ex. 3, at 0214.) Employees do not physically or electronically sign the Program Terms. (Levine Tr. 140:21–41:13.)

48. Employees access Paycheck Advances primarily through DailyPay’s mobile app. (Ex. 3, at 0214.) Under DailyPay’s Program Terms, an employee’s “Unpaid Earnings” are equal to her right to payment for regular pay that will be owed to her but has not yet been paid. (Ex. 3, § 10, at 0220.) When accessing the DailyPay app, a worker sees her available balance, which is equivalent to the portion of the worker’s Unpaid Earnings that DailyPay, in its sole discretion, will make available as a Paycheck Advance (Ex. 3, § 2, at 0215), as follows (Ex. 18):



49. To enable DailyPay to calculate Unpaid Earnings and determine available balances in real time, employees who sign up for the Paycheck Advance program consent to their employers sharing payroll data with DailyPay. (Ex. 3, § 3, at 0216.) Employers agree to provide this payroll data to DailyPay in their MSAs. (Ex. 6, ¶¶ 2(a)(v)–(ix), at 0224–25; Levine Tr. 15:4–22.)

50. On October 1, 2020, the beginning of the Data Period, the Paycheck Advances resulted in fees based on fee schedules that varied by employer. (See Ex. 36.) As of today, DailyPay's Program Terms specify that when employees request Paycheck Advances they will be provided the option to (i) receive a Paycheck Advance the next business day for a fee of \$0.00 to \$1.99, depending on the fee structure of the employer, or (ii) receive a Paycheck Advance immediately for a fee of up to \$3.99. (Ex. 5, § 2, at 0463; see Ex. 17, at 2191.)

51. The fees for Paycheck Advances with terms that begin immediately do not reflect the costs of real-time payments. The Clearing House’s per-transaction cost for a real-time payment is \$0.045. (Ex. 44.) And DailyPay’s own investor materials emphasize that its “Transaction Costs” are decreasing as a result of “the shift to Real Time Payments (RTP).” (Ex. 17, at 2227.) Indeed, while the Company generated nearly \$100 million more in fee revenue in its most recent fiscal year—an increase of more than 73% over the prior year—the transaction costs of the Company, which are defined as “everything directly related to settlements and security costs” such as “instant transaction” and “next-day ACH” costs, increased by less than 1%. (Ex. 17, at 2228.)

52. DailyPay’s Program Terms define an employee’s requested Paycheck Advance, inclusive of fees, as “Daily Earnings.” (Ex. 3, §§ 2 & 10, at 0215 & 0220.) And the funds that the Company sends to an employee is the “Amount Provided.” (Ex. 3, § 2, at 0215.) For example, if an employee requests a \$50 Paycheck Advance for a \$2.99 fee, the Daily Earnings is \$50 and the Amount Provided is the \$47.01 (\$50, less the \$2.99 fee) that DailyPay sends.

53. When an employee requests a Paycheck Advance from DailyPay, she assigns “all right, title, and interest in and to the related Daily Earnings”—in effect, an assignment of an amount equal to the sum of the Paycheck Advance and fee—to DailyPay. (Ex. 3, § 2, at 0215.) As the Company explains its business to investors: “DailyPay acquires [a] wage receivable from the employee against the payment of a fixed fee.” (Ex. 17, at 2192; Levine Tr. 190:24–91:11.)

54. The median DailyPay transaction for New York employees during the Data Period was a \$77.07 Paycheck Advance that incurred a \$2.99 fee. (Hasanov Aff. ¶ 25.) Across the entire Data Period, the most common Paycheck Advance was for \$25 to \$50 and carried a \$2.99 fee, representing more than 1.1 million transactions, or nearly one in every nine. (*Id.* ¶ 28.)

55. DailyPay's short-term, high-cost Paycheck Advance program generates substantial revenue for the Company. During the Data Period, DailyPay made more than 9.8 million Paycheck Advances to more than 130,000 New York workers. (Hasanov Aff. ¶¶ 13, 16.) DailyPay collected fees on roughly nine out of every ten Paycheck Advances (*id.* ¶ 15), for total fee revenue in excess of \$27 million (*id.* ¶ 13), all collected from the wages of New York workers.

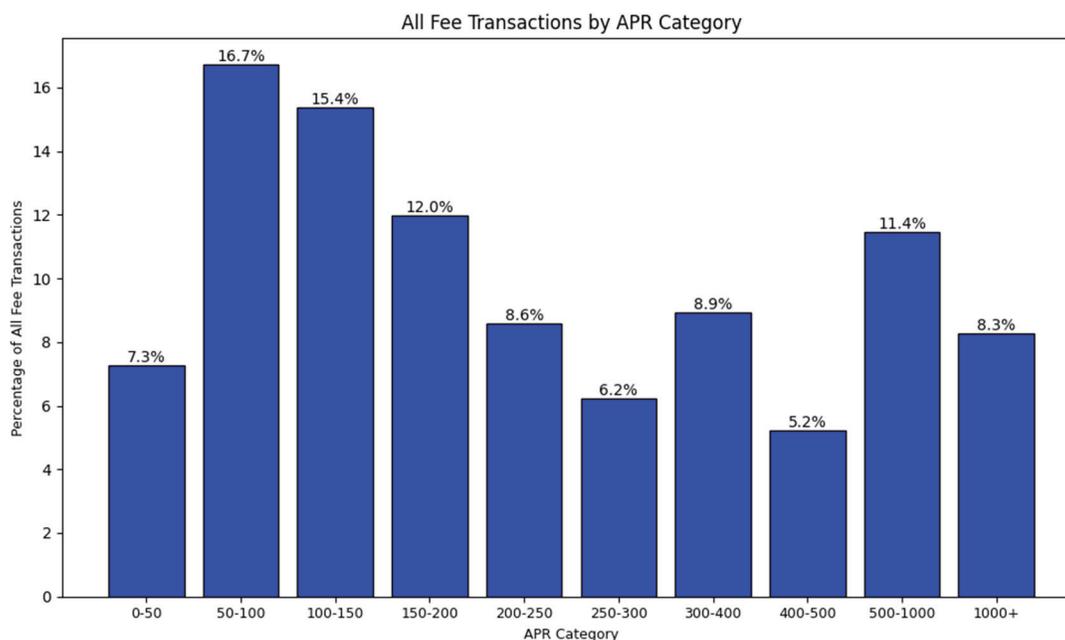
56. DailyPay is rapidly growing: Less than 11,000 New York workers obtained Paycheck Advances in the first six months of the Data Period, while more than 50,000 obtained Paycheck Advances in later periods. (Hasanov Aff. ¶ 17.) And in the first eighteen months of the Data Period, DailyPay collected less than \$3.4 million in fees, while in the last nine months alone the Company collected more than \$9 million in fees. (*Id.* ¶ 14.)

57. Beyond New York, in January of last year DailyPay told prospective investors in its most recent fundraising round that the Company had reached annual recurring revenues of more than \$235 million, with more than 1.2 million active users (Ex. 17, at 2184.) DailyPay also represented that it projects an additional \$1 million of revenue is added to the Company's bottom line for every 20,000 additional onboarded eligible workers. (Ex. 17, at 2184–2186.)

58. DailyPay's Paycheck Advance program imposes an extraordinarily high cost of credit on New York workers. The median transaction described above has a median term—the number of days between which the employee received a Paycheck Advance was received and the employer sent the next paycheck to DailyPay—of 8 days. (Hasanov Aff. ¶ 25.) For such a transaction, the \$2.99 fee that is paid by an employee to obtain a roughly \$75 median Paycheck Advances reflects an annualized percentage rate, or APR, in excess of 193%. (*Id.*)

59. DailyPay's most-common Paycheck Advance is for \$20, its most-common fee is \$2.99, and the single most-common term is 7 days. (Hasanov Aff. ¶ 26.) Employees pay a cost of credit of more than 750% APR on Paycheck Advances with such terms. (*Id.* ¶ 26.)

60. Over the entire Data Period, New York workers paid a median APR of 193.47% and an average APR of 398.59% on Paycheck Advances that they obtained from DailyPay. (Hasanov Aff. ¶ 27.) More than 1,100,000 Paycheck Advances were for between \$25 and \$50 and for fees of \$2.99 or \$3.49, and the median APR paid by employees on these short-term loans was above 400%. (*Id.* ¶ 28.) And across all Paycheck Advances on which fees were assessed during the Data Period, roughly 93% had APRs greater than 50%, as illustrated below:



(*Id.* ¶ 29 & Ex. B.) As the chart reflects, more fee-based Paycheck Advances had APRs above 1,000% than below 50%. (*Id.* Ex. B.) Workers, meanwhile, paid APRs in excess of 500% on nearly one out of every five Payday Advances made during the Data Period. (*Id.* ¶ 30.)

61. An overwhelming majority of Paycheck Advances made by DailyPay during the period exceed key New York limitations. In particular, 8,700,148 Paycheck Advances had APRs

above 16%, constituting nearly 99.5% of all fee-based Paycheck Advances and resulting in DailyPay's collection of \$24,366,911.52 in fees. (Hasanov Aff. ¶ 31.)

62. Similarly, more than 99.3% of fee-based Paycheck Advances had APRs in excess of 18%, imposing \$24,327,908.32 in fees. (Hasanov Aff. ¶ 32.)

63. Finally, more than 99.3% of all fee-based Paycheck Advances had APRs in excess of 25%, from which DailyPay collected \$24,089,752.42 in fees. (Hasanov Aff. ¶ 33.)

III. DailyPay Ensures that It Will Obtain Repayment of its Paycheck Advances using a Specified Flow of Funds, its User Agreements, and its Assessments of Credit Risk

64. Despite the extraordinarily high cost of credit imposed by its short-term lending program, DailyPay collects on virtually all amounts it is owed.

65. For one, using real-time access to payroll data, DailyPay unilaterally determines the maximum Paycheck Advance that an employee may obtain (Ex. 3, §§ 2 & 3 at 0215–16), thereby ensuring that the Paycheck Advances and fees owed will be less than the paycheck DailyPay receives. The Company employs a real-time algorithm to dynamically adjust for factors that could affect its ability to collect on its Paycheck Advances, such as “the impacts of any taxes, benefits, and garnishments for each unique employee.” (Ex. 17, at 2203–05.)

66. Further, if inaccurate payroll data causes DailyPay to make Paycheck Advances in excess of an employee's actual pay amount received when pay day arrives, employers must reimburse DailyPay for any shortfall. (Ex. 6, ¶2(a)(ix), at 0224–25.)

67. DailyPay also obtains legal protections for amounts it is owed. When an employee obtains a Paycheck Advance and assigns to DailyPay her wages in an amount equal to the Paycheck Advance plus fee, she simultaneously agrees that DailyPay “can stand in [her] shoes and receive payment for the Daily Earnings” from her employer. (Ex. 3, § 2, at 0215.) DailyPay calls this right to receive the employee's assigned wages “non-recourse” but that remains true only if

the employee has not breached the Program Terms (Ex. 3, § 2, at 0215), such as by failing to make payments to DailyPay in the event an employer routes pay to the employee.

68. When enrolling in DailyPay's program, an employee is obligated to arrange for her employer to direct deposit her pay to a DailyPay bank account. (Ex. 3, § 2, at 0215.) When taking an advance, the worker agrees that she "will not take any action" such as "redirecting payments" that has an "adverse effect on [DailyPay's] ability to collect." (Ex. 3, § 4, at 0215.)

69. Employers also separately agree in their MSAs to make all payroll payments owed to employees who use the Paycheck Advance program directly to DailyPay. (Ex. 6, ¶ 2(a)(x), at 0225.) Thus, on payday, employers deposit workers' entire pay in a DailyPay bank account. (Ex. 31.) DailyPay then collects all Paycheck Advances and fees that it is owed from workers' paychecks before passing any remaining amounts to them. (Ex. 3, § 2, at 0215.)

70. Because DailyPay collects all amounts it lends and fees from employers directly rather than from workers, the credit risk that the Company faces is, in its own words, "the risk that employers don't make payroll." (Ex. 17, at 2197.) As the Company tells investors: "DailyPay does not take consumer credit risk but is instead underwriting the employer." (Ex. 17, at 2191.)

71. To guard against the credit risk that employers don't make payroll, DailyPay maintains a Credit Review Policy that requires a thorough assessment of prospective and current employers' creditworthiness. (Ex. 13; *see* Levine Tr. 82:9–15 ("The credit review is to evaluate the risk involved in . . . contracting with the employer, and effectively that the employer is going to make payroll."); *id.* at 92:22–93:2 ("Q. And ultimately what the credit review committee is assessing is, I think, as you put it earlier, the risk that the employer won't be able to make payroll? A. That's the -- would be the biggest risk.")) As part of this underwriting, employers that are not

public companies must provide to DailyPay on an ongoing basis annual audited financial information and quarterly unaudited financial information. (Ex. 6, ¶ 2(a)(xix), at 0226.)

72. When underwriting a potential employer, DailyPay first determines the number of employees who will be eligible for the Paycheck Advance program. (Ex. 13, at 0484; Levine Tr. 88:5–16.) New employers with more than 3,000 eligible employees are subjected to a full review, while all other new employers go through a “low touch” process. (Ex. 13, at 0484.)

73. For potential new employers subject to its low touch process, DailyPay reviews two data analytics metrics from Dun & Bradstreet (“D&B”): Viability Score and Failure Score. (Ex. 13, at 0484.) D&B is a professional services firm that conducts data analytics and modeling on businesses and produces and sells reports of the results of its work. (Ex. 41.)

74. D&B’s Viability Score “is a multi-dimensional rating that delivers a comprehensive assessment of a company’s . . . viability,” including predicting “the likelihood that a company will go out of business, become inactive, or file for bankruptcy over the next 12 months.” (Ex. 43.)

75. D&B’s Failure Score, according to its public descriptions, “predicts the likelihood that a business will, in the next 12 months, seek legal relief from its creditors or cease business operations without paying all its creditors in full.” (Ex. 42.)

76. DailyPay accepts new employers through its low touch process where employers score moderate or better on both D&B’s Viability Score and its Failure Score. (Ex. 13, at 0484.) If a new employer does not meet these thresholds, they are subject to a full review under the Credit Review Policy, as are all potential new employers of greater size. (Ex. 13, at 0484.)

77. DailyPay’s full review of potential new employers involves a committee process. DailyPay’s Senior Committee, comprised of its Vice President of Capital Markets, its Chief Financial Officer, its Chief Operating Officer, and its Vice President of Finance, reviews all

potential new employers with more than 5,000 potentially eligible employees, while its Junior Committee, comprised of its Director of Capital Markets, Senior Director of Capital Markets, and Controller, reviews smaller potential new employers. (Ex. 13, at 0485.)

78. Under its Credit Review Policy, DailyPay's credit committees determine whether to accept new employers based on a review of the employers' external credit ratings, liquidity, profitability, cash flows, leverage, and other commercial factors, such as reputation, press coverage, and management team. (Ex. 13, at 0484.) The committees also have the option to offer "credit enhancements" for potential new employers. (Ex. 13, at 0485.)

79. DailyPay's credit review onboarding is also responsive to market conditions. For example, during the first 15 months of the Covid-19 pandemic, the credit committees determined that affected employers in sectors such as travel, amusement parks, and hospitality, would undergo a full review rather than a low touch review regardless of size. (Ex. 13, at 0486.)

80. After a new employer to the Paycheck Advance program "is credit approved and onboarded, DailyPay utilizes an ongoing credit monitoring process to account for potential changes in the credit quality of the [employer] over time." (Ex. 13, at 0487.)

81. For employers approved after a full review, a DailyPay employee is required to contact the employer annually to obtain updated credit metrics and financial information and then prepare a report for the credit committees. (Ex. 13, at 0488–89.)

82. The committees then determine whether to re-approve the employer, re-approve the employer with required "credit enhancements," such as quarterly rather than annual reviews, letters of credit, or personal guarantees, or deny the employer entirely. (Ex. 13, at 0489.) For employers approved after the low touch process, DailyPay re-runs the low touch process each year to ensure that the employers continue to score above the required thresholds. (Ex. 13, at 0489.)

83. Finally, if DailyPay determines that an employer is subject to “a deteriorating credit profile” outside the annual review process, the Credit Review Policy provides that its credit committee can take corrective actions, including reducing the size of Paycheck Advances available to employees or suspending Paycheck Advances altogether. (Ex. 13, at 0491; *see also* Levine Tr. 103:24–04:6 (“It could be the company is deemed such a credit risk that the service has to be suspended . . . the credit committee could recommend that.”).)

84. If, notwithstanding these credit risk assessments, employers fail to fund payroll in a manner that prevents DailyPay from collecting amounts it lends and fees, the result is a “Negative Balance.” (Ex. 6, at Ex. A, ¶ 1(p), at 0236.) Under the MSAs, employers must reimburse to DailyPay any Negative Balance below \$10,000 within thirty days and any Negative Balance above \$10,000 within two days. (Ex. 6, ¶ 2(a)(xvii), at 0225–26.) Failure to make these contractual payments can result in legal action taken by DailyPay. (Ex. 6, ¶ 10(b), at 0231.)

85. Beyond its rights vis-à-vis employers, DailyPay’s Program Terms impose obligations on employees to ensure its collection of all Paycheck Advances and fees.

86. For one, employees promise to “take all actions, including the execution of documents requested by [DailyPay], to preserve and protect [its] right, title, and interest to any Daily Earnings.” (Ex. 3, § 4, at 0217; Ex. 5, § 5, at 0474.)

87. Employees also promise as part of the Company’s Program Terms to “not take any action or make any omission” that has “an adverse effect on our ability to collect on or retain any Daily Earnings.” (Ex. 3, § 4, at 0217; Ex. 5, § 5, at 0474–75.)

88. Finally, employees make an affirmative representation to DailyPay, each time they seek a Paycheck Advance that they have not sold, pledged, or encumbered the amounts that they are seeking to borrow. (Ex. 3, § 5, at 0218; Ex. 5, § 6, at 0475.)

89. DailyPay also has the ability to collect directly from employees, despite its promise of non-recourse. For example, if an employer pays an employee directly rather than sending the pay to DailyPay, the employee is obligated to immediately notify DailyPay and “hold the amount in trust for our benefit.” (Ex. 3, § 4, at 0217; Ex. 5, § 5, at 0474.) Failure by an employee to adhere to these obligations triggered DailyPay’s rights under the Program Terms as follows:

90. Until May 1, 2023, DailyPay was authorized to debit an employee’s bank account to obtain repayment of the Paycheck Advances and fees. (Ex. 3, § 4, at 0217.) And if there is any dispute between an employee and her employer, the employee was obligated to resolve the dispute, to obtain disputed wages, and to immediately send payment to DailyPay to satisfy any outstanding Paycheck Advances; if she did not, DailyPay was authorized to debit her bank account to collect payment. (Ex. 3, § 6, at 0218–19.) The Program Terms also provided a blanket authorization to debit a bank account to address errors, fraud, and other breaches of the Program Terms. (Ex. 3, § 7, at 0219.) And the Company maintained a general right of setoff. (Ex. 3, § 9, at 0219.)

91. DailyPay updated its Program Terms on May 1, 2023 to remove workers’ debit authorizations. (*See generally* Ex. 4.) However, workers remain obligated (i) to hold amounts sent to them but owed to DailyPay in trust (Ex. 4, § 5, at 0474), (ii) to resolve disputes with employers and (iii), if unable to do so, to “immediately send [DailyPay] payment” within three days. (Ex. 4, § 7, at 0476.) Further, DailyPay retains the right to request that employees grant debit authorizations to resolve errors or fraud and, if employees decline to do so, DailyPay will settle disputed amounts against employees’ next paychecks. (Ex. 4, § 8, at 0477.)

92. The result of the substantial credit protections that DailyPay maintains is unsurprising: Across the Data Period, DailyPay successfully collected on between 99.92% and 99.99% of the Paycheck Advances made and fees assessed. (Hasanov Aff. ¶ 18.)

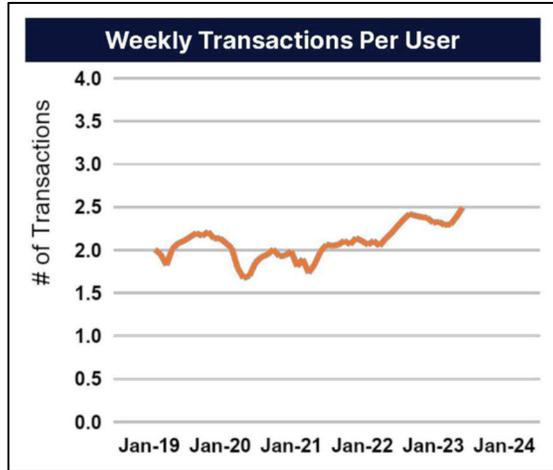
IV. DailyPay Traps Employees in Cycles of Dependency Resulting in Repeated Use of High-Cost Paycheck Advances Without Regard to Employees' Financial Wellbeing

93. To be profitable in the long run, DailyPay requires employees to obtain Paycheck Advances and pay fees to the Company both frequently and continuously over time. (*See generally* Ex. 17.) No matter how large in scale in terms of the number of employees enrolled, DailyPay cannot reliably generate profits if every employee accesses just one Paycheck Advance each month to pay for a single unexpected expense or to cover some emergency shortfall.

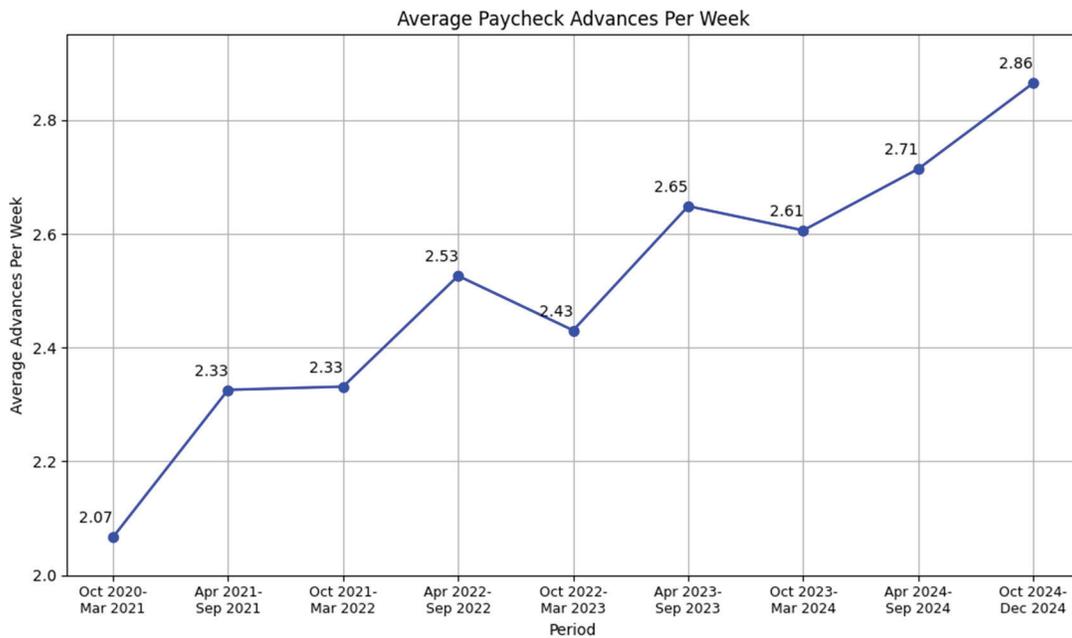
94. DailyPay's product, however, provides a ready engine to drive this need for more loans: As an employee obtains a Paycheck Advance, the amount that she receives on pay day is reduced by the amount of the Paycheck Advance, plus fees. (Ex. 40). The result is that employees are more likely to need to obtain another Paycheck Advance (and pay another fee) in their next pay cycle to make up shortfalls that occurs on payday. This creates a cycle of dependency in which the act of obtaining a Paycheck Advance creates a need, in the next pay cycle, for additional funds, thereby prompting another Paycheck Advance. (*See* Ex. 37 (“Repeat usage is high and the share of workers using [Paycheck Advance] products each month is increasing.”).)

