No. 26-1256

IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

AARON BURRISON, individually, on behalf of all others similarly situated,

Plaintiff-Appellee,

v.

FLOATME CORP., a Texas corporation,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Massachusetts,
No. 1:25-cv-10885
Hon. Denise J. Casper

BRIEF OF *AMICI CURIAE* CENTER FOR RESPONSIBLE LENDING AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, National Consumer Law Center certifies that it does not have a parent corporation and that no publicly held corporation owns 10% or more of its stock. The Center for Responsible Lending is controlled by the Center for Community Self-Help ("CCSH"), a North Carolina nonprofit corporation. CCSH itself does not have a parent company. In neither case is there any stock interest in these nonprofit corporations.

Dated: July 17, 2026

/s/ Nicholas G. Kline
Nicholas G. Kline

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF AMICI CURIAE[1]

Amici curiae are non-profit, public interest, and consumer advocacy organizations with extensive expertise in small-dollar credit markets and consumer lending law. They are dedicated to protecting consumers and the public from exploitative and abusive lending practices. *Amici* submit this brief to provide the Court with evidence concerning the similarities in product design, function, and consumer harms between FloatMe Corp's "Float" cash advance products, often marketed as "Earned Wage Access," and traditional payday loans. Floats, and other so-called Earned Wage Access products, function as loans—app-based payday loans. Payday Loan Apps ("PLA") operate as a financial technology-enabled versions of the same high-cost, short-term lending model long associated with storefront payday lenders.

Drawing on their research and expertise, *Amici* document the consumer harms associated with these loans and the public interest in protecting borrowers, particularly active-duty servicemembers and their eligible dependents, from high-cost, harmful cycles of debt. *Amici* offer this perspective to assist the Court in understanding how these products function in practice and how their design

[1] No counsel for any party authored this brief in whole or in part, and no person other than *amici* and their counsel has made a monetary contribution to this brief's