95. The result is an increasingly dependent user base. In the first six months of the Data Period, more than half of all employees averaged less than two Paycheck Advances per week. In the final nine months, more than 20,000 New York workers—more than 55% of all workers who obtained Paycheck Advances—obtained two or more each week. (Hasanov Aff. ¶ 40.)

96. DailyPay itself acknowledges the importance of repeat use. In describing its annual revenue per-employee to investors, DailyPay finds that average per-employee use of the Paycheck Advance is two times each week. (Ex. 17, at 2192.) This average-use figure has been remarkably consistent throughout the last several years, as shown below (Ex. 17, at 2225):

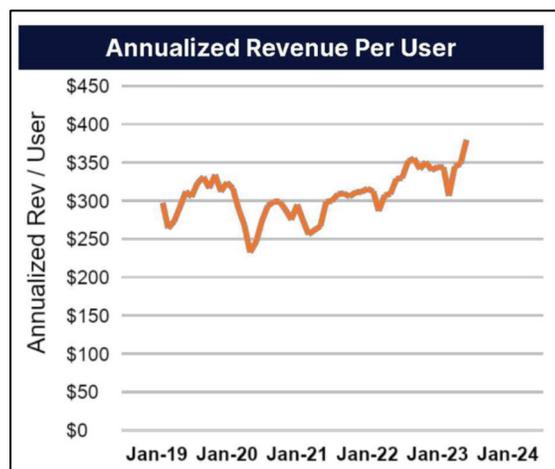


97. The projections DailyPay provided to investors are consistent with this reality: employees enrolled in the Paycheck Advance program have steadily increased the average number of Paycheck Advances they obtain each week from 2.07 to 2.86 (Hasanov Aff. ¶ 16 & Ex. A):



98. Repetitive use is durable: Once a worker begins to obtain multiple Paycheck Advances each pay period, she generally continues to do so in the future. For example, when presenting future revenue for potential investors at the outset of 2024, DailyPay projected that 90% of its revenue for 2024 would come from already-enrolled or soon-to-be-enrolled employees, while

75% of its revenue for 2025 would come from these same employees. (Ex. 17, at 2220.) Elsewhere, DailyPay touts its ability to retain more than 96% of existing employees and revenue year over year. (Ex. 17, at 2226.) DailyPay’s average revenue per employee has remained remarkably consistent throughout the last several years, as shown below (Ex. 17, at 2225):



99. DailyPay refers to employees’ pattern of durable, repetitive use of the Company’s Paycheck Advance program as its “Powerful Business Model.” (Ex. 17, at 2192.)

100. Through this “Powerful Business Model” DailyPay projects that it can generate an additional \$1 million in annual recurring revenue by adding 20,000 additional eligible workers (who may or may not enroll in DailyPay) as follows: *first*, about 16% of those workers will enroll and eventually become active users; *second*, those active users will eventually request two or more Paycheck Advances every week; *third*, DailyPay will generate \$3 of revenue for each Paycheck Advance, or \$300 annually, from each active user. (Ex. 17, at 2192.)

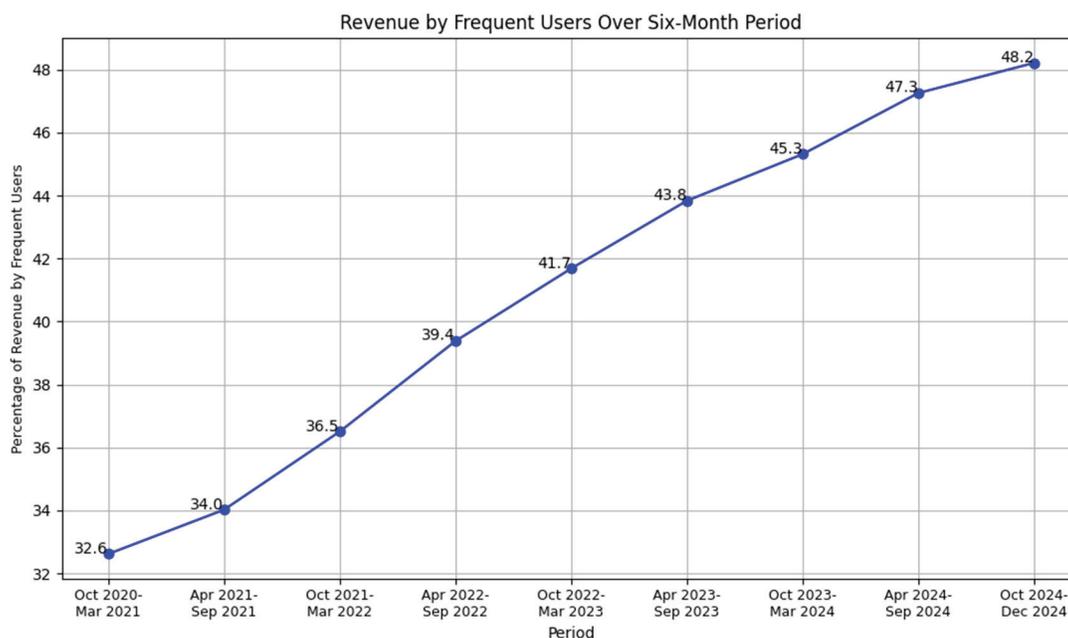
101. The Company’s business model is so durable, due to the dependency it creates, that DailyPay projects revenue several years out relying solely on its ability to collect about \$370 on average for each active user over the next several years. (Ex. 17, at 2223–24.)

102. The aggregate statistics DailyPay uses for its projections hide a far direr economic stress. Roughly half of employees who enroll in the Paycheck Advance program fall prey to this

pernicious cycle of use. (Hasanov Aff. ¶¶ 39–41.) DailyPay’s profitability and business model are centered on these employees who obtain Paycheck Advances more than twice a week—or much more often—whom the Company refers to as its “long-term upside.” (Ex. 17, at 2216.)

103. During the Data Period, 75 to 80 percent of the Company’s revenue was extracted from workers who obtained Paycheck Advances at least twice per week. (Hasanov Aff. ¶ 42.)

104. The burden of these fees falls more heavily on employees who use the program to obtain Paycheck Advances every other day, or more, on average. These users have steadily grown from one in every six workers to more than one in every four (Hasanov Aff. ¶ 45) who incur hundreds in fees annually and paid nearly half of all fees in recent periods (*id.* ¶ 46 & Ex. E):



Because dependent employees who obtain Paycheck Advances every other day or more frequently end up obtaining Paycheck Advances shortly before payday, their cost of credit is higher than for all workers using DailyPay, jumping above a median APR of 225%. (*Id.* ¶ 43.)

105. As the number of dependent workers has grown, so too has the number of Paycheck Advances obtained within a few days of the last one. Across the Data Period, about 75% of all

Paycheck Advances are taken out within four days of a worker's last one, while nearly three in every five Paycheck Advances are obtained by workers whose prior loan was taken out within two days or less. (Hasanov Aff. ¶ 48.) This repeat use is costly: the median APR employees pay on subsequent Paycheck Advances range from 219.15% to more than 450%. (*Id.* ¶ 49.)

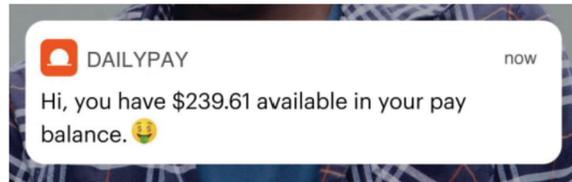
106. The effect on financial wellbeing is predictably harmful. A full-time, \$15-per-hour worker can be projected to receive about \$1,000 on payday. But if she obtains a median-level Paycheck Advance twice weekly—\$75 for a \$2.99 fee—then by pay day she will receive less than \$700, leaving her hundreds of dollars short when managing large-dollar recurring expenses such as the mortgage or rent and car payment. And a highly dependent worker obtaining Paycheck Advances every other day can easily see her previous \$1,000 paycheck cut in half.

107. Similarly, the costs imposed by the DailyPay program are disproportionate to any benefit received. A worker who takes one \$77.99 Paycheck Advance for a \$2.99 fee receives \$75 immediately and then receives \$77.99 less on pay day. During the next pay cycle, the worker requests a \$80.98 Paycheck Advance to make up for that lost \$77.99. But this new Paycheck Advance is not providing new funds—it is filling a hole left by the prior Paycheck Advance. And the fee incurred for this and each subsequent Paycheck Advance, which can amount to \$100 or more, is solely attributable to the one-time benefit received from the first Paycheck Advance.

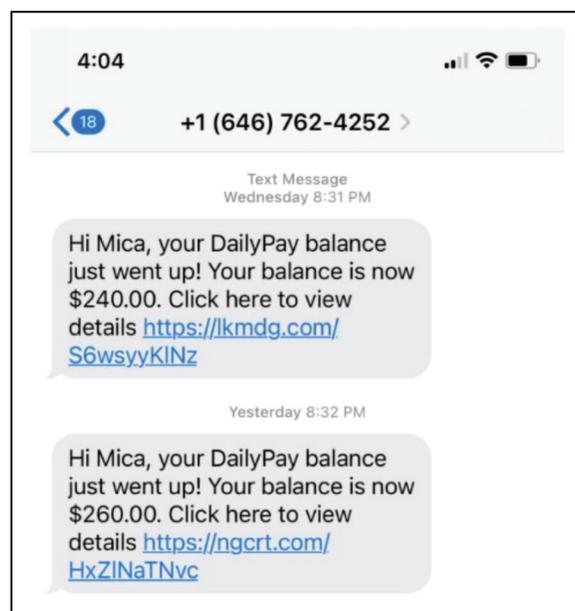
108. The financial behavior DailyPay's lending model encourages is unsustainable. For the ten percent of users with the highest average frequency of Paycheck Advances during the Data Period, the median size of their Paycheck Advances was \$50, the median fee of their Paycheck Advances was \$2.99, and the median term was 9 days. (Hasanov Aff. ¶ 44.) Through this financial activity, these workers are effectively taking out a new, 240% APR loan 5.7 times each week (*id.*), with DailyPay extracting hundreds of dollars in wages from such workers annually.

109. Yet while these cycles of dependency have the potential to wreak financial havoc on individual employees' lives, DailyPay has structured its business model to make the Company utterly indifferent to any such negative outcomes. (See Ex. 17, at 2191 (“DailyPay does not take consumer credit risk”).) Instead, DailyPay contractually guarantees its own repayment through its MSAs with employers that obligate those employers to send the paychecks of financially distressed employees directly to DailyPay, ensuring that the Company is able to collect the amounts it lends and all fees first (Ex. 6, ¶ 2(a)(x), at 0225), in priority over workers' needs.

110. Through balance updates, DailyPay encourages repeat use. In particular, whenever an employer updates its payroll records to reflect additional hours worked, DailyPay sends notice that a worker has “new earnings in your Daily Pay account!” and provides up-to-date available balance data. (Ex. 10.) For example, employees receive push notifications on their phone:

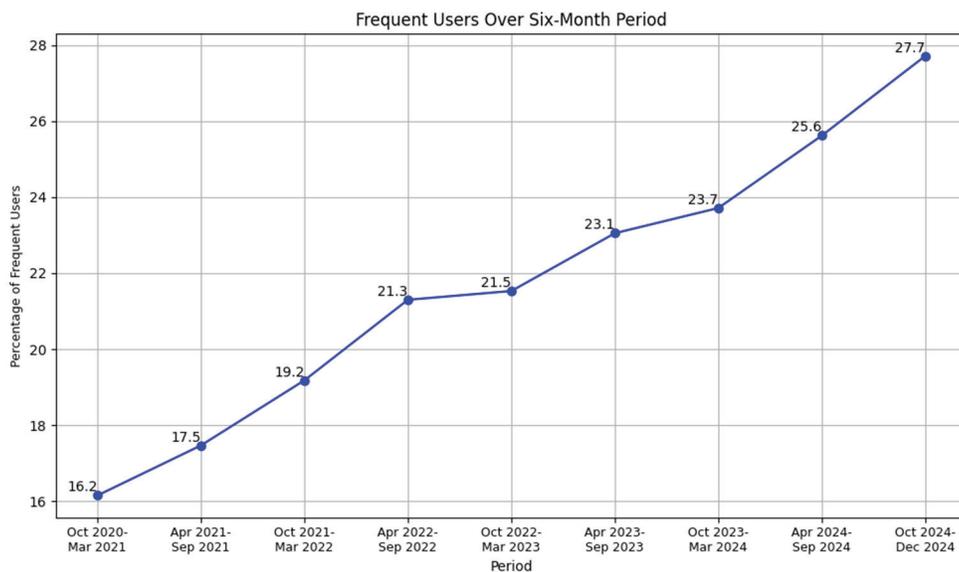
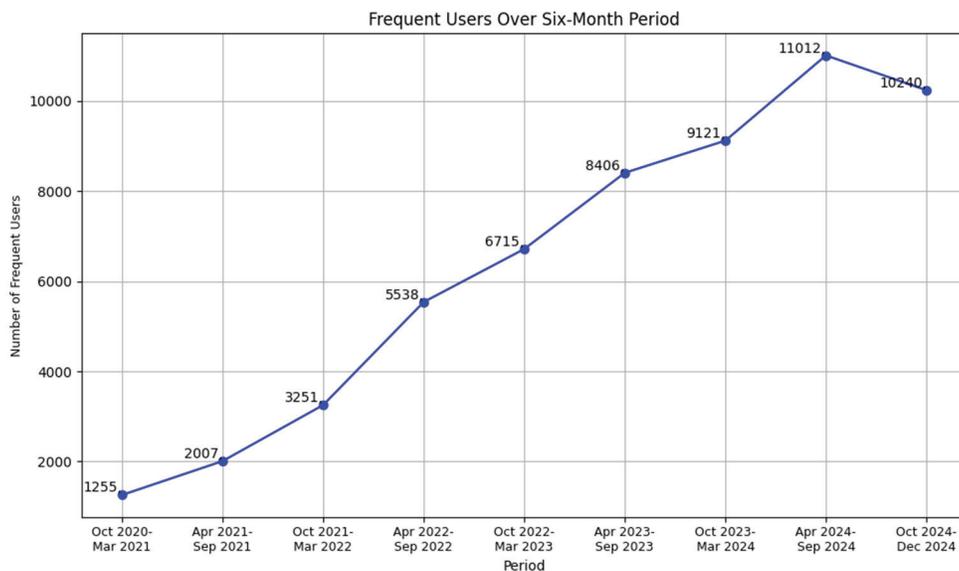


(Ex. 8.) The result is a repeated prompt to trigger frequent use:

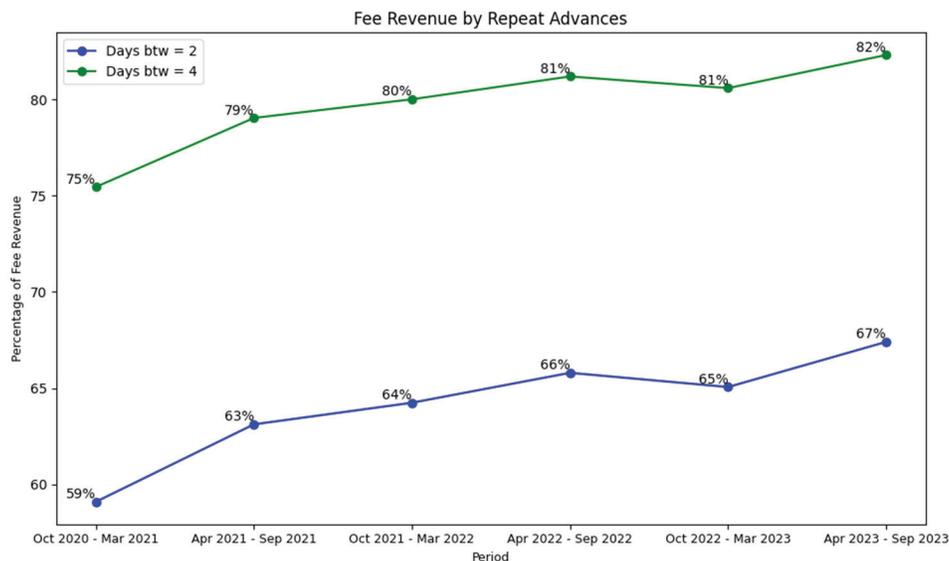


(Ex. 9.) Rather than discouraging frequent use (and fees), DailyPay encourages harmful behavior, telling employees they “deserve to be paid every day.” (Ex. 8.) And DailyPay ads derisively chide those who are still “waiting 2 WEEKS for their paycheck???” (Ex. 22.)

111. As a result, DailyPay is steadily growing its number of workers who are dependent on Paycheck Advances. As shown below, both the absolute number of workers who obtain Paycheck Advances more than every-other-day, and the percentage of such workers that make up all enrolled employees, has been and is steadily growing (Hasanov Aff. ¶ 45 & Exs. C, D):



112. Similarly, the number of Paycheck Advances that workers obtained within days of their last loans is steadily growing, with Paycheck Advances that workers obtain within two days of their last ones now generating two-thirds of all fees for DailyPay (Hasanov Aff. ¶ 50 & Ex. F):



FIRST CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(N.Y. P.P.L. § 46-F – Wage Assignment)

113. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

114. New York’s Personal Property Law § 46-F prohibits any entity from directly or indirectly receiving or accepting, for the making of any advance of money for earnings assigned, a sum greater than eighteen percent annually, whether as a bonus, interest, or otherwise.

115. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through its making of Paycheck Advances and directly or indirectly accepting and receiving payment in excess of eighteen percent annually for earnings assigned.

116. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(N.Y. G.O.L. § 5-501 – Civil Usury)

117. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

118. New York’s General Obligations Law § 5-501 prohibits any entity from directly or indirectly charging, taking, or receiving any money as interest on a loan at a rate exceeding sixteen percent annually, as determined by New York’s Banking Law § 14-A.

119. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through its making of Paycheck Advances and directly or indirectly charging, taking, and receiving interest in amounts that exceed sixteen percent annually.

120. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(N.Y. Penal Law § 190.40 – Criminal Usury)

121. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

122. New York’s Penal Law § 190.40 makes it a Class E felony for any entity to take or receiving money as interest on a loan at a rate exceeding twenty-five percent annually.

123. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through its making of Paycheck Advances and directly or indirectly charging, taking, and receiving interest in amounts that exceed twenty-five percent annually.

124. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**FOURTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(N.Y. G.B.L. § 350 – False Advertising)**

125. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

126. New York’s GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce, or furnishing of any service, in the state of New York.

127. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through false advertising of “no interest” or “interest free” Paycheck Advances when DailyPay assessed and collected usurious interest on the Paycheck Advances. The false advertisements were likely to mislead a reasonable consumer, in violation of GBL § 350.

128. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**FIFTH CAUSE OF ACTION
Executive Law § 63(12) (Fraud)**

129. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent fraudulent conduct in the carrying on, conducting, or transacting of business in the state of New York.

130. Executive Law § 63(12) broadly defines fraud to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

131. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent fraud through its marketing and offering of Paycheck Advances in a manner that had the capacity or tendency to deceive and that created an atmosphere conducive to fraud by:

- a. having falsely represented to employers and employees in marketing materials and that the DailyPay program was “no interest” or “interest free”;
- b. having created inaccurate impressions that consumers can obtain funds immediately through Paycheck Advances without incurring costs; and
- c. having promoted Paycheck Advances as improving financial health and wellbeing without a factual basis and while projecting future dependency.

132. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

**SIXTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(N.Y. G.B.L. § 349 – Deceptive Practices)**

133. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

134. New York’s GBL § 349(a) prohibits deceptive acts and practices in the conduct of any business, trade, or commerce in the state of New York.

135. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through deceptive marketing and offering of Paycheck Advances in a manner that was likely to mislead a reasonable consumer, in violation of GBL § 349 by:

- a. having falsely represented to employers and employees in marketing materials and that the DailyPay program was “no interest” or “interest free”;
- b. having created inaccurate impressions that consumers can obtain funds immediately through Paycheck Advances without incurring costs; and
- c. having promoted Paycheck Advances as improving financial health and wellbeing without a factual basis and while projecting future dependency.

136. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**SEVENTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(12 U.S.C. § 5531 – Deceptive Acts or Practices)**

137. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

138. The Consumer Financial Protection Act, 12 U.S.C. § 5531, prohibits a covered person from engaging in deceptive acts or practices in connection with any transaction for a consumer financial product or in the offering of a consumer financial product.

139. DailyPay is a covered person, 12 U.S.C. § 5481(6), as DailyPay engages in the offering or providing of a consumer financial product or service.

140. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through deceptive marketing and offering of Paycheck Advances in a manner that was likely to mislead a reasonable consumer, in violation of 12 U.S.C. § 5531 by:

- a. having falsely represented to employers and employees in marketing materials and that the DailyPay program was “no interest” or “interest free”;

b. having created inaccurate impressions that consumers can obtain funds immediately through Paycheck Advances without incurring costs; and

c. having promoted Paycheck Advances as improving financial health and wellbeing without a factual basis and while projecting future dependency.

141. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**EIGHTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(12 U.S.C. § 5531 – Abusive Acts or Practices)**

142. New York’s Executive Law § 63(12) authorizes the OAG to seek injunctive and other relief when any individual or entity engages in repeated and persistent illegal conduct in the carrying on, conducting, or transacting of business in the state of New York.

143. The Consumer Financial Protection Act, 12 U.S.C. § 5531, prohibits a covered person from engaging in abusive acts or practices in connection with any transaction for a consumer financial product or in the offering of a consumer financial product.

144. DailyPay is a covered person, 12 U.S.C. § 5481(6), as DailyPay engages in the offering or providing of a consumer financial product or service.

145. Employers likewise are covered persons, 12 U.S.C. §§ 5481(6)(B), (15)(A)(i), (26)(A), as they broker financial products or services and provide services to DailyPay.

146. As set forth in the preceding paragraphs, DailyPay has engaged in repeated and persistent illegality through abusive acts and practices in connection with its offering Paycheck advances, including acts and practices that: (i) materially interfere with employees’ ability to understand the terms and conditions of obtaining Paycheck Advances; (ii) take unreasonable advantage of employees’ inability to protect their own interests in the selection of Paycheck

Advances; and (iii) take unreasonable advantage of employees' reasonable reliance on their employers in connection with their selection and use of Paycheck Advances.

147. By reason of the conduct set forth herein, DailyPay has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Petitioner the People of the State of New York respectfully request that the Court grant the Verified Petition in all respects by issuing an order and judgment:

- a. permanently enjoining Respondent from violating Executive Law § 63(12), General Business Law ("GBL") §§ 349 and 350, General Obligations Law § 5-501, Penal Law § 190.40, Personal Property Law § 46-F, and the federal Consumer Financial Protection Act, 12 U.S.C. § 5531 *et seq.*, and from engaging in the fraudulent, deceptive, or abusive acts or practices described herein, including by enjoining Respondent from offering Paycheck Advances that incur fees above the rates prescribed by New York law and requiring clear and conspicuous disclosure of all fees in equal prominence in Respondent's advertising of its Paycheck Advance program;
- b. ordering Respondent to provide an accounting of all consumers who paid costs in excess of that permitted under General Obligations Law § 5-501, Penal Law § 190.40, Personal Property Law § 46-F, in connection with advances that were obtained from Respondent from the end of the Data Period to the date of the Court's order and judgment;
- c. ordering Respondent to provide restitution and damages to all affected consumers from the beginning of the Data Period to the date of the Court's order and judgment, whether known or unknown;

- d. ordering Respondent to disgorge all profits resulting from the fraudulent and illegal acts or practices described herein;
- e. ordering Respondent to pay a civil penalty in the sum of \$5,000 to the State of New York for each violation of GBL Article 22-A, G.B.L. § 350-d;
- f. imposing appropriate civil money penalties against Respondent as authorized by 12 U.S.C. § 5565(c);
- g. awarding costs under CPLR 8303(a)(6) and 12 U.S.C. § 5565(c); and
- h. granting such other and further relief as the Court deems just and proper.

Dated: April 14, 2025
New York, New York

Respectfully submitted,

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Attorney General of the State of New York

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

v.

MONEYLION INC,

Defendant.

COMPLAINT

Index No. _____

Plaintiff People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York (the “OAG”), bring this action against Defendant MoneyLion Inc. (“MoneyLion” or “the Company”) alleging as follows:

INTRODUCTION

1. Beginning when it was still just a colony, decades before declaring Independence, New York adopted usury legislation to protect its most vulnerable residents from high-cost lending that preys on economic fragility and weakened bargaining positions. In the centuries that followed, strengthened prohibitions on usury have been enacted on multiple occasions, including laws that overrode judicially imposed usury limits and the addition of criminal penalties for usury, among other enhancements. This long and unbroken history reflects a clear declaration of public policy by New York’s legislature: lending at usurious rates, even where freely entered into, is financially unhealthy and destructive, and therefore is not permitted within the state of New York.

2. Efforts by lenders to circumvent New York public policy are almost as old as the prohibition on high-cost lending itself. New York’s highest court “has recognized for more than a century that the economy changes” and that, as these changes occur, new opportunities come about

for “lenders to extract unlawful interest rates through novel and increasingly sophisticated instruments.” *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 342 (2021). Thus, the Court of Appeals instructs: “if the court can see that the real transaction was the loan or forbearance of money at usurious interest, its plain and imperative duty is to so declare.” *Id.* Embracing this call to action, New York courts have repeatedly applied usury prohibitions to loansharks, payday lenders, and others who exploit New Yorkers through illegal, abusive lending practices.

3. This action concerns a modern, technology-driven attempt to evade New York’s usury laws. In the transactions at issue here, users obtain advances for \$100 or less and typically agree to pay fees and tips from \$5 to \$10, reflecting exorbitant and plainly usurious costs of credit. In exchange, users also provide open-ended authorization for future deductions from their bank to repay these amounts, typically in 7 to 10 days. The parties expect this repayment will occur: there are barriers to revoking authorization, the lending program terminates if no repayment is made, and the lender treats the amounts it lends as principal and the fees and tips it collects as interest. And the results are clear: in the absence of actual fraud, repayment is a virtual certainty. For all these reasons and others, this is lending, plain and simple—and usurious lending at that. Such activity contravenes centuries of New York law and policy, and it should be barred.

* * *

4. MoneyLion makes small-dollar, short-term, high-cost loans (each, a “Paycheck Advance”) under the brand name “Instacash” to tens of thousands of New Yorkers. In a typical transaction, an Instacash user will request a \$50 Paycheck Advance. If she wants the money right away (and she nearly always does) she pays a \$4.99 fee, while the Company repeatedly pressures her to pay an additional \$2 tip. In exchange, a user must authorize MoneyLion to debit linked payment methods as often as needed for the Company to collect. At the end of this typical Instacash

transaction, the user will have paid MoneyLion \$56.99 to obtain a ten-day, \$50 Paycheck Advance—an illegal, usurious annualized percentage rate, or APR, of more than 350%.

5. MoneyLion entices consumers to sign up for Instacash by promising two things: instant access to funds for emergency expenses—the name “Instacash” says it all—and a “free” product that charges zero percent interest or APR. Both claims are fundamentally deceptive. As to the former, Instacash users cannot obtain Paycheck Advances with immediate terms and immediate funds disbursement without paying for it, a fact that MoneyLion typically obscures or even omits entirely from the Company’s marketing materials. As to the latter, fees charged to Instacash users and tips collected by MoneyLion act solely as revenue that boost the Company’s bottom line and thus constitute interest expenses for its high-cost Paycheck Advances.

6. MoneyLion, moreover, is relentless in charging fees and pressuring users for tips. The Company preselects loans with immediate terms for users, makes it artificially difficult for users to avoid fee-based Paycheck Advances, and enforces undisclosed transaction limits to require repeat usage (and collect repeat fees). The Company also employs sophisticated algorithms and dynamic models to pressure users to tip, designs and deploys manipulative tactics, guilts users into tipping, and implicitly threatens negative consequences for those users who do not.

7. MoneyLion aggressively safeguards its ability to collect its fees and tips. The Company scientifically projects the timing and amount of Instacash users’ next direct deposits of wages or other income: MoneyLion uses its projection of future direct deposit size to ensure that the amounts it lends to Instacash users will be collectable; and MoneyLion its projection of future direct deposit timing to ensure that the Company is first in line to new money. Through these methods, MoneyLion prioritizes its own repayment over Instacash users’ ability to use their recently deposited wages or income to pay rent or bills, to buy groceries, medicine, or necessities,

or to save for the future. In total, the Company's illegal, deceptive, and abusive practices have enabled MoneyLion to extract tens of millions of dollars from working-class New Yorkers.

8. The result is financial hardship: Instacash users have less money in the bank after MoneyLion first collects its amounts lent, fees, and tips from users' direct deposits of wages or income. Facing fresh shortfalls, Instacash users go back for more, piling up new amounts owed, more fees, and higher tips each time, until they are utterly dependent on regular and repeat access to MoneyLion's high-cost Paycheck Advances. The Company facilitates this destructive behavior by obscuring any risks of dependency, protecting its own bottom line, and aggressively encouraging increased usage through temporary boosts to the amounts it will lend.

9. Plaintiff OAG alleges that Defendant violated Executive Law § 63(12) by engaging in repeated and persistent illegal conduct through usurious lending in violation of state usury laws (Counts I and II). Plaintiff OAG also alleges that Defendant violated Executive Law § 63(12) by engaging in: repeated and persistent fraud (Count III); repeated and persistent deceptive acts or practices in violation of General Business Law ("GBL") § 349 and the Consumer Financial Protection Act ("CFPA") (Counts IV & VI); repeated and persistent false advertising in violation of GBL § 350 (Count V); and repeated and persistent abusive acts or practices by rendering Instacash users dependent on high-cost credit in violation of the CFPA (Count VII).

10. The Court should enjoin Defendant from engaging in illegal, deceptive, and abusive conduct, should order Defendant to provide an accounting of its usurious lending, and should award restitution, disgorgement, damages, civil penalties, and other relief as appropriate.

PARTIES & JURISDICTION

11. Plaintiff is the People of the State of New York, by their attorney, Letitia James, the New York Attorney General and is authorized to take action to enjoin repeated and persistent

fraudulent and illegal conduct under Executive Law § 63(12), deceptive business practices under GBL § 349, and deceptive or abusive acts or practices under the CFPA.

12. Defendant MoneyLion Inc. is a Delaware corporation with its principal place of business at 30 West 21st Street, 9th Floor, New York, New York 10010.

13. Plaintiff has provided Defendant with notice as specified in GBL § 349.

14. This Court has jurisdiction over this action under Executive Law § 63(12), under which the OAG is empowered to see injunctive relief, restitution, damages, and other equitable relief for repeated and persistent fraudulent or illegal acts or practices

15. This Court has personal jurisdiction over Defendant because it is located in New York and because the causes of action arise from Defendant's contracting with New Yorkers to supply goods and services in New York and from Defendant committing of tortious acts within and without New York causing injury within New York. CPLR § 302.

16. Venue is proper because the parties reside in this county, because a substantial amount of the transactions, practices, and courses of conduct at issue occurred within this county, and because Defendant conducts business in this county. CPLR § 503.

FACTUAL ALLEGATIONS

I. MONEYLION OFFERS ONLINE CONSUMER FINANCIAL PRODUCTS, INCLUDING INSTACASH LOANS, THROUGH ITS MOBILE APP

17. MoneyLion is a technology company that offers banking, lending, and other consumer financial products and services directly to consumers throughout the United States. The Company interacts with consumers predominantly online and through its mobile app.

18. MoneyLion claims it enhances financial wellbeing for working-class consumers by increasing access to banking services and financial literacy tools. As one of the Company's own

guide documents states: “Our target market is the 70% of hard working and gig economy Americans who do not want fees at their financial institutions and have little in savings.”

19. At its founding, MoneyLion’s key product was a bank account, which the Company called a “RoarMoney” account, offered online or through its app. RoarMoney accounts are offered in partnership between MoneyLion and one or more banks, and were intended to provide basic deposit accounts, debit cards, and other banking-like services to underbanked sectors.

20. Over time, MoneyLion has offered a variety of consumer financial products through its app, both to RoarMoney account holders and directly to consumers who do not have RoarMoney accounts. These products include a membership program that provides access to loans and other financial tools, investment accounts, and crypto-related products.

21. In 2019, MoneyLion began to offer Paycheck Advances under its “Instacash” label. The Company advertises Instacash as one of several “earned wage access” products available to consumers. These products purport to offer hourly workers who are paid every two weeks or on other fixed cycles access to wages that they have “earned” because they have worked during their current pay period, but which they have not yet been paid by their employers.

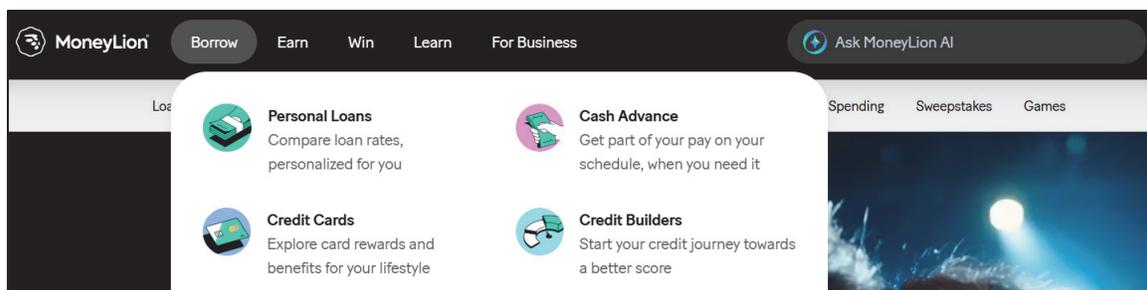
22. MoneyLion initially developed Instacash as a recruitment tool that was designed to attract consumers to open RoarMoney accounts. As part of this strategy, the Company made Paycheck Advances through Instacash available only to MoneyLion users who arranged for their pay or other income to be direct deposited into their RoarMoney accounts.

23. Like virtually all “earned wage access” providers, MoneyLion publicly asserts that it is not engaging in lending but merely providing users with wages that have already been earned. But MoneyLion has no relationship to employers and no access to real-time wage and hour data. As alleged further below, when it makes a Paycheck Advance, MoneyLion relies on its own

projections of future direct deposits, not any concrete evidence that the user who is requesting the Paycheck Advance has “earned” any wages at the time of the request.

24. MoneyLion also asserts that its Paycheck Advances are not loans. The Company’s business plans for Instacash, however, describe Paycheck Advances as “single payment loans” and state that the due date of the “loan should be on next pay date.” In communications among themselves, MoneyLion employees refer to amounts owed by users as “principal” while the Company’s business plans refer to its “exposure” as the “principal exposed.” And the Company tracks the impacts that changes to its algorithms and modeling have on its “loan books.”

25. Indeed, when a user hovers over the “Borrow” link on MoneyLion’s website, one of the links presented for users to select is a “Cash Advance” link, as shown below:



If a user clicks on the “Cash Advance” link, she is taken to MoneyLion’s “Earned Wage Access” page that includes several prominent advertisements for Instacash.

26. MoneyLion also closely tracks default rates on its Paycheck Advances to maintain “target limits.” It engages in what it describes internally as “collections” activity. And it tracks loan-to-value ratios to determine whether Instacash is driving growth.

27. Like most lenders, MoneyLion determines and periodically adjusts its acceptable credit risk levels by so that it can prioritize repayment rates or loan volume based on its current business strategy. The Company routinely evaluates its underwriting criteria, such as eligibility thresholds, to adjust repayment rates, and changes are reviewed by the Company’s Credit Risk

team. In addition, the Company's Credit Committee analyzes performance by tier and in total regularly, including analyses of "Credit Loss performance" among Instacash users.

28. MoneyLion also scores Instacash users into credit segments, tracking the "unpaid principal rate" of those segments to identify "high risk" users. The Company has experimented with trial programs for users who have their attempts to obtain Paycheck Advances rejected "to help them show us evidence of creditworthiness and migrate them over a few cycles." And MoneyLion developed its own "Roarscore" model "to improve our ROI on IC repayment," finding that it "seems to have high accuracy and high recall at predicting" repayment.

29. Over time, MoneyLion has repositioned Instacash away from being a recruiting tool for RoarMoney accounts towards being a direct-to-consumer product. Several years ago, the first product a visitor to www.moneylion.com would see advertised was the RoarMoney account. For the past few years, the first product advertised has been Instacash. The Company also eliminated the requirement to have a RoarMoney account to be eligible for Instacash; instead, consumers can access Instacash by linking any external bank account to MoneyLion's app. And the Company has experimented with what it calls "Trial Instacash" programs designed to attract consumers to Instacash that MoneyLion does not expect will open RoarMoney accounts.

30. MoneyLion also actively works to encourage its RoarMoney account holders who do not regularly obtain Paycheck Advances to begin using Instacash, such as by experimenting with offers to such users to refund Instacash fees for their first Paycheck Advance.

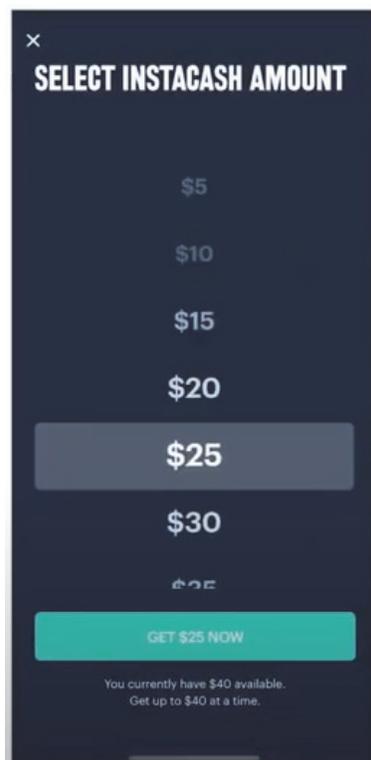
II. MONEYLION DECEPTIVELY MARKETS INSTACASH AS AN INTEREST-FREE AND NO-COST PRODUCT USED TO OBTAIN CASH ON DEMAND

31. MoneyLion extensively markets Instacash to consumers using various channels, including on the Company's website, through advertisements placed online and on social media,

and with video advertisements on YouTube and TikTok. The Company's Instacash marketing prioritizes two key supposed features: instant funds availability and no interest expense.

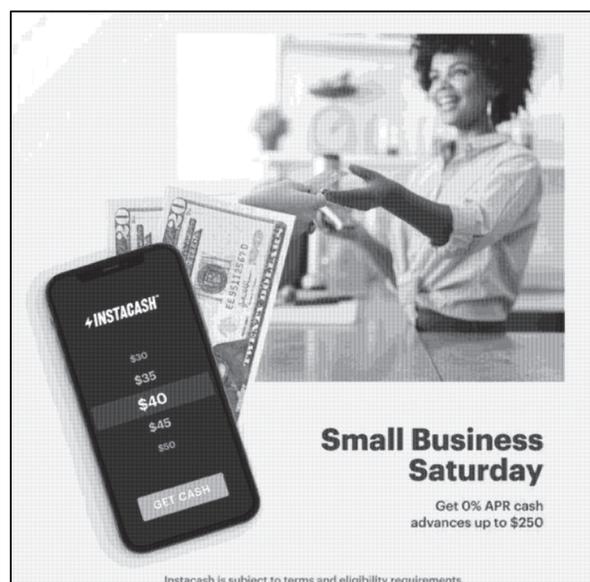
32. As to the feature of immediate funds availability, the name "Instacash" says it all. MoneyLion ads state that Instacash will help fund "emergency expenses" or provide consumers "extra cash" on demand. One ad describes Instacash as providing access to Paycheck Advances "anytime" while another states that Instacash provides "money you can get when you need it most," such as to pay for an "unexpected parking ticket, a sudden car breakdown, a leaky roof, or a last-minute dinner party." The Company similarly touts Instacash for when consumers "need fast cash." These ads, however, often make no mention of fees for immediate disbursement.

33. For example, in one online video advertisement, MoneyLion displays the process of obtaining a Paycheck Advance through Instacash. The advertisement prominently displays to consumers a button, highlighted in green, that reads: "GET \$25 NOW." However, as illustrated by the following screenshot, the advertisement never displays the required fee:



34. MoneyLion also frequently asserts in advertisements that there are no interest expenses associated with Instacash. The Company's website declares: "There's no interest charged." In other places on its website, MoneyLion describes Instacash as "0% APR." And when discussing the costs of Paycheck Advances obtained through Instacash, MoneyLion's website describes its Paycheck Advances through Instacash as "interest-free" transactions.

35. MoneyLion also uses text messages and pop-up notices that encourage consumers to "Get your first Instacash advance" by unlocking "up to \$250 in interest free cash." The Company's social media advertising contains similar messaging around interest expense:



III. CONSUMERS USE INSTACASH TO OBTAIN ADVANCES THAT ARE REPAID THROUGH MONEYLION'S DEBITS OF CONSUMER BANK ACCOUNTS

36. MoneyLion's app users agree to the Company's terms and conditions, including Instacash agreements, before they are eligible to obtain a Paycheck Advanced through the app. Those agreements are governed by the law of the state in which the user resides.

37. Consumers who want to obtain Paycheck Advances through Instacash must either have a RoarMoney account or link an external bank account to MoneyLion's app. The Company's agreements provide that whenever a user requests a Paycheck Advance they also authorize the

Company to debit her selected RoarMoney or linked external bank account for the amounts owed, plus fees and tips. And if the account lacks funds, the user's request also authorizes the Company to debit other bank accounts or charge other payment methods linked to its app.

38. MoneyLion aggressively employs these authorizations. Training materials instruct employees to "retry payments every day until repaid" and that when "there is not enough in the customer's accounts, we may take a partial repayment and try again the next day."

39. Finally, in its agreements, MoneyLion warrants that it will not pursue legal action or engage in debt collection activities to obtain repayment of Paycheck Advances. However, MoneyLion refers internally to its automated debit process as "automated collections" or its "automated retry logic," which is a central part of its "collections process."

40. The centerpiece of MoneyLion's business model for Instacash is the Company's extensive and rigorous analysis, tracking, and future projection of users' direct deposits into the RoarMoney account or external bank account that a user links to the Company's app.

41. When users sign up for MoneyLion's app to access Instacash, the agreements state that the Company must be able to detect at least three recurring deposits into linked RoarMoney accounts or external bank accounts before users will become eligible for Instacash.

42. Once the Company detects the deposits, it projects that anticipated size of the next deposit and makes available only a fraction of that deposit in the form of Paycheck Advances, thereby ensuring that future deposits will be sufficient to repay the Company in full.

43. In addition to ensuring that projected amounts of future deposits will be sufficient to repay itself (plus fees and tips), MoneyLion makes extensive efforts to ensure that it will be first in line to new money in users' accounts. When a user obtains a Paycheck Advance, MoneyLion sets the repayment date as the date it projects for the user's next direct deposit.

44. From the launch of Instacash in 2019 forward, MoneyLion has tested and experimented to develop the ideal “due date prediction” for Instacash. The goal for the Company throughout has been “predicting and detecting users paycheck” to line up with repayment. And the Company constantly refines its model “to smoothen DD detection/predictions.”

45. The precision of its modeling to ensure repayment of Paycheck Advances is central to making Instacash profitable. Before launch, the Company’s engineers focused on creating an “architecture to be able to detect individual DD in near-real time.” The Company’s founder often sent messages to his team when Instacash repayments were not quickly taken from his personal direct deposits during testing, stressing the need for “immediate debits upon payroll.” He inquired whether employees were “watching instacash tonight to make sure debits are happening immediately as payroll hits,” emphasizing “it needs to be near instant.” He also complained that his “payroll has been deposited 1 hour ago” but the repayment of “\$115 instacash still hasn’t been taken out,” which other employees promised to address “in the next couple of hours.”

46. Today, MoneyLion times its debits to obtain repayment for Paycheck Advances immediately after users receive new direct deposits. The reason is simple: as the Company acknowledges, its ability “to initiate repayment on a per user basis as soon as DD hits” will “improve and collect on most payments.” Today, the Company’s model is so aggressive at being first in line to new money that MoneyLion regularly receives complaints from users when its projections cause the Company to attempt debits shortly before direct deposits are made, triggering overdraft and other banking fees for users with linked external bank accounts.

47. For Instacash users who link Instacash to their RoarMoney accounts, MoneyLion takes this aggression a step further, as the Company’s control over these accounts permits it to “prioritize” its automatic debits of accounts to obtain repayment “over other transactions.”

48. The result of this automatic debit process is very high collections rates, as MoneyLion successfully collects on more than 95% of all fee-based Paycheck Advances.

49. MoneyLion's true collections rates are much higher. One analysis by the Company found that the vast majority of Instacash repayment failures were due to bad actors who were defrauding the Company, such as users who created 5 or more Instacash accounts that were associated with a single mobile device. In contrast, for devices that had fewer than 5 Instacash accounts associated with them, the Company's collections rates were nearly 98%.

50. MoneyLion enhances its collections by imposing substantial hurdles on users' ability to avoid repayment—notwithstanding the Company's promises that Paycheck Advances carry no obligation to repay and that the only consequence will be a loss of Instacash.

51. As an initial matter, MoneyLion strictly enforces a policy of barring users from Instacash in the event the user does not pay back a Paycheck Advance. As Instacash is marketed (and used) as a source of frequent and repeat transactions, strict enforcement of this policy reflects both MoneyLion's and users' expectations that repayment will be made. And those expectations align with reality, including the near-100% collections rate on non-fraud transactions.

52. Moreover, MoneyLion provides no notice, reminder notifications, prompts, or other deadlines or revocation information directly within Instacash about the process for removing payment authorization once a user obtains a Paycheck Advance through Instacash.

53. This lack of readily available information makes it particularly complicated for users since MoneyLion requires users to provide three business days' notice before it will treat a user's revocation of debit authorization to be valid and enforceable. The notice requirement makes revocation entirely impossible for Paycheck Advances with short terms. And even where

revocation might have been possible, the notice period of three business days means that many users will need to submit revocation nearly a week before repayment is scheduled.

54. MoneyLion makes the process of revoking debit authorizations needlessly difficult as well. At the launch of Instacash, users were required to provide the Company with written notice of revocation, despite the fact that those users' prior interactions with MoneyLion almost certainly occurred entirely over the Company's app. Even today, while the Company provides an in-app revocation method, the process is not well explained or clearly highlighted: In contrast to the "One-Click" process that makes is quick and easy for users to obtain another Paycheck Advance, there is no clear and straightforward "revoke debit authorization" button to click in the app. Instead, users must navigate an unintuitive and more complex process across multiple menus to de-link all authorized payment methods that they have ever added to the Company's app.

55. Further, users who do go through the entire process of de-linking all authorized payment methods from MoneyLion's app effectively render the app useless. Users who attempt to revoke debit authorization not only lose access to future Paycheck Advances through Instacash, but also to any other features of the MoneyLion app that require payment. And RoarMoney account holders must effectively give up their bank accounts to revoke their authorizations.

IV. MONEYLION CHARGES AND RECEIVES INTEREST VIA INSTACASH

A. MoneyLion Charges Interest by Assessing Fees for Paycheck Advances that Have Terms that Begin Immediately Rather than in 48 Hours or Later

56. When users navigate MoneyLion's app to obtain Paycheck Advances through Instacash, they eventually must elect either a Paycheck Advance with an immediate term—meaning that funds will be disbursed to users within minutes—or a Paycheck Advance with a term that begins 48 hours or later—meaning that funds will be disbursed to users days later.

57. MoneyLion does not characterize Instacash as offering users two distinct Paycheck Advances with two different terms. Instead, the Company instead presents users the choice in its app to either select immediate disbursement of funds in exchange for what MoneyLion calls a “TurboFee” or select delayed disbursement of funds for no TurboFee.

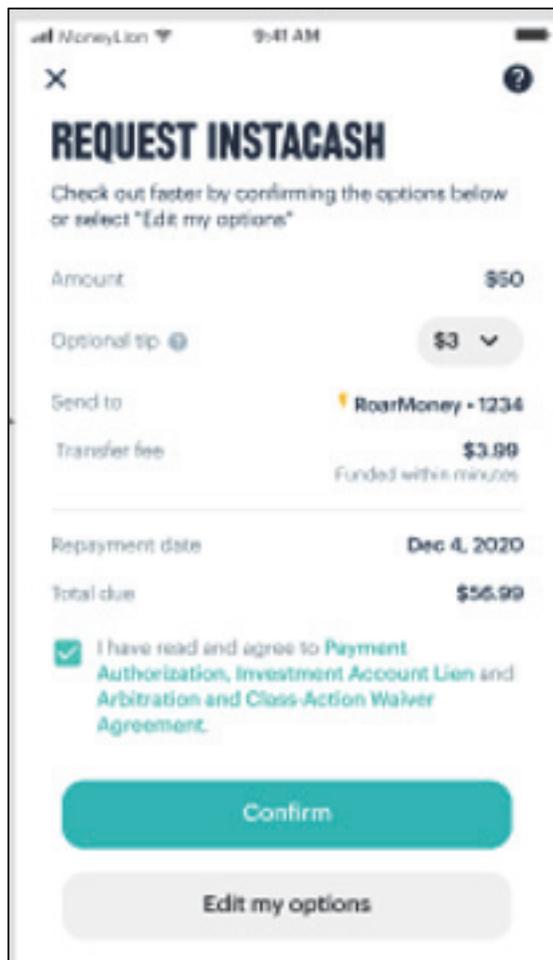
58. At launch of Instacash, MoneyLion charged \$3.99 for Paycheck Advances with immediate terms and disbursement to a RoarMoney account and charged \$4.99 for Paycheck Advances with immediate terms and disbursement to an external bank account.

59. In November 2021, MoneyLion adopted a new fee schedule that charged fees that varied by the size of disbursement amount, starting at \$0.99 (RoarMoney) or \$1.99 (external) for immediate-term Paycheck Advances of \$5 or less and increasing up to \$5.99 (RoarMoney) and \$7.99 (external) for immediate-term Paycheck Advances between \$90 and \$100.

60. Beginning on October 12, 2022, and through today, MoneyLion’s fee schedule starts at \$0.49 (RoarMoney) and \$1.99 (external) for immediate-term Paycheck Advances of \$5 or less and increases up to \$6.99 (RoarMoney) and \$8.99 (external) for immediate-term Paycheck Advances between \$90 and \$100. The full fee schedule is shown below:

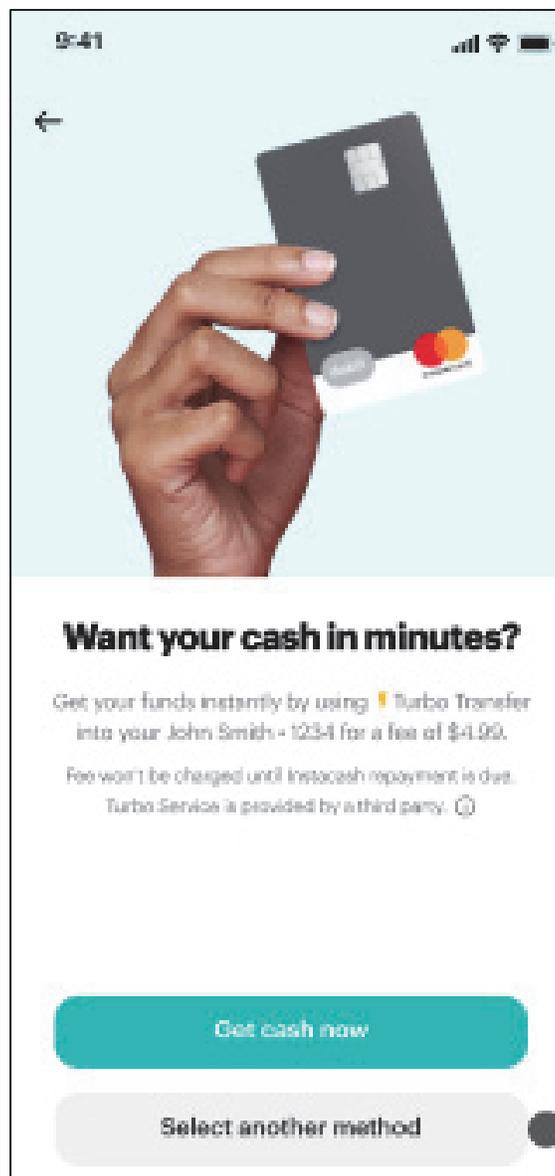
Instacash Turbo Fee		
Disbursement Amount	RoarMoney account	External account
\$5 or less	\$0.49	\$1.99
\$10 – \$25	\$1.99	\$3.99
\$30 – \$45	\$2.99	\$4.99
\$50 – \$65	\$3.99	\$5.99
\$70 – \$85	\$5.49	\$7.49
\$90 – \$100	\$6.99	\$8.99

61. MoneyLion pushes users to select Paycheck Advances with immediate terms by pre-selecting such options. For example, a user who attempts to obtain a Paycheck Advance through Instacash will see the following summary screen in the Company's app:



As this exemplar screenshot shows, MoneyLion prods users to request Paycheck Advances with terms that begin immediately (and which incur the Company's TurboFees) by: (i) making immediate loan terms the default option; (ii) emphasizing the receipt of funds "within minutes"; (iii) highlighting the "Confirm" button in bright colors, in contrast to the grayed-out option to "Edit my options"; and (iv) requiring users to navigate to separate screens to alter the terms.

62. Instacash users who attempt to avoid fees are met with resistance. For example, MoneyLion displays the following screen to push Paycheck Advances with immediate terms:



As illustrated by this exemplar screenshot, MoneyLion pushes users to select Paycheck Advances with immediate terms both by emphasizing the ability to obtain funds immediately and by making the fee-based Paycheck Advance more prominent through a colored “Get cash now” button.

63. To further drive revenue generated by Paycheck Advances with immediate terms, MoneyLion has adopted a “One-Click” process for Instacash that enables users to obtain new Paycheck Advances with the click of a single button. These One-Click options come with “pre-filled” choices made by MoneyLion, including terms that begin immediately.

64. MoneyLion expects users to select Paycheck Advances with immediate terms and disbursement most of the time. In one study, for example, the Company noted from “past experience” that users “dont really look at TurboFees as a decisioning criteria.”

65. From October 28, 2018 to December 31, 2023 (the “Data Period”), MoneyLion assessed a fee on nearly nine out of every ten Paycheck Advances made through Instacash, successfully collecting its fee on nearly 96% of those loans. In total, the Company collected more than \$24.6 million in fees from New Yorkers during the Data Period.

66. MoneyLion’s fees for Paycheck Advances with terms that begin immediately impose substantial costs of credit on Instacash users. During the Data Period, the most common Paycheck Advance obtained by Instacash users was \$100 for a \$8.99 fee and was scheduled to be repaid in two weeks. That \$8.99 represents an APR of about 234%. The second-most-common Paycheck Advance was \$50 for a \$4.99 fee and was scheduled to be repaid in two weeks and an APR of about 260%. The third-most-common Paycheck Advance was for \$100 with a \$8.99 fee, but with repayment in one week and an APR well in excess of 450%.

67. While the fees imposed on Instacash users for immediate terms are substantial, the costs to MoneyLion are minimal. The Clearing House, which operates a real-time payment network, states that per-transaction charges for users of its network, such as MoneyLion, are less than 5 cents—a fraction of what MoneyLion charges Instacash users. And when accounting for fees paid for Paycheck Advances with immediate terms in its audited financials, the Company recognizes its fee revenue as gross rather than net because the services the Company provides related to those “fees are not distinct from the services of the Instacash advance.”

68. For RoarMoney account holders, any difference in the Company’s “costs” between immediate and delayed terms is entirely illusory. MoneyLion controls RoarMoney accounts,

meaning that there are no external transfers necessary and no additional costs for real-time payments. MoneyLion instead artificially slows deposits for no-fee Paycheck Advances sent to RoarMoney accounts, a process it describes as “Delayed Deposits” or “Delayed RM.” Its internal tracking categorizes these transfers as “DELAYED_ROAR_MONEY.”

B. MoneyLion Receives Interest by Relentlessly Pushing Users to Tip the Company in Connection with Each Paycheck Advance they Obtained

69. When users navigate MoneyLion’s app to obtain Paycheck Advances through Instacash, they are be prompted to pay a tip to the Company for each Paycheck Advance.

70. MoneyLion publicly asserts that tipping is optional and that Instacash users will not suffer adverse consequences for choosing not to tip. But the Company also attempts to extract tips aggressively, pushing users to tip through guilt. For example (emphases added throughout): “So each time you take an interest-free cash advance, you’ll have an opportunity to leave an optional small tip. And it’s wonderful to see *great folks like you leaving tips* to support this empowering feature.” Another MoneyLion display encourages users to tip “what you think is *fair*.” And a third reminder suggests that tips “help us cover the high costs of keeping Instacash interest-free and readily available to as many members as possible. *We’re all in this together.*”

71. Other efforts by the Company to push tips carry implicit threats that users will not continue to be able to access Instacash on the same terms in the absence of generous tipping. For example, MoneyLion tells users that “tips are what help us cover the high costs of administering Instacash at 0% APR for the large and growing MoneyLion community.” In another message pushing users to tip, MoneyLion warns that “it takes money to keep 0% APR Instacash running, so please consider a tip to help keep it free.” And in another in-app reminder, the Company suggests that users’ “participation will help us ensure that we can keep offering the product”—implying that a failure to tip regularly will lead to a loss of Instacash entirely.

72. Internally, however, MoneyLion does not maintain any detailed tracker of what level of tipping is required to keep Instacash “free” or available to its users. Instead, the Company treats money obtained through tips as “an additional revenue stream” and closely tracks tipping rates (how often users tip) and tipping amounts (the dollar value of tips). Indeed, the Company publicly reports tips received as adding to its bottom-line revenue, not reducing its costs.

73. One early business plan for Instacash was clear: the purpose of requesting tips from Instacash users was to extract funds that go “to MoneyLion as a payment (FEE).” Internally, the Company acknowledges that “Instacash profitability requires that we maximize profitability using both tip and fee-based structures.” The goal is for MoneyLion “to raise [tipping] rates and keep them up by learning what works and continuously keeping the messaging and design on these screens fresh.” Thus, MoneyLion employees “continue to work to ensure that both tipping rates” and “tip rates” are “at the optimum level that user base will support.” The end goal is to get “users into our [Instacash] ecosystem and nurture them up the value chain” to produce revenue.

74. To further drive revenue from tipping, MoneyLion closely tracks tipping rates. Early business plans noted that “about 65% of users provided an average tip of almost \$5 for an average loan of about \$50.” And tipping has been quite profitable. As one MoneyLion analysis explained, even “a \$5 tip on a \$50 advance taken for a week is a great return at scale.”

75. To push users to pay tips when obtaining Paycheck Advances, MoneyLion engages in many of the same tactics it uses to push instant terms and disbursement. When an Instacash user requests a Paycheck Advance, in-app screens present suggested tip levels and require users to navigate to drop-down menus or other screens to remove the preselected tip.

76. MoneyLion also predetermines a tip amount. At the outset of Instacash, this default tip was set at \$5. The Company eventually adopted a dynamic tipping model that adjusts the

amount of the preselected tip based on the requested size of the Paycheck Advance. The amount of the preselected tip chosen by MoneyLion, however, is never \$0.

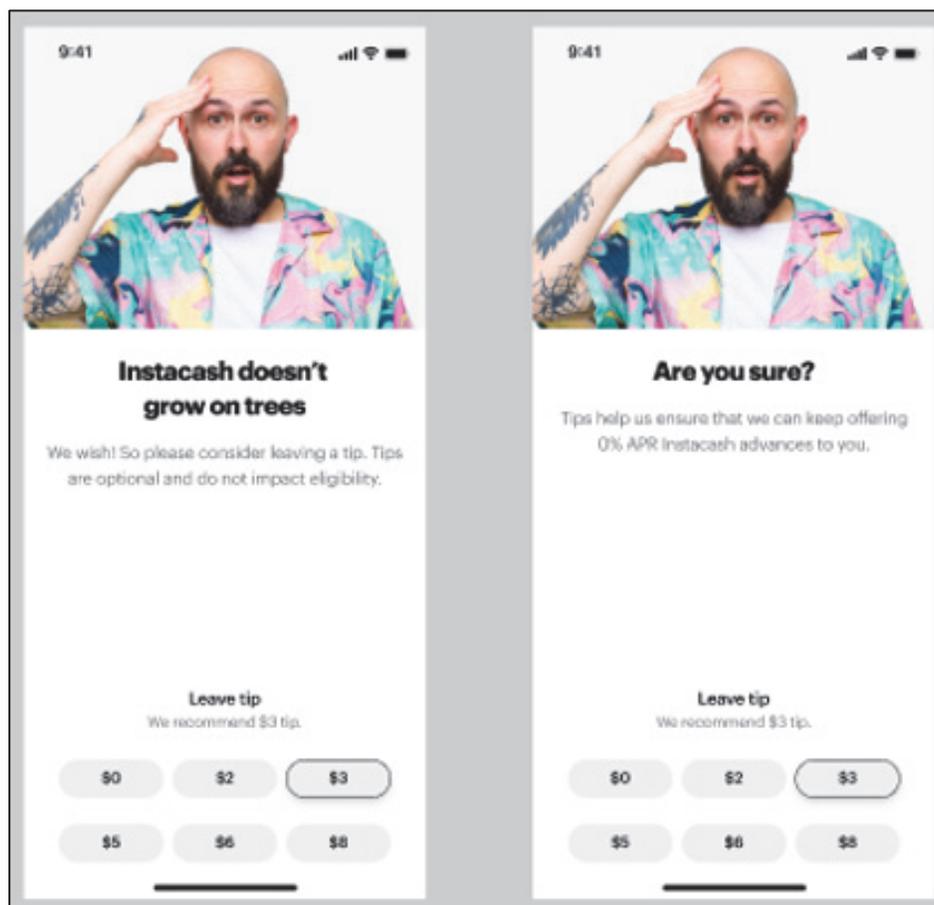
77. The Company refers internally to its predetermined tip amount as a “tip anchor”—a reference to cognitive biases wherein humans are readily tied to the first piece of information presented, thereby “anchoring” them to a starting point when making decisions. And MoneyLion ramps up effectiveness of its tip anchors by personalizing them for each user.

78. MoneyLion also repeatedly demands tips, showing users screens during the normal process of requesting a Paycheck Advance through its app, after the terms of a proposed Paycheck Advances has been set, and even during future uses of Instacash. And the Company closely tracks user responses, including which screens they see and which buttons they push.

79. For example, MoneyLion’s analyses of its user base found that tipping rates and amounts tended to increase if users were shown future progressions in eligibility, such as access to future higher amounts of Paycheck Advances through Instacash. As one business plan stated: “We test everything” to optimize tipping, including headlines, colors, page load times, images, statements, the effect of email follow-up, and the messages conveyed.

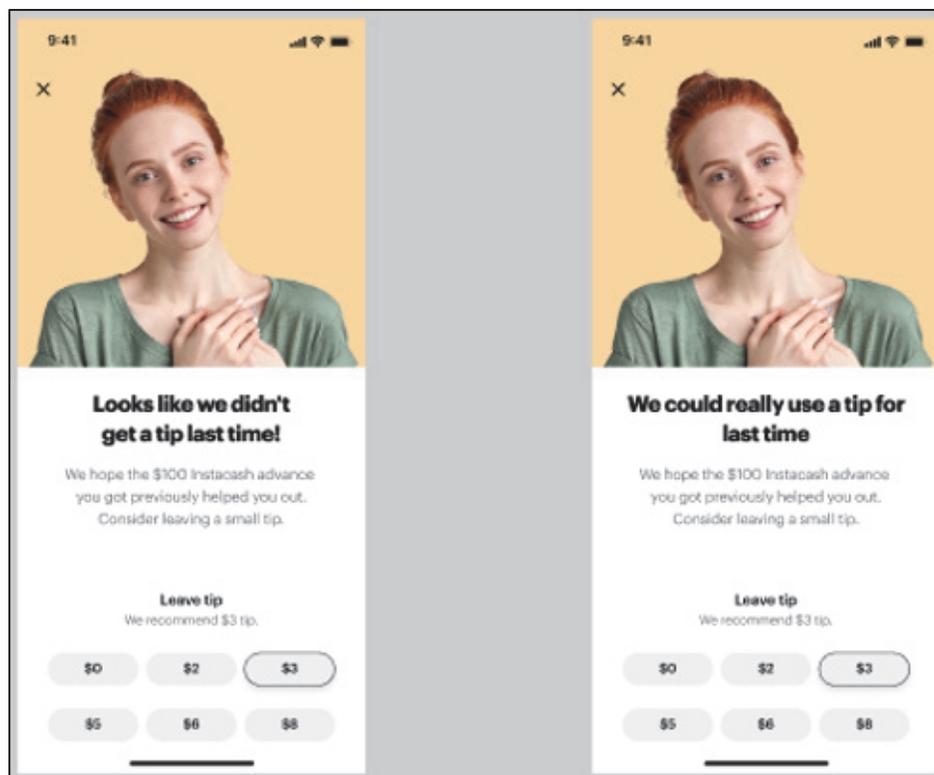
80. According to the Company’s business plans, MoneyLion uses testing data to engage in “behavioral nudges and messaging” to push Instacash users to pay tips. The end goal is to “continue to improve economics of Instacash and make it highly profitable.” Indeed, one business plan outlining the Company’s “Instacash Goals and Roadmap” stated a goal of *reducing* the average Paycheck Advance obtained through Instacash down to \$50 from \$60 because “our tip rate as a % of principal” would be “higher.” To accomplish this goal, MoneyLion planned to offer more consumers “the \$25 tier” for Instacash, thereby limiting maximum Paycheck Advances to that amount, and deploy “other UX mechanics to encourage smaller amounts.”

81. As an example, when users successfully navigate the required menus to reset the tip amount to \$0 during the process of obtaining Paycheck Advances through the app, MoneyLion will automatically show “friction screens” later in the Instacash process, prompting users again to provide tips in exchange for Paycheck Advances provided through Instacash, such as:



As this exemplar screenshot shows, MoneyLion pressures users repeatedly to tip when using Instacash by: (i) implicitly threatening them with loss of the product (“Instacash doesn’t grow on trees”); (ii) inducing guilt for declining to tip (“Are you sure?”); (iii) anchoring users’ expectations by recommending specific tip levels; and (iv) highlighting preferred tip amounts.

82. Similarly, where users successfully avoid being pushed into tipping when obtaining prior Paycheck Advances, MoneyLion’s app will automatically show them “retargeting screens” at the beginning of the process when they next use Instacash in the future, such as:

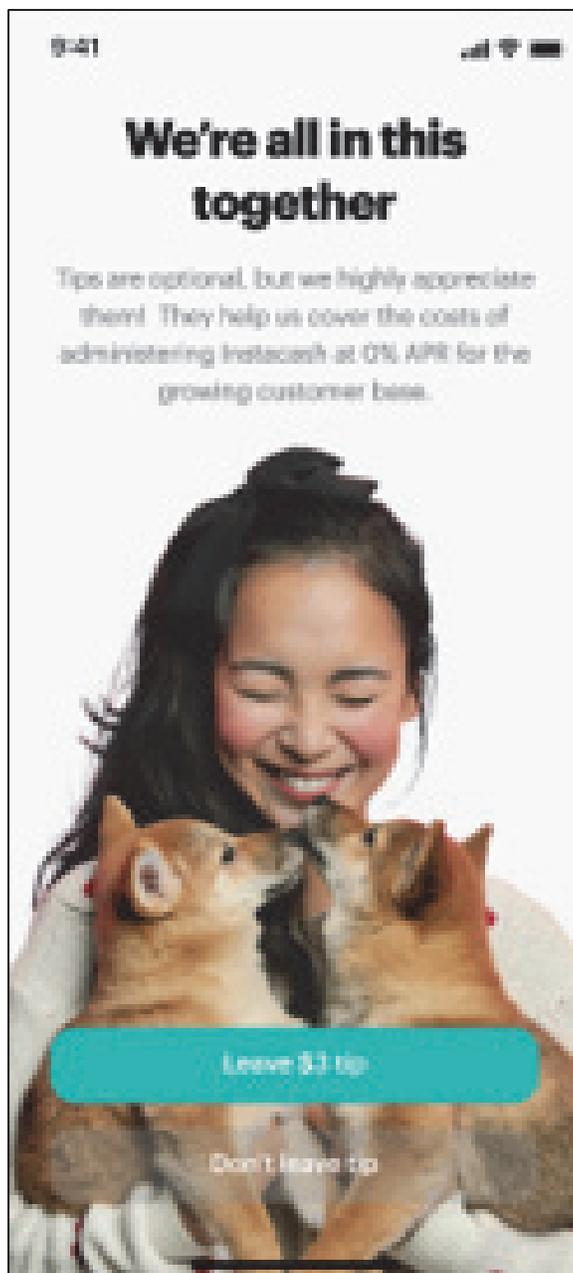


As this exemplar screenshot shows, through its retargeting screens MoneyLion similarly pressures users to tip for prior Paycheck Advances obtained through Instacash.

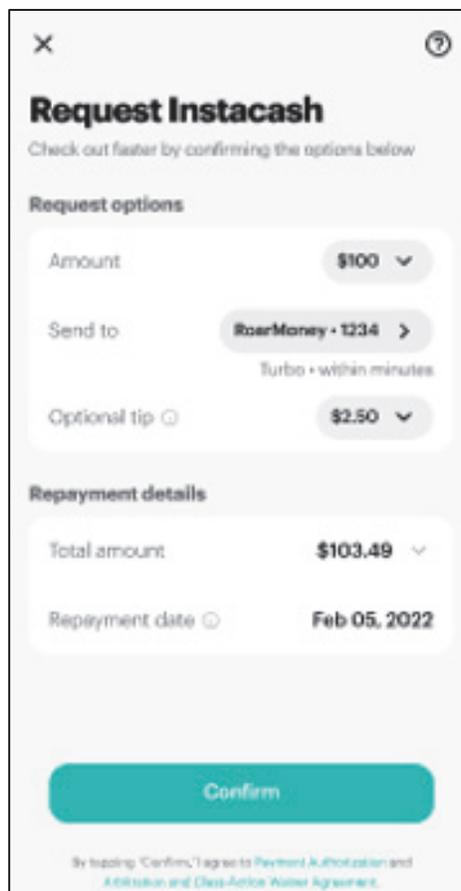
83. The express purpose of these friction and retargeting screens, according to communications among employees, is to “improve instacash tipping rates.”

84. MoneyLion also evaluates the effectiveness of the screens it uses in its app to request that its users provide tips for using Instacash. In one experiment, the Company showed its users different images and headlines to evaluate which would “consistently produce the highest tipping metrics among users” before deploying updated screens through its app. MoneyLion also conducted experiments to determine whether presenting tips to Instacash users as dollar amounts or as percentages would drive more frequently and higher tipping.

85. The result are screens like the one below, which pressures consumers to act on behalf of a claimed community interest and prominently displays a predetermined tip:



86. As it does with TurboFees that users agree to pay to receive Paycheck Advances that have immediate terms, MoneyLion also incorporates “pre-filled” tip amounts determined by the Company into its One-Click process for obtaining Paycheck Advances:



As this exemplar screenshot shows, MoneyLion’s One-Click process encourages both fees for immediate terms and tips by preselecting amounts while drawing users’ attention to the large, colored “Confirm” button and away from separate, grayed-out drop down menus.

87. Despite no requirement to do so, Instacash users agreed to pay tips to MoneyLion in connection with nearly 40% of all Paycheck Advances obtained. For Instacash users who agreed to pay tips, they agreed to pay tips between \$2.00 and \$5.00 on more than three-quarters of all Paycheck Advances, and the average tip amount was about \$4.10. In total, Instacash users agreed to pay more than \$7 million in tips to MoneyLion, and the Company in fact was able to collect approximately \$6.8 million from those same Instacash users during the Data Period.

88. MoneyLion’s tipping demands and manipulative behavioral tactics impose substantial costs of credit on Instacash users. During the Data Period, the most common Paycheck

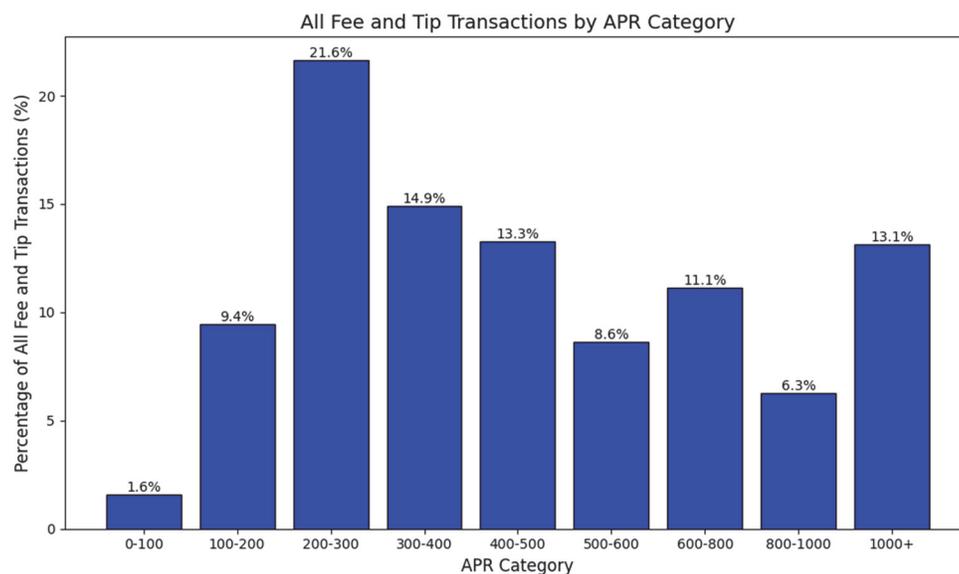
Advance obtained by Instacash users was \$100 to be repaid in two weeks, with the most common agreed-upon tip of \$4. That \$4 represents an APR of more than 100%.

C. MoneyLion Has Charged and Received Millions of Dollars in Interest through its High-Cost Paycheck Advances Made Through Instacash

89. MoneyLion has extracted tens of millions of dollars from New Yorks’ wages through Instacash. In total, during the Data Period, users agreed to pay approximately \$25.6 million in fees and approximately \$7.1 million in tips to MoneyLion for Paycheck Advances. The Company collected more than \$31 million in fees and tips from New York consumers.

90. During the Data Period, the most common amount of a Paycheck Advance was \$50, the most common fee was \$4.99, the most common tip was \$2, and the most common term was ten days. Combining these most common traits to create a “typical” Paycheck Advance, the annualized cost of credit for this Paycheck Advance exceeds 350% APR.

91. In total, users agreed to pay fees or tips to MoneyLion on about 4.25 million Paycheck Advances during the Data Period. The average cost of credit imposed by the Company’s fees and tips was more than 800% APR, with more than 95% of these Paycheck Advances carrying APRs above 100% and more than half imposing costs in excess of 500% APR, as shown below:



92. In total during the Data Period, MoneyLion made Paycheck Advances on which users agreed to pay costs in the form of fees and tips in amounts that exceeded 25% APR, New York’s criminal usury cap, or 16%, new York’s civil usury cap, about 4.1 million times.

93. Even looking at fees alone, MoneyLion made Paycheck Advances during the Data Period on which users agreed to pay fees in amounts that exceeded the 16% APR or 25% APR civil and criminal state usury caps on nearly 4 million occasions.

94. Similarly, looking at tips alone, MoneyLion made Paycheck Advances during the Data Period on which users agreed to pay tips in amounts that exceeded the 16% APR or 25% APR civil and criminal state usury caps on approximately 1.67 million occasions.

95. Despite users’ agreements to pay fees and tips, MoneyLion states that users paid “0% APR” when they obtained Paycheck Advances in disclosures such as the following:

Great job using Instacash!

You requested Instacash and opted for a Turbo transfer! The funds are already in your MoneyLion account **ending in 2743!**

Here are the details:

Instacash amount:	\$100.00
Interest rate:	0% APR
Tip amount:	\$10.00
Turbo transfer fee:	\$5.99
Repayment amount:	\$115.99
Repayment scheduled date:	Friday, October 20, 2023

96. While MoneyLion does not disclose to Instacash users that it treats these fees and tips as supplemental revenue rather than costs for services provided, the Company's publicly filed financials acknowledge this reality. Specifically, MoneyLion reports both Instacash fees and Instacash tips as gross revenue, without accounting for any costs being covered by those fees or tips. As the Company acknowledges in its financials, the services it provides related to these tips and fees "are not distinct from the services of the Instacash advance."

D. MoneyLion Has Employed Artificial (and Generally Undisclosed) Per-Transaction Limits to Extract Millions of Additional Dollars in Interest

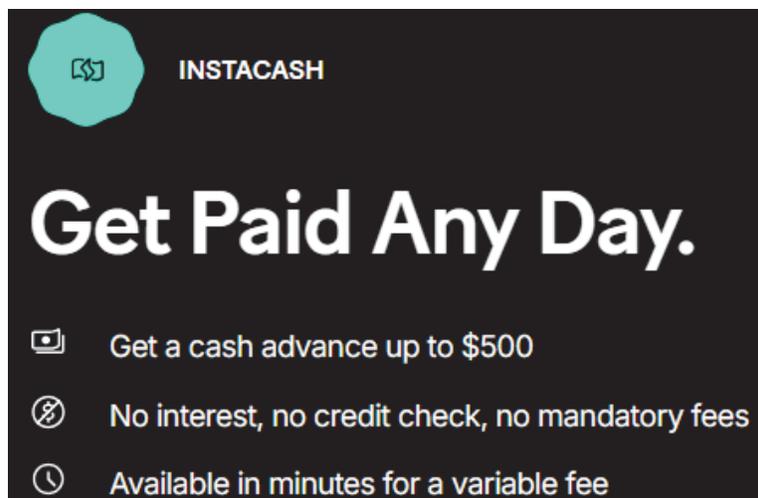
97. At Instacash's inception, the total amount MoneyLion would make available to an Instacash user was \$250. The Company subsequently increased this limit to \$500.

98. MoneyLion's advertising generally focuses on the total amount of funds that the Company makes available. In one advertisement, for example, MoneyLion prominently declared: "GET CASH ADVANCES UP TO \$250 WITH NO INTEREST." And the Company's website on which that ad appeared contained the following Instacash explainer:

**Instacash makes it easy
to get the cash you need:**

- 1. Download the MoneyLion app and use your email address to create an account.**
- 2. Link an account you'd like to use to receive your cash advances. No credit check.**
- 3. Unlock Instacash and get paid today. Tap "Instacash" and request an amount up to \$250.**

99. Similarly, the front page of MoneyLion's website prominently proclaims that consumers can get "a cash advance of up to \$500," as shown below:



100. MoneyLion’s representation in its advertisement on its website is that a future user can obtain “a cash advance”—meaning one transaction—of up to \$500. In other advertisements, MoneyLion shows screenshots of phones purporting to reflect its app in which a “Balance” of “\$500 available out of \$500” is shown above a green “Request” button, also with no indication that, when a user actually uses the app, a \$500 Paycheck Advance will not be available.

101. Contrary to this representation, MoneyLion placed a \$50 per-transaction limit on Instacash at inception, limiting users to Paycheck Advances of \$50. In late 2021, around the same time that the Company increased total amounts available in Instacash from \$250 to \$500, MoneyLion increased this limit to \$100 for any single Paycheck Advance.

102. As a result of the per-transaction limit, users who want to access the entire amount of funds made available through Instacash must obtain multiple Paycheck Advances—and pay multiple fees and tips if the users desired immediate loan terms and disbursement. Indeed, the Company internally projected as much: “The increase from \$50 to \$75 forces users to take at least 2 instacashes to get the full \$75, hence we see an increase in % fee promised.” Yet MoneyLion’s advertising of the \$250 and \$500 amounts available make no mention of these caps.

103. Despite its successful extraction efforts, MoneyLion favorably contrasts itself with payday lenders. In an online explainer, the Company describes the following: “Suppose the lender is offering \$250 payday loans and charging \$15 for every \$100 borrowed, this means you’ll spend \$37.50 on interest alone – that comes out to 400% APR!” Yet if MoneyLion offered a consumer \$250 through Instacash, due to the Company’s artificial transaction limit that Instacash user would need to take five \$50 Paycheck Advances, paying a \$4.99 fee each time for instant terms and instant disbursement, to obtain the \$250 on the same terms as the Company’s hypothetical payday lender—*nearly \$25 and an APR of 260%*. And if that user provided the \$3 tip that MoneyLion aggressively pushes for each Paycheck Advance, the user would end up paying nearly \$40 to obtain the \$250—an APR of 415% and *more than to the hypothetical payday lender*.

104. Instacash users regularly incurred substantial additional fees and tips to access their full available balance. During the Data Period, nearly two million Paycheck Advances were by Instacash users who had previously obtained a Paycheck Advance minutes earlier. And Instacash users who engaged in these consecutive transactions paid millions of dollars in fees and tips on the subsequent Paycheck Advances as a result of MoneyLion’s artificial transaction limits.

V. INSTACASH TRAPS CONSUMERS IN CYCLES OF DEPENDENCY THAT MONEYLION ACTIVELY BOOSTS TO ENCOURAGE REPEAT BORROWING

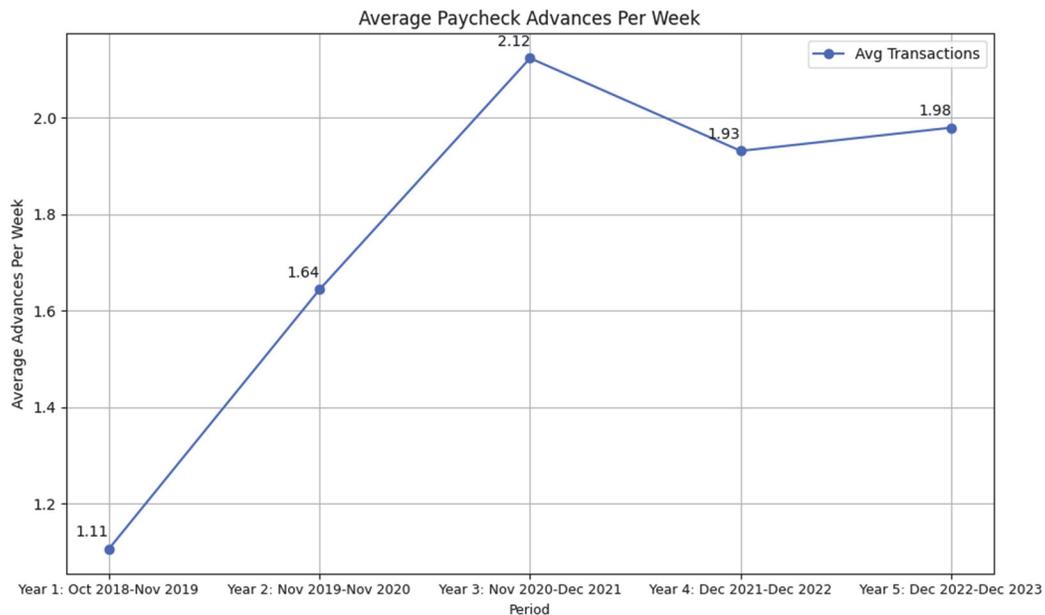
105. For Instacash to reliably generate profits for MoneyLion, the Company needs users to obtain Paycheck Advances regularly and repeatedly. MoneyLion cannot profit from Instacash if each Instacash user obtains one monthly Paycheck Advance to cover a single expense.

106. MoneyLion’s Instacash, however, readily drives usage: As users obtain multiple Paycheck Advances and the Company debits substantial sums from RoarMoney accounts or external bank accounts after new direct deposits to repay itself and capture fees and tips, the funds

available for users to cover ongoing expenses is reduced. As a result, users need to quickly obtain additional Paycheck Advances to cover the shortfall, creating a cycle of dependency.

107. MoneyLion recognized the addictive nature of Instacash early on. Early business plans for expanding the Company’s offering of Paycheck Advances to users without RoarMoney accounts observed that “2 out of 3 eligible customers have used Instacash. And 2 out of 3 users who have used Instacash have returned and used the product at least a second time.”

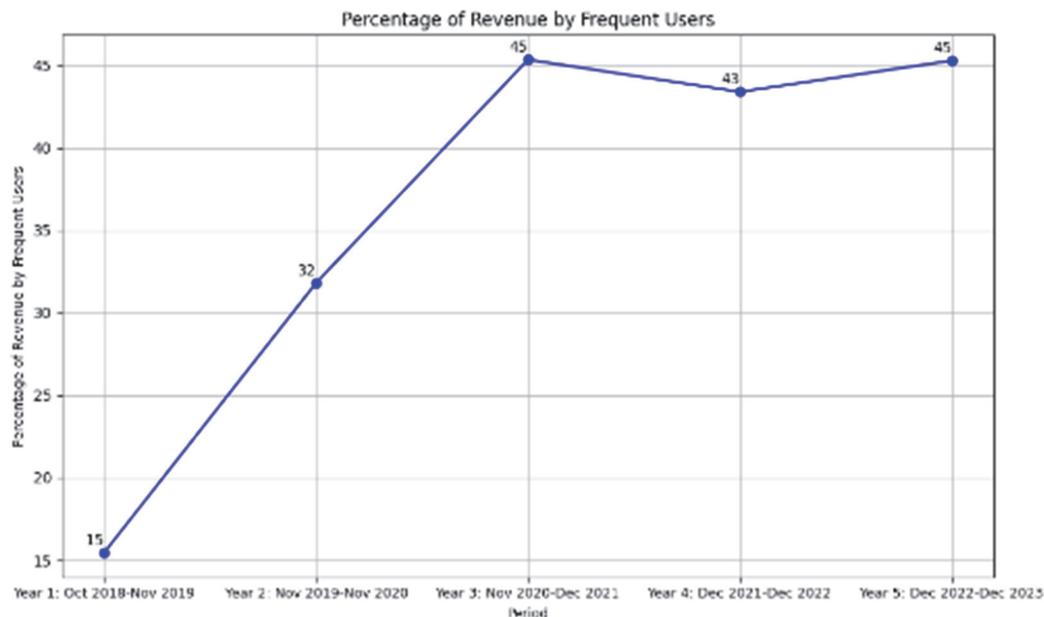
108. And indeed, the average number of times Instacash users obtain Paycheck Advances each week has steadily risen over time, as shown below:



109. According to a February 2023 modeling exercise, MoneyLion estimates that up to 40% of Instacash users pay fees to the Company for 10 or more Paycheck Advances per month, up to 7% of users pay fees on 20 or more Paycheck Advances per month, and nearly one out of every 100 users pay fees on 30 or more Paycheck Advances per month.

110. The key for MoneyLion to make Instacash profitable is to push as many users as it can into these higher-usage categories. In fact, during the Data Period, more than 44% of the

Company's fees and tips were extracted from users who obtained two or more Paycheck Advances weekly. And the burdens of fees and tips fall heavier on higher-usage users. For example, users who obtain Paycheck Advances every other day or more on average—which make up one out of every five Instacash users—regularly incur fees and pay tips in excess of \$57 each month. And this user group collectively generates about half of all Instacash fees and tips:



111. Users who become dependent on Instacash need to obtain Paycheck Advances more and more often to make up the resulting shortfalls once repayment and fees and tips are extracted from their direct deposits. Across the Data Period, approximately 44% of all Paycheck Advances obtained through Instacash were for users who previously obtained a Paycheck Advances two days earlier or less. And these users paid a median APR of more than 365%.

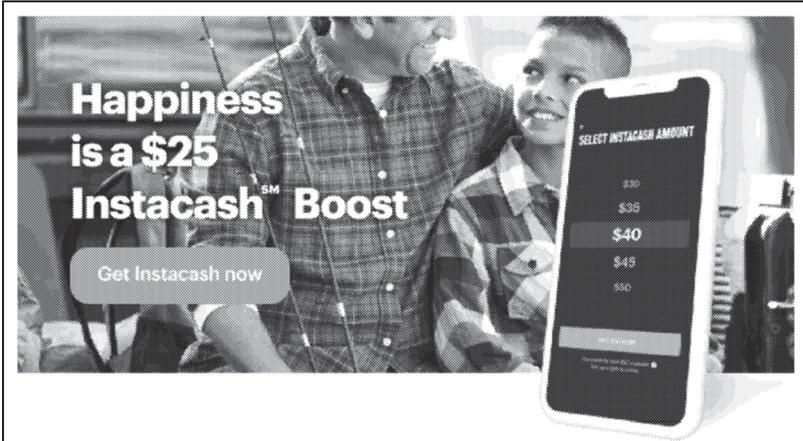
112. The effect on Instacash users' financial wellbeing is straightforward. A user who anticipates receiving a \$1,000 direct deposit for work every two weeks and who obtains a median-level Paycheck Advance twice weekly—\$50 plus a \$4.99 fee and \$2 tip—will have nearly \$250 extracted by MoneyLion from her next \$1,000 direct deposit, leaving her hundreds of dollars short

when managing large-dollar recurring expenses such as the mortgage or rent and car payment. And higher-usage Instacash users can easily see their \$1,000 direct deposits cut in half.

113. Similarly, the costs imposed by Instacash are disproportionate to any benefit received. A user who takes one \$50 Paycheck Advance for a \$4.99 fee receives \$50 immediately and then receives \$54.99 less on pay day. During the next pay cycle, the user requests a \$54.99 Paycheck Advance to make up for lost funds. But this new Paycheck Advance is not providing new funds—it is filling a hole left by the prior Paycheck Advance. And the fee incurred for this and each subsequent Paycheck Advance, which can amount to \$100 or more over time, is solely attributable to the one-time benefit received from the first Paycheck Advance alone.

114. In recent years, MoneyLion has supercharged Instacash usage further through “Boost” programs, in which users gain temporary increases to the total funds available through Instacash, thereby allowing maxed-out users to obtain additional Paycheck Advances.

115. For example, the Company sent users the following boost in March 2021:



Happiness
is a \$25
InstacashSM Boost

Get Instacash now

SELECT INSTACASH AMOUNT

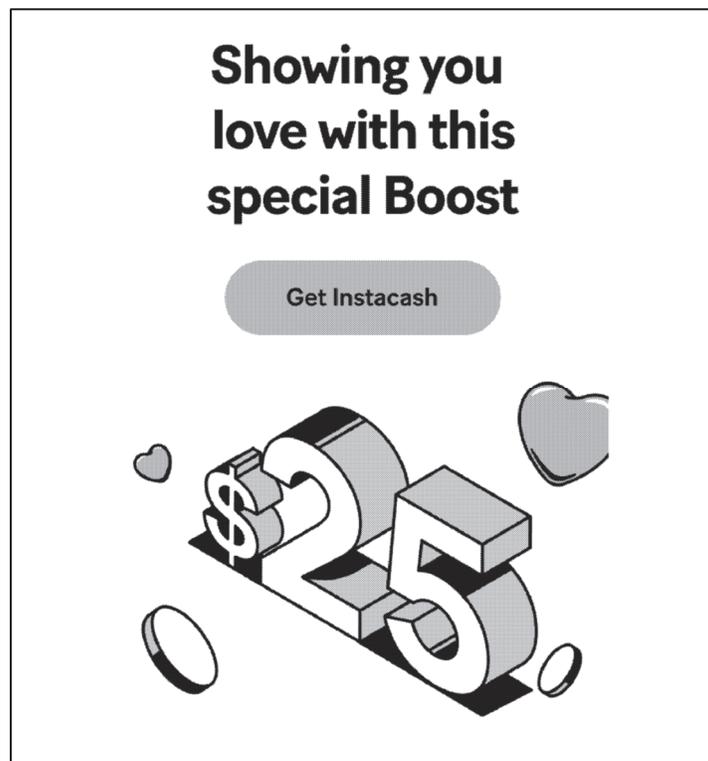
\$30
\$35
\$40
\$45
\$50

Get Instacash

Hi, `{{ snippet "hi_member_name" }}`

We're keeping the International Day of Happiness celebration going all month long! Brighten your day with a **\$25 Instacash Boost**! You can enjoy it from now until March 31, 2021.

116. MoneyLion regularly sends boosts to members on holidays or- in anticipation of future short-term spending. In one case, MoneyLion sent boosts for Valentine’s Day:



MoneyLion has sent boosts in advance of Thanksgiving, on the Super Bowl, after Valentine’s Day, and throughout the winter holidays. The Company even sends boosts on birthdays.

117. MoneyLion also offers boosts of up to \$50 to the amount of Paycheck Advances available to Instacash users who successfully refer new users to the product.

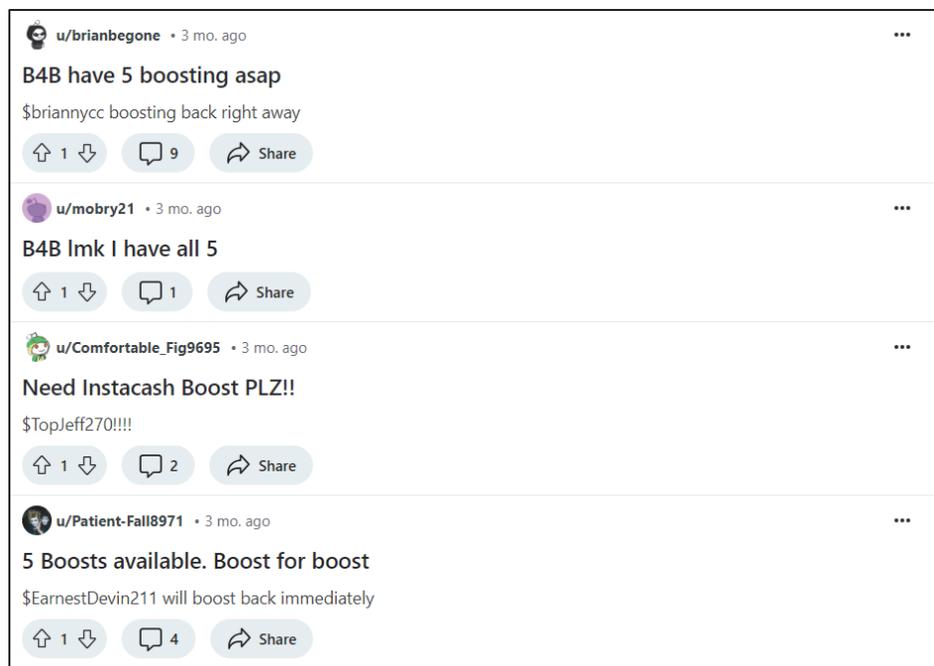
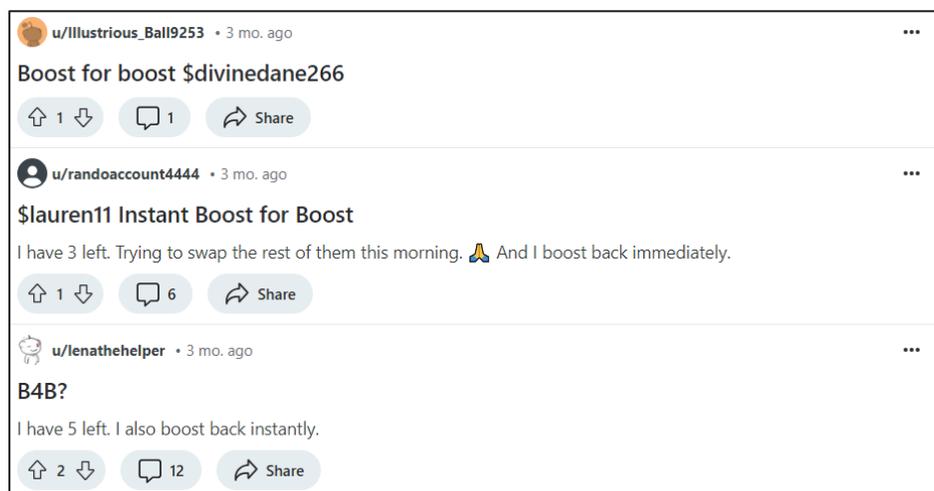
118. MoneyLion’s projections of the effects of its boosts programs show that boosts increase overall Instacash usage—and the fees and tips that accompany that usage—by approximately 25%. The effect is so reliable that the Company previously has rolled out new boosts on short notice in response to weaker-than-expected Instacash performance.

119. MoneyLion also has launched a “Peer Boost” program through which certain users identified by the Company receive the ability to send \$5 boosts directly to other users, increasing the amount of funds available to those users through Instacash. Instacash users who receive these

boosts then in turn are granted five \$5 boosts they can send to other users. Each month, users' available boosts reset, and the process of increasing Instacash limits begins again.

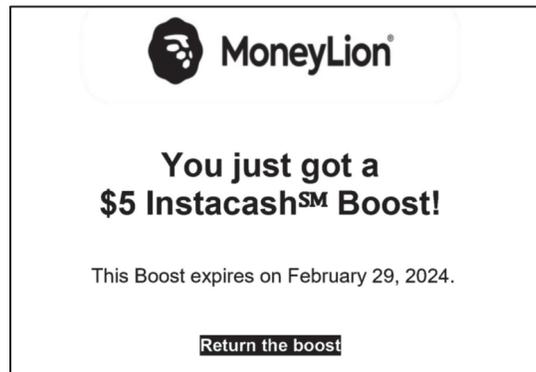
120. MoneyLion's founder touted Peer Boosts to employees as "F'ing brilliant," instructing employees to work to "make this viral" and highlight it "on social media."

121. It worked. MoneyLion's Peer Boost program spawned an entire community of addicted users who regularly seek out boosts from other Instacash users in exchange for boosts back, further driving Instacash usage and generating fee and tip revenue for the Company:



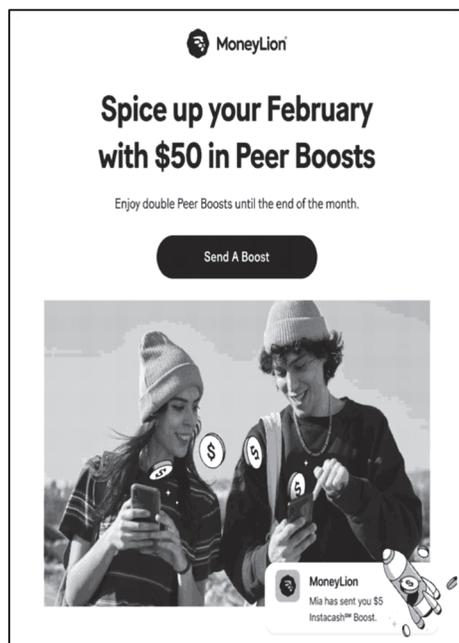
Posts from Instacash users desperate for their next Instacash fix through the Company’s Peer Boost program go on for pages and pages across various online forums such as Reddit.

122. MoneyLion encourages this behavior by prompting its users who receive boosts from other Instacash users to “Return the boost” and providing a link to do so immediately:

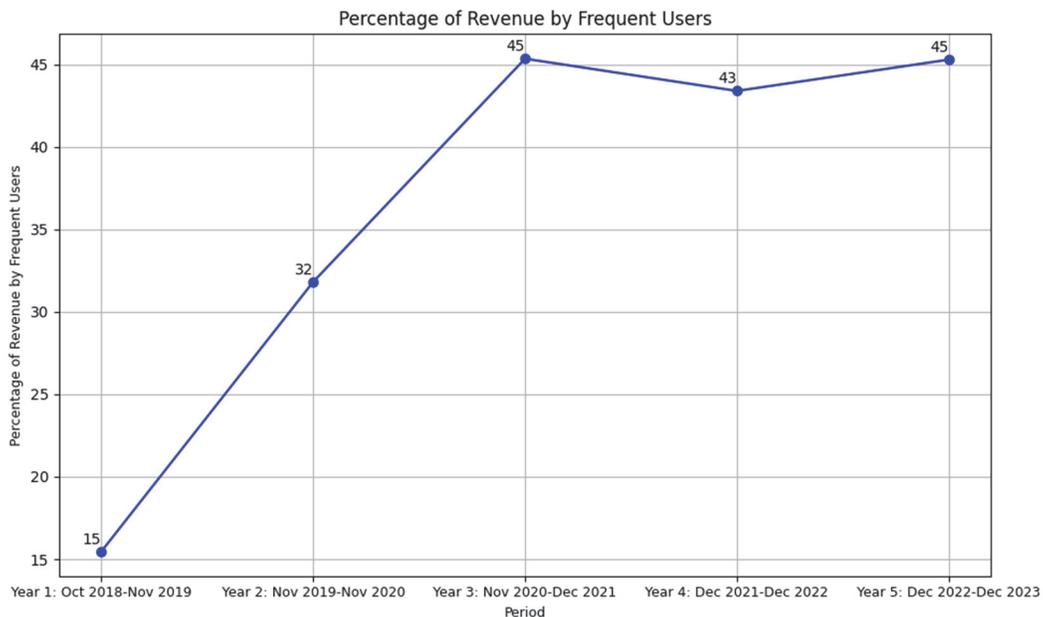
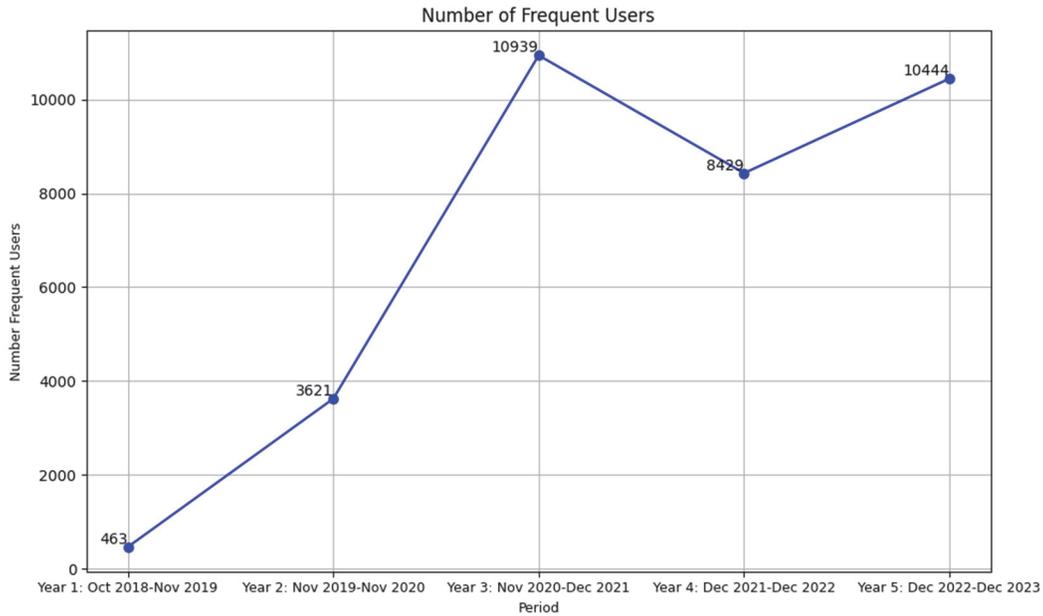


123. MoneyLion also created its own online forum, called the “Discover Feed,” where Instacash users looking to exchange boosts could be connected, a practice the Company expressly encouraged with its “Give \$5 Boost. Get \$5 Boost.” campaign.

124. Finally, MoneyLion accelerates Peer Boost usage by periodically increasing the total volume of boosts that eligible users can send, such as this doubling of available boosts:



125. As a result, MoneyLion is steadily growing Instacash-dependent users. Since inception, both the absolute number of users who obtain Paycheck Advances more than every-other-day, and the percentage of such users who make up users, has steadily grown:



126. Similarly, MoneyLion generates nearly half of all tip and fee revenue from new Paycheck Advances that users request within two or fewer days of their last ones.

127. The financial behavior MoneyLion's lending model encourages is unsustainable. For the ten percent of Instacash users with the highest average frequency of Paycheck Advances during the Data Period, the median size of their Paycheck Advances was \$90, the median fee of the Paycheck Advances these users obtained was \$5.99, and the median term was 10 days. Through this financial activity, these users are effectively taking out a new, 242% APR loan every other day, as MoneyLion extracts hundreds of dollars from these users annually.

CAUSES OF ACTION

FIRST CAUSE OF ACTION Executive Law § 63(12) (Illegality) (Civil Usury)

128. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

129. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

130. New York's General Obligations Law § 5-501 prohibits any entity from directly or indirectly charging, taking, or receiving any money as interest on a loan at a rate exceeding sixteen percent (16%) annually, as set by New York's Banking Law § 14-A.

131. MoneyLion has made millions of Paycheck Advances to New York users over the past several years. These Paycheck Advances are loans: The Company and its users have entered into agreements that govern the Paycheck Advances, MoneyLion has sent funds to users who requested Paycheck Advances through Instacash, and users have agreed to repay the Company by authorizing MoneyLion to debit RoarMoney accounts or external bank accounts.

132. MoneyLion also has, directly or indirectly, charged, taken, or received interest on these Paycheck Advances. The Company has charged and taken interest in the form of fees it has

charged and collected for Paycheck Advances whose terms begin immediately. The Company also has taken and received interest in the form of tips it has received from Instacash users.

133. As a result of these practices, MoneyLion has made millions of Paycheck Advances to New York users of Instacash for which the Company has, directly or indirectly, charged, taken, or received interest at rates that exceed an annualized cost of sixteen percent (16%).

134. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(Criminal Usury)**

135. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

136. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

137. New York's Penal Law § 190.40 makes it a Class E felony for any entity to take or receiving money as interest on a loan at a rate exceeding twenty-five percent (25%) annually.

138. MoneyLion has made millions of Paycheck Advances to New York users over the past several years. These Paycheck Advances are loans: The Company and its users have entered into agreements that govern the Paycheck Advances, MoneyLion has sent funds to users who requested Paycheck Advances through Instacash, and users have agreed to repay the Company by authorizing MoneyLion to debit RoarMoney accounts or external bank accounts.

139. MoneyLion also has, directly or indirectly, charged, taken, or received interest on these Paycheck Advances. The Company has charged and taken interest in the form of fees it has charged and collected for Paycheck Advances whose terms begin immediately. The Company also has taken and received interest in the form of tips it has received from Instacash users.

140. As a result of these practices, MoneyLion has made millions of Paycheck Advances to New York users of Instacash for which the Company has, directly or indirectly, charged, taken, or received interest at rates that exceed an annualized cost of twenty-five percent (25%).

141. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**THIRD CAUSE OF ACTION
Executive Law § 63(12) (Fraud)**

142. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

143. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent fraud in the carrying on, conducting, or transaction of business in the state of New York.

144. MoneyLion has engaged in fraud in connection with its Instacash product offered to New York consumers in at least the following respects:

- a. having falsely represented to consumers in marketing materials and users in disclosures that the Company's Paycheck Advances carry 0% APRs or no interest;
- b. having misleadingly marketed that consumers can obtain funds immediately through Instacash without incurring costs or interest;
- c. having deceptively marketed Instacash as providing access to immediate funds in amounts, such as \$250 or \$500, that are greater than the amount of funds, such as \$50 or \$100, that the Company has permitted users to obtain in a single Paycheck Advance; and
- d. having described tips as voluntary while engaging in manipulation and scare tactics to force users to agree to tip when obtaining Paycheck Advances.

145. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

**FOURTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(GBL § 349)**

146. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

147. New York’s Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

148. New York’s GBL prohibits deceptive acts and practices in the conduct of any business, trade, or commerce in the state of New York. GBL § 349(a).

149. MoneyLion has engaged in deceptive practices in connection with its Instacash product offered to New York consumers in at least the following respects:

- a. having falsely represented to consumers in marketing materials and users in disclosures that the Company’s Paycheck Advances carry 0% APRs or no interest;
- b. having created inaccurate impressions that consumers can obtain funds immediately through Instacash without incurring costs or interest;
- c. having deceptively marketed Instacash as providing access to immediate funds in amounts, such as \$250 or \$500, that are greater than the amount of funds, such as \$50 or \$100, that the Company has permitted users to obtain in a single Paycheck Advance; and
- d. having described tips as voluntary while engaging in manipulation and scare tactics to force users to agree to tip when obtaining Paycheck Advances.

150. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**FIFTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(GBL § 350)**

151. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

152. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

153. New York's GBL prohibits false advertising in the conduct of any business, trade, or commerce, or furnishing of any service, in the state of New York. GBL § 350.

154. MoneyLion has engaged in false advertising in connection with its Instacash product offered to New York consumers in at least the following respects:

a. having falsely represented in marketing materials and other disclosures that the Company's Paycheck Advances carry 0% APRs or no interest; and

b. having falsely represented in marketing materials access to immediate funds in amounts, such as \$250 or \$500, that are greater than the amount of funds, such as \$50 or \$100, that the Company has permitted users to obtain in a single Paycheck Advance.

155. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(12 U.S.C. § 5531 (Deceptive Acts or Practices))

156. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

157. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

158. The CFPA is a federal consumer law that prohibits covered persons or service providers from committing or engaging in a deceptive, unfair, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. § 5531(a).

159. An act or practice is deceptive if it involves a material misrepresentation or omission likely to mislead consumers acting reasonably under the circumstances. Information is material to consumers if it is likely to affect a consumer's conduct regarding the product.

160. MoneyLion is offering a "consumer financial product or service" and the Company is therefore a "covered person" within the meaning of the CFPA. 12 U.S.C. § 5481(5)–(6).

161. MoneyLion has engaged in deceptive practices in connection with its Instacash product offered to New York consumers in at least the following respects:

a. having falsely represented to consumers in marketing materials and users in disclosures that the Company's Paycheck Advances carry 0% APRs or no interest;

b. having created inaccurate impressions that consumers can obtain funds immediately through Instacash without incurring costs or interest;

c. having deceptively marketed Instacash as providing access to immediate funds in amounts, such as \$250 or \$500, that are greater than the amount of funds, such as \$50 or \$100, that the Company has permitted users to obtain in a single Paycheck Advance; and

d. having described tips as voluntary while engaging in manipulation and scare tactics to force users to agree to tip when obtaining Paycheck Advances.

162. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**SEVENTH CAUSE OF ACTION
Executive Law § 63(12) (Illegality)
(12 U.S.C. § 5531 (Abusive Acts or Practices))**

163. Plaintiff repeats and realleges the allegations in paragraphs 1 to 127 above.

164. New York's Executive Law § 63(12) authorizes Plaintiff to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business in the state of New York.

165. The CFPA is a federal consumer law that prohibits covered persons or service providers from committing or engaging in a deceptive, unfair, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. § 5531(a).

166. An act or practice is abusive if it “materially interferes with the ability of a consumer to understand a term or condition” of a consumer financial product, or if it “takes unreasonable advantage” of “the inability of a consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.” 12 U.S.C. §§ 5531(d)(2).

167. MoneyLion is offering a “consumer financial product or service” and the Company is therefore a “covered person” within the meaning of the CFPA. 12 U.S.C. § 5481(5)–(6).

168. The consequential terms of a financial transaction, such as pricing and costs, are central to consumers’ decisions of whether to enter into such transactions.

169. MoneyLion has materially interfered with consumers’ ability to understand the true pricing and costs of its Paycheck Advances in at least two distinct ways:

a. MoneyLion has marketed and offered “no interest” or “0% APR” Paycheck Advances to New York consumers when the Company charges fees for Paycheck Advances that have terms that begin immediately and manipulates Instacash users into paying tips in connection with their receipt of Paycheck Advances. Further, by declining to disclose fees and tips associated with Paycheck Advances as annualized costs or APRs, the Company has obscured relative costs of its Paycheck Advances as compared to alternative forms of consumer credit.

b. MoneyLion has promised New York consumers’ immediate access to \$250 or \$500, depending on the time period, while maintaining undisclosed caps of \$50 or \$100 for any single Paycheck Advance that force consumers to incur multiple fees to obtain full funds.

170. MoneyLion separately has taken unreasonable advantage of consumers' inability to protect themselves through rampant manipulation. The Company has employed multiple techniques to push users to select fee-based Paycheck Advances with immediate terms and has made it more difficult to avoid more costly Paycheck Advances. Similarly, the Company has used techniques—including anchors that tie users to certain tipping expectations, friction and retargeting screens designed to manipulate users, dynamically preselected tips, and guilt- and fear-inducing messages—to push its users to tip the Company when using Instacash.

171. MoneyLion takes unfair advantage of consumers' inability to protect themselves by extracting tips at usurious rates that the Company treats as a source of revenue.

172. Instacash users also are unable to protect themselves from the financial need created by taking a Paycheck Advance, which places consumers in a position of needing a new advance after their next pay day in order to fill the gap in their finances that the first one created.

173. MoneyLion has taken unreasonable advantage of these circumstances by encouraging repeat and regular Instacash, including use through its One-Click process, by sending regular “boosts” to encourage users to obtain additional Paycheck Advances, thereby putting themselves further behind, and by enabling and encouraging Peer Boosts. The Company, meanwhile, has made itself indifferent to the resulting financial strain by being first in line to new deposits that come into consumers' RoarMoney or external bank accounts.

174. Finally, MoneyLion has relentlessly tweaked its business model to ensure that it can predict users' future direct deposits down to the minute, has required users to authorize the Company to attempt repeat debits over multiple days, has implemented artificial time periods for users' to cancel debit authorizations provided when obtaining Paycheck Advances, and, in the case of RoarMoney account holders, has systematically prioritized Instacash repayments over other

payment obligations from RoarMoney accounts. Through these actions, MoneyLion has taken unreasonable advantage of consumers' inability to protect themselves from harm by prioritizing critical expenses, such as rent, food, and medical expenses, over Instacash repayment.

175. By reason of the conduct alleged herein, Defendant has engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court issued an order and judgment under Executive Law § 63(12) and GBL §§ 349 and 350:

- a. permanently enjoining Defendant, its agents, trustees, employees, successors, heirs, and assigns; and any other person under their direction or control, whether acting individually or in concert with others, or through any corporate or other entity or device through which one or more of them may now or hereafter act or conduct business, from engaging in the fraudulent and illegal practices alleged herein;
- b. ordering Defendant to provide an accounting of all consumers who obtained loans through Defendant's Instacash product in the preceding six years;
- c. ordering Defendant to pay restitution and damages to all injured consumers, whether known or unknown, at the time of the decision and order;
- d. ordering Defendant to disgorge all profits from the fraudulent and illegal practices alleged herein;
- e. directing Defendant, under GBL § 350-d, to pay a civil penalty of \$5,000 to the State of New York for each violation of GBL § 349;
- f. imposing appropriate civil money penalties against Defendant as authorized by 12 U.S.C. § 5565(c);
- g. awarding costs under CPLR 8303(a)(6) and 12 U.S.C. § 5565(c); and
- h. granting such other and further relief as the Court deems just and proper.

Dated: April 14, 2025

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York



By: _____

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Bureau Chief

Laura J. Levine
Deputy Bureau Chief

*Counsel for Plaintiff People
of the State of New York*

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MAYOR & CITY COUNCIL OF BALTIMORE,
100 N. Holliday Street
Baltimore, Maryland 21202,

Plaintiff,

v.

MONEYLION TECHNOLOGIES, INC.
30 West 21st Street, 9th Floor
New York, New York 10010,

Serve On:
Registered Agent
The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19810

Defendant.

Case No. C-24-CV-25-008340

JURY TRIAL DEMANDED

**MAYOR & CITY COUNCIL OF BALTIMORE'S COMPLAINT FOR CIVIL
PENALTIES & INJUNCTIVE RELIEF**

Plaintiff the Mayor and City Council of Baltimore, by and through its undersigned attorneys, (“Plaintiff,” “Baltimore City,” or “City”) alleges as follows:

INTRODUCTION

1. MoneyLion Technologies, Inc. (d/b/a MoneyLion) (“MoneyLion,” “Defendant,” or “the Company”) is a modern payday lender. The Company markets an earned wage access (“EWA”) product known as Instacash that is, in fact, a disguised high-interest loan. MoneyLion makes high-frequency, small-amount, high-cost, short-term loans (“Instacash Advances”) to consumers that trap them in a cycle of debt.

2. If a consumer wants a \$25 Instacash Advance, the consumer must link a debit account to a MoneyLion account, typically on a smartphone. If the consumer meets MoneyLion’s lending criteria, MoneyLion will almost always charge a hidden fee of \$4 to process the transaction right away. MoneyLion will also set a default “tip” of \$5 and repeatedly pressure the consumer to reconsider if they indicate that they are not going to provide a tip. After 7 or 10 days, the Company expects, and almost 100% of the time gets, repayment by aggressively charging (and re-charging) the consumer’s debit account. And at the end of the day, for a \$25 cash advance with a default tip of \$5 and a hidden processing fee of \$4, MoneyLion will have charged an astounding, usurious rate of over 900% annual percentage rate (APR) for this transaction. MoneyLion’s APRs are routinely 10 times the interest rates allowed under Maryland law: 33%.

3. MoneyLion’s digital-age lending scheme may be new but the financial industry’s attempts to evade prohibitions on high-cost loans are not. No matter the label a lender puts on their product, courts in Maryland protect consumers from these loans: “It matters not in what part of the transaction it may lurk, or what form it may take--whether it reads six per cent. upon its face, with an understanding to pay an extra four per cent., or whether it be a pretended sale and lease, or

under whatever guise the lender--always fruitful in expedients--may attempt to evade the law, Courts of justice, disregarding the shadows and looking to the substance, will ascertain what in truth was the contract between the parties.” *Andrews v. Poe*, 30 Md. 485, 488 (1869).

4. The truth here is that Instacash Advances are loans, a fact that MoneyLion has relentlessly and deceptively hidden from consumers.

5. While MoneyLion hides the fact that Instacash Advances are loans, they have every fundamental characteristic of a loan. MoneyLion provides funds, charges interest, and collects repayment nearly 100% of the time. MoneyLion even refers to Instacash Advances as “loans” and unpaid amounts as “principal” in internal documents. Yet when marketing to consumers, MoneyLion says the opposite.

6. In its marketing to consumers, MoneyLion contrasts itself to other lenders by promising the ability to get up to \$500 instantly with no interest through Instacash Advances. But these claims fall apart when consumers seek an Instacash Advance.

7. Contrary to MoneyLion’s representations, a consumer *must* pay interest to access instant funds. Consumers end up paying high APRs in fees and tips for Instacash Advances, a fact that MoneyLion hides in its marketing and in the very screens by which consumers navigate these transactions. These effectively mandatory fees frequently exceed the interest rates offered by payday and other high-cost lenders. Making matters worse, MoneyLion engineers ways to rack up as much interest as possible, including by misrepresenting the amount an Instacash user can obtain in a single transaction and repeatedly pressuring customers to provide “tips.”

8. The result is consumers who are trapped in a cycle of debt. As a consumer obtains Instacash Advances—one after another—their available funds for utility bills, rent, and food go

down. As a consumer's funds for utility bills, rent, and food dissipate, a consumer needs more Instacash Advances, and the cycle begins anew.

9. Baltimore City law is clear: it is illegal for lenders like MoneyLion to use unfair, abusive, or deceptive trade practices. MoneyLion hooks consumers into a cycle of debt through a combination of usurious loans and misrepresentations. Its actions are unfair, abusive, deceptive, and contrary to public policy encapsulated by the Maryland Consumer Loan Law, the Truth in Lending Act, and the City of Baltimore's Consumer Protection Ordinance. Through this action, the City seeks to put an end to these practices and to hold MoneyLion accountable.

PARTIES

10. Plaintiff Mayor & City Council of Baltimore is a municipal corporation organized and existing under the laws of Maryland. Plaintiff is authorized, through the City Solicitor of the Baltimore City Law Department, to enforce laws for the protection of the public. Baltimore City Code Art. 7, §§ 22–24.

11. Defendant MoneyLion Technologies, Inc. (d/b/a MoneyLion) is a Delaware corporation with its principal place of business at 30 West 21st St, 9th Floor, New York, New York, 10010.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction because the claims at issue arise under an ordinance enacted in the City of Baltimore. Md. Code Ann., Cts. & Jud. Proc. § 1-501 (“The circuit courts are the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil. . . cases within its county[.]”). The amount-in-controversy exceeds the threshold for this Court to exercise exclusive jurisdiction. *Id.* §§ 1-501; 4-401(a).

13. This Court may exercise personal jurisdiction over MoneyLion because the City’s claims arise from or are related to MoneyLion’s continuous (1) directed advertising to Maryland consumers through text, video, and image-based online advertisements, (2) directed marketing to Maryland consumers, (3) contracting with Maryland consumers to provide Instacash Advances, (4) extending loans to consumers, and (5) collecting debts from Maryland consumers. MoneyLion intended, knew, or is chargeable with the knowledge, that its out-of-state actions would have a consequence within Maryland. *Id.* § 6-102.

14. Venue is proper in this Court because a substantial part of the acts or omissions giving rise to the claims occurred in the City of Baltimore. *Id.* § 6-201 (“[A] civil action shall be brought in a county where the defendant. . . carries on a regular business[.]”).

FACTUAL ALLEGATIONS

15. In marketing to Baltimore consumers, MoneyLion has marketed Instacash Advances as “loan alternatives.”¹ Unlike payday lenders, which are illegal in Maryland, and other lenders, which charge high interest, MoneyLion claims that “MoneyLion lets you **borrow up to \$250 instantly**” with 0% interest through Instacash.

¹ MoneyLion, *Online Payday Loans in Maryland – Payday Advances When You Need Quick Cash*, available at <https://web.archive.org/web/20250424100052/https://www.moneylion.com/learn/online-payday-loans-maryland/> (last accessed September 26, 2025) (emphasis in original).

16. Other online advertisements are to the same effect, emphasizing that consumers can access an “advance” up to \$500 instantly with no interest:

Sponsored

 MoneyLion
www.moneylion.com/

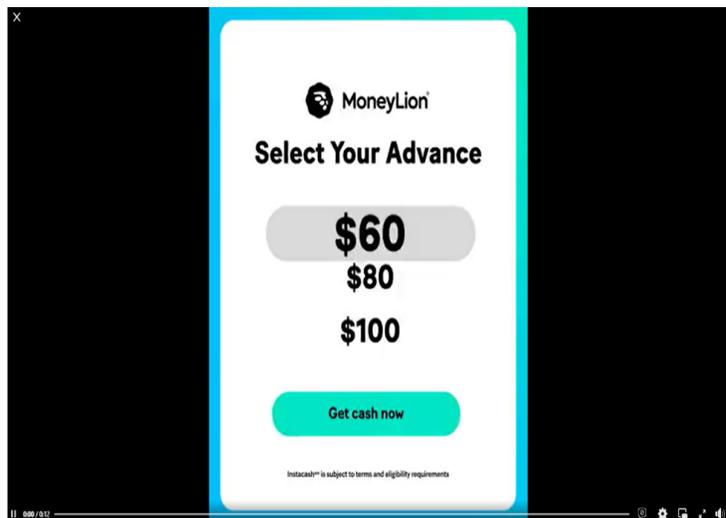
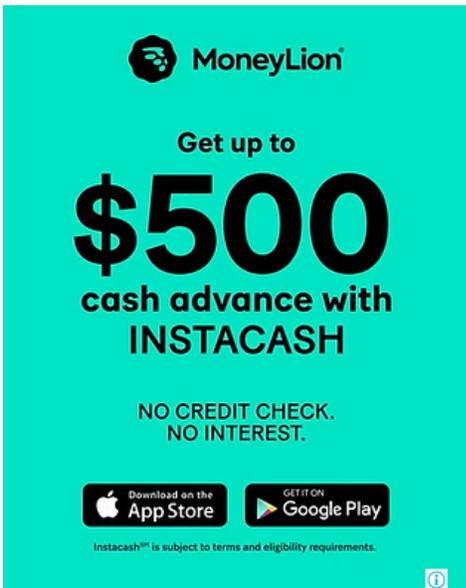
Up to \$500 Instacash Advances - Get Up to \$500 Cash Advances

No credit check, no interest, no more waiting for payday to access up to \$500 of your \$. Zero interest - Access up to \$500 Instacash advances. Get the money you earned, sooner.



 MoneyLion @MoneyLion 27 Dec 2024
Short on cash before payday? Don't sweat it! 📱 Download MoneyLion and get up to \$500 instantly with Instacash. Your wallet will thank you 💰

#MoneyLion #FastCash #PaydayHelp #Instacash



17. At bottom, MoneyLion represents that Instacash Advances are not loans, are available instantly with no interest, and are available up to \$500 at a time. In fact, Instacash Advances have every fundamental feature of loans and fees are effectively mandatory to access instant cash on demand. MoneyLion further misleads consumers by repeatedly and deceptively pushing consumers to provide “tips.” After charging fees and tips, interest on Instacash Advances

adds up to astounding, usurious APRs. All told, through its deceptive and predatory tactics, MoneyLion traps Baltimore consumers in a cycle of mounting debt.

A. Instacash Advances Are Loans

18. While MoneyLion tells consumers that Instacash Advances are merely earned wage advances, not loans, its practices and internal treatment of Instacash Advances show the opposite.

19. MoneyLion has specifically marketed Instacash Advances as “earned wage advances” or “EWAs,” asserting that the Company is merely offering a worker early access to their wages. For example, MoneyLion states on its website: “Unlike traditional loans or even payday loans, an EWA payment provides access to money you’ve already earned, making it a safer alternative for managing short-term cash needs.”² MoneyLion further represents that “Instacash by MoneyLion allows users to access up to \$500 of their earned wages with no interest and no credit check.” But this is not what Instacash Advances provide. MoneyLion has no relationship with a consumer’s employer and has no data on how a consumer’s actual paychecks are calculated for the day by which MoneyLion seeks repayment. MoneyLion’s claims that Instacash Advances are somehow associated with consumers’ wages are illusory. Instead, Instacash Advances are loans.

20. MoneyLion’s internal documents confirm that the Company treats Instacash Advances as loans. Internal documents reveal that MoneyLion refers to Instacash Advances as “single payment loans” and that the due date of the “loan should be on the next pay date.” MoneyLion employees refer to amounts owed as “principal” and other MoneyLion internal documents refer to MoneyLion’s “exposure” as the “principal exposed.” Through MoneyLion’s “loan books,” MoneyLion also tracks impacts to its algorithms and modeling for Instacash

² MoneyLion, *What is Earned Wage Access? The Complete Guide*, available at <https://web.archive.org/web/20250924213815/https://www.moneylion.com/learn/earned-wage-access/> (last accessed September 26, 2025).

Advances. And in MoneyLion's SEC Form 10-K, MoneyLion refers to amounts owed for Instacash Advances as "principal amounts."

21. MoneyLion's internal documents also reveal that, like other lenders, MoneyLion tracks default rates for Instacash Advances to maintain "target limits." It engages in what it considers "collections" activity and tracks loan-to-value ratios to assess whether and how Instacash is growing.

22. Like other lenders, MoneyLion conducts a proprietary credit check that users must pass before receiving a loan. The purpose of this credit check, like any other lender's credit check, is to guard against non-payment.

23. Further, MoneyLion's internal documents reveal that, like other lenders, MoneyLion sets and adjusts acceptable credit risk levels to prioritize repayment rates or loan volume. The Company reassesses and changes its underwriting criteria, including eligibility thresholds, to adjust repayment rates, changes which are approved by MoneyLion's Credit Committee. This Committee analyzes performance among Instacash users, including through "Credit Loss performance" analyses.

24. If MoneyLion, after analyzing a user's spending history and other information, determines that the Company will be unable to obtain repayment, it will not issue an Instacash Advance.

25. MoneyLion also engages in aggressive collections like other lenders, leading to a nearly 100% collections rate. Though MoneyLion represents that it will not seek legal action against Instacash users and will not engage in debt collection activities, \ MoneyLion acknowledges that it engages in collections in internal documents. MoneyLion refers to its

automated debit process as a “collections process” that happens through “automated collections” or the Company’s “automated retry logic.”

26. MoneyLion requires access to either a RoarMoney account (a mobile debit account made available through MoneyLion) or an external bank account before it provides an Instacash Advance. MoneyLion’s automated collections process is set after a user provides sufficient information for MoneyLion to detect at least three recurring deposits in either kind of account. Consumers agree and expect to repay the Instacash Advance on a date for which MoneyLion expects a recurring deposit.

27. After MoneyLion takes note of the timing and amount of these recurring payments, MoneyLion can jump the line to access a consumer’s pay, debiting the consumer for amounts owed, in addition to tips and fees. This way, MoneyLion ensures that it will get paid ahead of any utility company, landlord, or anyone else to whom the consumer owes money.

28. MoneyLion has dedicated substantial resources to ensuring that its automated collections process results in payment as soon as possible after a paycheck hits a consumer’s account. According to internal documents, the Company’s founder has made near-instantaneous debiting a priority, messaging employees during testing that he needed to see “immediate debits upon payroll” and that the debiting “needs to be near instant.” As MoneyLion was developing its repayment procedures, the founder complained that the process—which, at the time, had not processed MoneyLion’s repayment, despite the fact that a consumer’s payroll had been deposited just *one hour* prior—was too slow.

29. Today, MoneyLion’s process is as aggressively timed as ever to push aside any other creditors and put the Company first in line. MoneyLion now fields regular complaints that

its repayment debits are too early by attempting to charge a consumer before payroll is processed. These consumers then have to deal with costly overdraft and other fees.

30. If a consumer does not have enough funds to repay MoneyLion its amount owed, fees, and tips, MoneyLion tries again and again to get its money. Training materials instruct employees to “retry payments every day until repaid” and if “there is not enough in the customer’s accounts, we may take a partial repayment and try again the next day.”

31. For consumers who think twice and seek to revoke their repayment authorization, MoneyLion uses several tactics to make this process as impracticable as possible. The effectiveness of these tactics is borne out by the nearly 100% collections rate for Instacash Advances. While MoneyLion tells consumers that there is no obligation to repay an Instacash Advance, revocation is effectively illusory. MoneyLion ensures that consumers do not revoke authorization through a variety of tactics:

- a. If a consumer revokes authorization, MoneyLion forbids the consumer from using Instacash moving forward.
- b. MoneyLion provides no reminders or notifications in the MoneyLion app about a consumer’s ability to revoke authorization after a consumer obtains an Instacash Advance.
- c. MoneyLion makes revocation nearly impossible for its short-term loans by imposing a three-business-day notice requirement for revocation. If a consumer takes out a seven-day Instacash Advance on a Wednesday and their repayment date is the following Wednesday, the consumer must revoke authorization two days after seeking an Instacash Advance. Combined with the fact that the consumer would get

no notification of this deadline, MoneyLion ensures that revocations basically never happen.

- d. While MoneyLion streamlines the Instacash Advance process so that a consumer can obtain an Instacash Advance with one click, the process for revocation is convoluted and highly burdensome. A user must navigate multiple, confusing screens and remove all payment methods in the MoneyLion app. Doing so renders the rest of the app useless. So, if a consumer wants to use (or has used) another MoneyLion product, MoneyLion effectively forbids them from continued use. This process is particularly difficult for RoarMoney users, who are forced to abandon their bank accounts to revoke authorization for a low-dollar Instacash Advance.

32. In sum, Instacash Advances are loans on which MoneyLion expects repayment, contrary to MoneyLion's representations that Instacash Advances are merely "earned wage advances."

B. Instacash Users Cannot Access Instant Funds Without Interest.

33. While MoneyLion tells consumers that Instacash Advances are interest-free and instantaneous, Instacash users simply cannot obtain instant payments without substantial fees, which operate as interest.

- a. *Fees are Effectively Mandatory for MoneyLion's Advertised Product.*

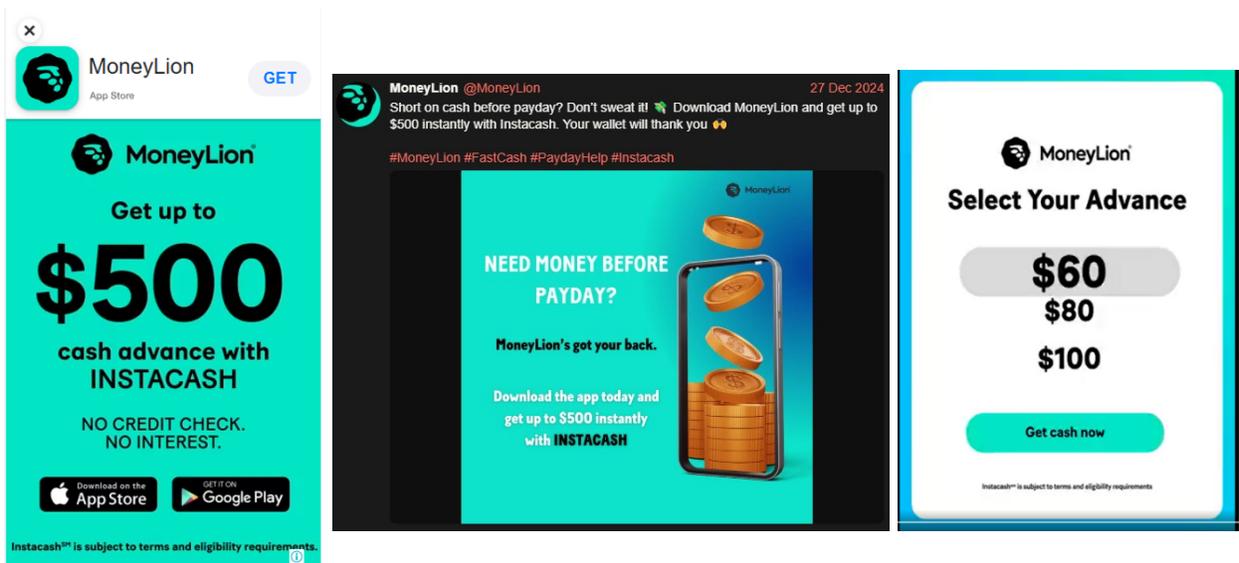
34. MoneyLion charges transaction fees so that a consumer can get their Instacash Advance in minutes as follows:

Disbursement Amount	RoarMoney Account	External Account
\$5 or less	\$0.49	\$1.99
\$10 – \$25	\$1.99	\$3.99
\$30 – \$45	\$2.99	\$4.99
\$50 – \$65	\$3.99	\$5.99
\$70 – \$85	\$5.49	\$7.49
\$90 – \$100	\$6.99	\$8.99

35. MoneyLion has marketed Instacash Advances as a single product through which consumers can get instant cash. But, in reality, there are two Instacash Advance products. Consumers can either choose a product with interest and instantaneous payment or a product without interest and without instantaneous payment. In other words, a customer can obtain an Instacash Advance of \$50 for a \$4.99 fee within minutes, or they can obtain an Instacash Advance of \$50 for no fee in a matter of days.

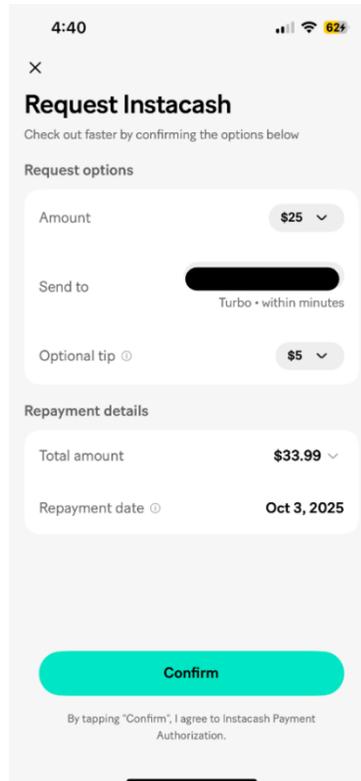
36. Even before adding any other fees or tips, “Turbo Fees” result in usurious rates of interest. If a consumer obtains a \$50 Instacash Advance with a fourteen-day repayment schedule and a \$6 Turbo Fee, the APR for a Turbo Fee alone is more than 300%.

37. MoneyLion has misled Baltimore consumers by conflating these separate products and advertising a product that does not exist:



38. Beyond straightforwardly stating in some advertisements that zero-interest Instacash Advances are available “instantly” for zero interest, MoneyLion drives the point home in a variety of ways. MoneyLion’s choice of the brand name “Instacash” is not an accident. The very name of the product communicates to consumers that cash is made available instantly. MoneyLion also creates screenshots indicating that consumers can “get cash now” with the simple click of a button.

39. These fees are also deceptively hidden. When a consumer seeks an Instacash Advance, MoneyLion presents a screen like the one below:



40. This screen does not state that the Turbo Fee is optional. It does not even display the charge unless the consumer thinks to expand the “Total amount” owed.

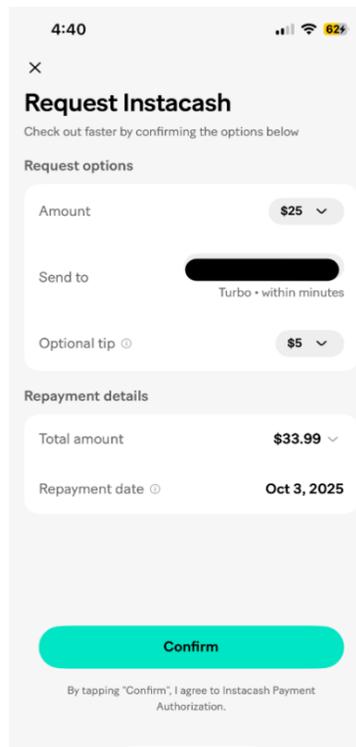
41. If a consumer does not pay a Turbo Fee, the consumer cannot access the advertised version of an Instacash Advance for its intended, core purpose: an instant source of cash. The consumer would instead access an inferior product, one not envisioned by the brand name “Instacash” or by the many advertisements noted above. In other words, the Turbo Fee is effectively mandatory.

42. To access instant cash, a core feature of what Instacash offers, consumers cannot obtain zero interest, another core feature of what Instacash offers. The result, as described more fully below, is astounding interest rates.

b. *MoneyLion Deceptively Pushes Tips on Consumers as Effectively Mandatory.*

43. MoneyLion repeatedly prompts users to provide a tip for each Instacash Advance, pressuring consumers to provide a tip to MoneyLion as if the Company were a bartender, taxi driver, or waiter. Unlike a lot of bartenders, taxi drivers, and waiters, MoneyLion is not dependent on tips to survive. However, this is what MoneyLion leads consumers to believe. MoneyLion repeatedly pressures consumers into providing tips, suggesting that if consumers do not pay tips, MoneyLion may not be able to provide the same services.

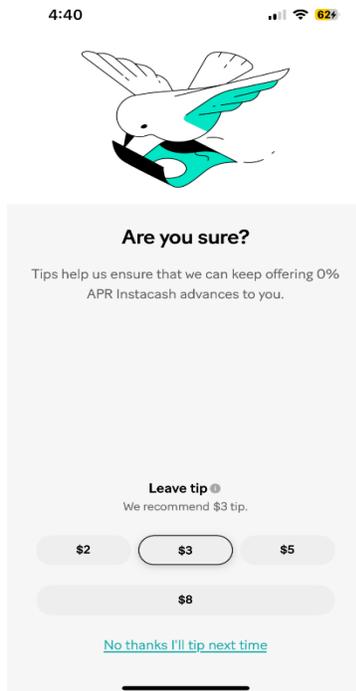
44. The pressure begins with a default tipping option. A \$25 Instacash Advance results in a default tip of \$5 which, on its own, would result in a more than 500% APR with a fourteen-day repayment schedule:



45. MoneyLion encourages consumers to click “Confirm” without looking at anything else. A consumer’s eye is drawn to the large, green “Confirm” button instead of a smaller, grey dropdown menu, and a tip amount is preselected.

46. According to internal MoneyLion documents, the predetermined amount is referred to as a “tip anchor.” Anchoring is a well-known cognitive bias in which people rely heavily on the first piece of information they receive to make a decision.

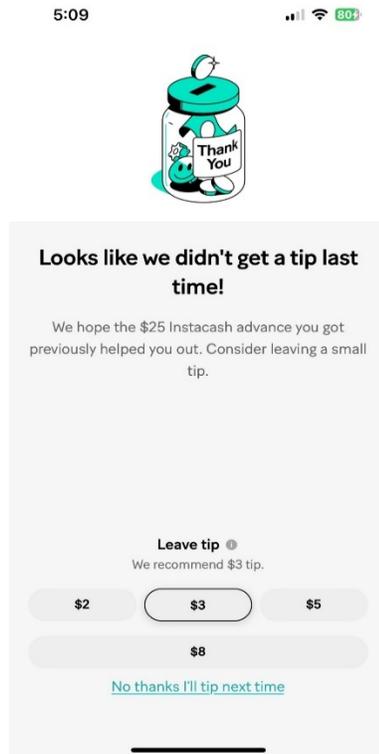
47. According to other internal MoneyLion documents, the Company uses many other “behavioral nudges and messaging” to push for more tips from consumers. These tactics include evaluating the use of different messaging and images to improve tipping rates. One of the primary ways MoneyLion improves tipping rates is to repeatedly urge consumers to provide a tip if they change the default tip to \$0. After a consumer changes the default tip option to \$0, MoneyLion presents a screen like the one below:



48. Instead of acknowledging the consumer’s choice, MoneyLion again urges the consumer to provide a tip for a default amount, which is preselected. MoneyLion does not even give the option to click “\$0.” The consumer only has a choice to provide a tip or promise that they will tip the next time they obtain an Instacash Advance.

49. Amping up the pressure, MoneyLion leads consumers to believe that tips are necessary to ensure that Instacash Advances continue to exist. MoneyLion represents to consumers that tips are necessary to “ensure that we can keep offering 0% APR Instacash advances to you.” Yet in its SEC Form 10-K, MoneyLion recognizes that tips are simply gross “banking revenue” not tied to the continued existence of Instacash.

50. If MoneyLion’s browbeating tactics are not successful for an initial transaction, the Company tries the same trick once more. If a consumer tries to obtain a second Instacash Advance, MoneyLion presents a screen like the one below at the beginning of the second process:



51. Again, MoneyLion urges the consumer to provide a tip for a default amount, which is preselected. And again, MoneyLion does not give the option to click “\$0.” The consumer only has a choice to provide a tip or promise that they will tip the next time they obtain an Instacash Advance.

52. The result of this onerous process, and MoneyLion’s representations, is that consumers believe that tips are necessary for Instacash Advances to continue to exist. As a result, consumers provide tips. MoneyLion charges exorbitant interest through tips by making consumers believe that they are necessary.

C. MoneyLion Charges Astounding Interest Rates Through Fees and Tips

53. Even taking MoneyLion’s promise of “zero interest” on its own, this representation also falls flat.

54. MoneyLion routinely charges fees and tips that, taken together, represent far more than “zero” interest. Take, for example, a \$50 Instacash Advance with a \$4.99 fee and a tip of \$2. This transaction, which was, according to data obtained by the New York Attorney General, the most common transaction in the State of New York between October 28, 2018 and December 21, 2023, represents a more than 350% APR. There is no reason to believe that these patterns are any different in Baltimore City.

55. According to the same data, the average cost of credit across all Instacash Advances was more than 800% APR, with 95% of Instacash Advances carrying more than 100% APR, and more than half carrying more than 500% APR. By contrast, the APR limit for consumer loans under \$1000 in Maryland is 33%.

56. MoneyLion, in its marketing to Baltimore residents, has sought to compare itself favorably to other kinds of lenders.³ These other kinds of lenders “offer predatory high-interest loans” that “can reach **triple digits in APR rates.**” MoneyLion has marketed itself as different from these lenders, noting that “0% is our favorite interest rate!” In fact, Instacash Advances almost always reach triple-digit APRs, and its average cost of credit is above the APR of the lenders against which MoneyLion contrasts itself.

57. MoneyLion’s APR appears to be higher than the industry average. The California Department of Financial Protection and Innovation conducted an analysis of EWA providers which found that the average APR for EWA providers with tipping averaged 334%.⁴ More recently, the Center for Responsible Lending found that the average APR for an EWA was 383%, comparable to the average APR available from a payday lender, which is 391%.⁵

58. Moreover, these fees and tips are not payments for a cost that MoneyLion incurs, contrary to what a reasonable consumer would infer. Fees are not used to process expedited transactions. Tips are not used for any purpose other than MoneyLion lining its pockets. Indeed, in its SEC Form 10-K, MoneyLion recognizes that fees and tips “are not distinct from the services of the Instacash advance.” Instead, fees and tips are gross “banking revenue.” The actual cost to MoneyLion for real-time transactions is, in fact, less than 5 cents for external users, a far cry from the up to \$8.99 that MoneyLion charges consumers per transaction.

³ MoneyLion, *Online Payday Loans in Maryland – Payday Advances When You Need Quick Cash*, available at <https://web.archive.org/web/20250424100052/https://www.moneylion.com/learn/online-payday-loans-maryland/> (last accessed September 26, 2025).

⁴ California Dep’t of Financial Protection and Innovation, *2021 Earned Wage Access Data Findings* (Mar. 16, 2023), available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.

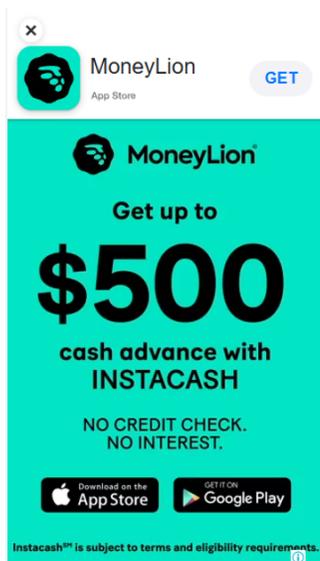
⁵ Center for Responsible Lending, *Escalating Debt: The Real Impact of Payday Loan Apps Sold as Earned Wage Advances (EWA)* (Sept. 22, 2025), available at <https://www.responsiblelending.org/research-publication/escalating-debt-real-impact-payday-loan-apps-sold-earned-wage-advances-ewa>.

59. This sleight of hand is even more egregious for RoarMoney users with a MoneyLion mobile debit account. For these users, MoneyLion does not bear any transaction costs because RoarMoney users' accounts are not external. Nonetheless, MoneyLion imposes a purported transaction fee on those users' requests for Turbo payments, and, in turn, penalizes any user's decision to not pay the transaction fee by *artificially slowing down* the transfer of funds to the user's RoarMoney account. Its internal documents reveal that the Company tags non-fee transactions as "Delayed Deposits" or "Delayed RM" for RoarMoney users. This artificial constraint further demonstrates that the Turbo fee is not tied to any actual costs borne by MoneyLion.

60. In sum, MoneyLion charges huge amounts of interest through fees and tips, charges which are disconnected from the actual services that MoneyLion performs.

D. MoneyLion Does Not Allow for \$500 Instacash Advances at One Time

61. Along with the instantaneous access to funds and zero interest, MoneyLion promises that a consumer can access a cash advance up to \$500:



62. A reasonable consumer would interpret “Get up to \$500 cash advance” as offering a single cash advance worth up to \$500. But \$500 is only the aggregate limit of what MoneyLion allows. In fact, users can only access a maximum of \$100 for any given transaction.

63. The result is more fees and tips for MoneyLion and higher APRs for consumers. Consumers wanting their promised \$500 cash advances must navigate a far-from-instantaneous process featuring multiple transactions and multiple opportunities for fees and tips.

64. If a consumer wants to obtain \$500 and the consumer has a \$100 per-transaction limit with a fourteen-day repayment obligation, the consumer must make five separate transactions with five separate charges for fees and tips. If each transaction involves a \$9 fee and a \$5 tip, then the consumer will pay \$70, resulting in an APR of over 350%. If the transaction were structured in the way MoneyLion has led consumers to believe, a consumer with a \$500 one-time transaction, maximum \$9 fee, and \$5 tip, the consumer would pay \$14, resulting in an APR around 75%.

65. Due to artificial per-transaction limits, consumers necessarily engage in multiple transactions, one after the other, paying exorbitant fees and tips in the process.

E. MoneyLion Provides Instacash Advances Without a License

66. While MoneyLion provides some consumer loans in Maryland through an entity known as MoneyLion of Maryland, LLC, this entity has not provided funds to Instacash users or collected repayment, fees, and tips from Instacash users in Maryland. Instead, MoneyLion provides funds and collects repayment from outside the State of Maryland, without a license.

F. MoneyLion Hooks Users Into a Cycle of Debt

67. MoneyLion’s tactics cause a cycle of debt for consumers. As a consumer obtains one Instacash Advance after another, a consumer is less able to afford utility bills, rent, and food.

As a consumer is less able to pay for utility bills, rent, and food, a consumer needs more Instacash Advances, and the cycle starts again.

68. Consumers who need \$25 or \$100 at a time are not just living paycheck-to-paycheck. Because of MoneyLion, they are living day-to-day, with each day burdened with more fees and tips.

69. Data analyzed by the Center for Responsible Lending shows that, for EWA providers like MoneyLion, “repeat borrowing is the norm, not the exception: nearly three-quarters of users (72%) not only come back for another loan, but do so quickly, taking out more than one loan within a two-week period.”⁶

70. These users are in a precarious financial position especially because repayment typically happens on payday, and MoneyLion ensures that it cuts to the front of the line, ahead of a consumer’s landlord, utility company, and any other creditors whose payments are also typically due on a payday. This problem becomes compounded with increased usage. According to data analyzed by the Center for Responsible Lending, overdraft activity increases with more EWA loans. Users experiencing at least one overdraft rose from 9.7% before their first EWA loan to 14.1% in the three months after taking out their first EWA loan. Frequent pay more than three times in overdraft fees alone, compared to less frequent users.

71. MoneyLion has taken every possible step to fuel this problem and increase the frequency of Instacash Advances for each Instacash user. In turn, high-frequency lending leads to more fees and tips being collected for MoneyLion and even higher APRs for consumers.

⁶ Center for Responsible Lending, *Escalating Debt: The Real Impact of Payday Loan Apps Sold as Earned Wage Advances (EWA)* (Sept. 22, 2025), available at <https://www.responsiblelending.org/research-publication/escalating-debt-real-impact-payday-loan-apps-sold-earned-wage-advances-ewa>.

72. MoneyLion has recognized this issue in internal documents. The Company noted in the early stages of Instacash that “2 out of 3 users who have used Instacash have returned and used the product at least a second time.” Subsequent analysis in February 2023 showed that up to 40% of Instacash users pay fees to the Company for *10 or more Instacash Advances per month*, 7% of Instacash users pay fees on *20 or more Instacash Advances per month*.

73. 20% of Instacash users obtain Instacash Advances at least every other day on average, a group which generates nearly half of fee and tip revenue for Instacash. This group has grown substantially over time, both in raw numbers and in the percentage of high-frequency users compared to other users. While this data is based on New York consumers, there is no reason to believe that these patterns are any different for Baltimore consumers.

74. MoneyLion encourages dependency and higher APRs by forcing artificial, per-transaction limits. The more transactions a consumer has to go through, the more fees and tips MoneyLion collects.

75. MoneyLion also encourages dependency through its “Boost” program by which the Company provides consumers temporary, low-dollar increases (usually around \$25) in their Instacash funds available. This program provides Boosts for birthdays, Super Bowls, and holidays. This program has increased the frequency of transactions for consumers, leading to a 25% increase in Instacash transactions and associated fees and tips.

76. MoneyLion goes further to enlist friends and family to send each other Boosts, typically for \$5. This program has created a way for dependent users to trade Boosts with each other and, in turn, increase the frequency of their transactions.

77. MoneyLion has taken no steps to mitigate the cycle of debt created by its practices. Instead, MoneyLion has taken every available step to increase addiction and dependency to the detriment of consumers. Through this action, the City seeks to stop this cycle of debt.

COUNT I
Deceptive Trade Practices

78. The City of Baltimore reasserts, realleges, and incorporates by reference each paragraph above as though fully set forth below.

79. The Baltimore Consumer Protection Ordinance, Baltimore City Code Art. 2, § 4 (“CPO”), protects consumers and others against “unfair, abusive, or deceptive trade practices,” which are defined consistently with the Maryland Consumer Protection Act (“MCPA”), Md. Code Ann, Com. Law, § 13-301. *See* Baltimore City Code Art. 2, § 4-1 (13).

80. MoneyLion is a “person” or “merchant” engaged in the extension of credit and collection of consumer debt in the City of Baltimore. Baltimore City Code Art. 2, §§ 4-1(9)-(10), 4-2 (4)-(5).

81. The MCPA identifies as deceptive trade practices any “[f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers” and “[f]ailure to state a material fact if the failure deceives or tends to deceive.” Com. Law, § 13-301(1) & (3).

82. The MCPA also instructs that, “in construing the term ‘unfair or deceptive trade practices,’ due consideration and weight be given to the interpretations of § 5(a)(1) of the Federal Trade Commission Act by the Federal Trade Commission and the federal courts.” Com. Law, § 13-105. Under the FTC Act, a trade practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.

Information is material to consumers if it is likely to affect a consumer's choice of or conduct regarding a product or service.

83. At all relevant times, Instacash Advances were loans under the Maryland Consumer Lending Law ("MCLL"). Com. Law, § 12-201(e).

84. In the alternative, even if Instacash Advances were not "loans," Instacash Advances were a "device or pretense" by which MoneyLion collected interest or charges. Com. Law, § 12-303(d)(2).

85. Until October 1, 2025, fees and tips paid through Instacash Advances were "interest" under Maryland law. Com. Law, § 12-201(e).

86. Until October 1, 2025, Maryland law capped interest rates on short-term loans chargeable on Instacash Advances at 33%. Com. Law, § 12-206(a)(2)(1).

87. Loans or advances are void and unenforceable in Maryland when a person contracts for any "interest, charge, discount, or other consideration greater than that authorized under State law." Com. Law, § 12-314(b)(1)(i)(1).

88. MoneyLion has charged interest in excess of 33%, failed to obtain a license to provide consumer loans to Maryland consumers, and has enforced payment of principal, interest, and charges that are unenforceable under Maryland law. These violations of the MCLL are contrary to the public policy of the State of Maryland.

89. MoneyLion's trade practices are deceptive. Without limitation, MoneyLion has violated the CPO by:

- a. Misrepresenting Instacash Advances as a non-loan product prior to October 1, 2025;

- b. Failing to represent the material fact that Instacash Advances were loans prior to October 1, 2025;
- c. Failing to represent the material fact that Instacash Advances were void and unenforceable under Maryland law prior to October 1, 2025;
- d. Failing to represent the material fact that MoneyLion has engaged in consumer lending activity without a license in violation of Md. Com. Law § 12-302;
- e. Misrepresenting Instacash Advances as providing instant payment with zero interest prior to October 1, 2025 when, in fact, MoneyLion does not provide such a service to consumers;
- f. Misrepresenting Instacash Advances as charging zero interest or “0% APR” prior to October 1, 2025;
- g. Misrepresenting Instacash Advances as providing instantaneous access to \$500 at a time when, in fact, consumers can only access funds in smaller increments like \$25, \$50, or \$100; and
- h. Misrepresenting the nature of tips as necessary to continue to provide consumers future access to Instacash Advances.

90. The above representations and omissions were false, misleading, of the kind which has the capacity, tendency, or effect of deceiving or misleading consumers.

91. Each misrepresentation and failure to disclose material facts by MoneyLion is a separate violation of the CPO.

92. Each fee and tip collected by MoneyLion as a result of these unlawful trade practices is a separate violation of the CPO.

93. Each day in which MoneyLion has operated without a license is a separate violation of the CPO.

94. While engaging in the unlawful practices described herein, MoneyLion has, at all times, acted willfully. MoneyLion knew or should have known that its actions were of the nature prohibited by the CPO.

95. As a result of the foregoing, the City seeks all legal and equitable relief as allowed by law, including civil penalties, injunctive relief, restitution, and disgorgement.

COUNT II
Unfair Trade Practices

96. The City of Baltimore reasserts, realleges, and incorporates by reference each paragraph above as though fully set forth below.

97. The MCPA instructs that, “in construing the term ‘unfair or deceptive trade practices,’ due consideration and weight be given to the interpretations of § 5(a)(1) of the Federal Trade Commission Act by the Federal Trade Commission and the federal courts.” Com. Law, § 13-105. Under the FTC Act, a trade practice is unfair if it is likely to cause substantial injury that is not reasonably avoidable by the consumer and is not outweighed by benefits to competition or consumers. Notably, the Federal Trade Commission has looked “to statutes or other sources of public policy to affirm that a practice is unfair.” *Legg v. Castruccio*, 100 Md. App. 748, 769 (1994).

98. A person cannot make “loans” of \$25,000 or less for personal, family, or household purposes in Maryland unless the person has a license under the MCLL or is otherwise exempt from the MCLL licensing requirement. Com. Law §§ 12-302, 12-303(a).

99. Through Instacash Advances, MoneyLion advances funds to Instacash users who, in turn, authorize MoneyLion to debit the amount advanced, along with fees and tips, by a date certain. These transactions are “credit” under the Truth in Lending Act (“TILA”), 15 U.S.C. §§

1601, *et seq.*, because MoneyLion provides consumers the right to defer payment of debt or incur debt and defer payment. 15 U.S.C. § 1602(f); 12 C.F.R. pt. 1026, Supp. I, Paragraph 2(a)(14) Credit, ¶ 2 (“Payday loans; deferred presentment”).

100. MoneyLion is a “creditor” under TILA because MoneyLion is a “person” regularly engaged in “credit” transactions with “consumer[s].” 15 U.S.C. §§ 1602(e), (f), (g), (i).

101. Turbo Fees are effectively mandatory charges because these fees are deceptively presented and necessary to access Instacash Advances for their intended, core purpose.

102. Tips are effectively mandatory charges because users are led to believe that tips are necessary for continued use of Instacash Advances and MoneyLion misleads and coerces consumers into providing tips through a highly onerous process.

103. TILA requires MoneyLion to disclose, among other things, the “amount financed,” “finance charge,” “annual percentage rate,” and “total of payments.” 15 U.S.C. §§ 1638(a)(2), (3), (4), (5). The purpose of these disclosure requirements is so that “the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.” 15 U.S.C. § 1601(a).

104. MoneyLion fails to disclose the “amount financed,” “finance charge,” “annual percentage rate,” and “total of payments” as required under TILA. 15 U.S.C. §§ 1638(a)(2), (3), (4), (5).

105. TILA also requires MoneyLion to “state the rate of [the finance charge] as an annual percentage rate” in its advertising. 15 U.S.C. § 1664.

106. In (falsely) marketing the rate of a finance charge for Instacash Advances as “zero interest,” MoneyLion fails to state the rate of the finance charge for its loans as an annual percentage rate.

107. MoneyLion’s trade practices are unfair. Without limitation, MoneyLion has violated the CPO by:

- a. Engaging in consumer lending activity without a license in violation of Md. Com. Law § 12-302;
- b. Charging interest and/or charges in excess of the rate allowed by the MCLL prior to October 1, 2025;
- c. Collecting interest and/or charges on loans that were void and unenforceable prior to October 1, 2025;
- d. Failing to represent interest and/or charges as an annual percentage rate in marketing and advertising, as required by TILA, 15 U.S.C. § 1664(c);
- e. Failing to disclose the “amount financed,” “finance charge,” “annual percentage rate,” or “total of payments” for Instacash Advances, as required under TILA, 15 U.S.C. §§ 1638(a)(2), (3), (4), (5);
- f. Encouraging a cycle of debt through manipulation, deceptive marketing, and deceptive advertising; and
- g. Engaging in manipulation, deceptive marketing, deceptive advertising, and scare tactics to force users to provide fees and tips to MoneyLion.

108. These trade practices are likely to cause consumers substantial injury that is not reasonably avoidable and not outweighed by countervailing benefits.

109. MoneyLion's actions are against public policy, as expressed through the MCLL and TILA.

110. Each fee and tip collected by MoneyLion as a result of these unlawful trade practices is a separate violation of the CPO.

111. Each day in which MoneyLion has operated without a license is a separate violation of the CPO.

112. While engaging in the unlawful practices described herein, MoneyLion has, at all times, acted willfully. MoneyLion knew or should have known that its actions were of the nature prohibited by the CPO.

113. As a result of the foregoing, the City seeks all legal and equitable relief as allowed by law, including civil penalties, injunctive relief, restitution, and disgorgement.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff City of Baltimore, respectfully requests that the Court enter judgment in its favor and against MoneyLion, as follows:

- a. The maximum amount of statutory penalties available under Baltimore City Code Art. 2, § 4-3(a), for each violation of Baltimore's CPO, Baltimore City Code Art. 2, § 4;
- b. Injunctive relief mandating that MoneyLion cease the exploitation of Baltimore City consumers by trapping them in a cycle of debt;
- c. Injunctive relief ordering that unlawful Instacash Advances be deemed void and unenforceable, and that MoneyLion return all principal, fees, and tips to Baltimore consumers;

- d. Injunctive relief requiring that MoneyLion adequately disclose the amount financed, finance charge, annual percentage rate, and total of payments for Instacash Advances;
- e. Injunctive relief requiring MoneyLion to reform its practices to accurately describe Instacash Advances;
- f. Any other relief as may be available and appropriate under the law or in equity.

DEMAND FOR JURY TRIAL

The City demands a jury trial for all claims upon which a jury trial is available.

Respectfully submitted,

Date:

/s/

EBONY M. THOMPSON
City Solicitor

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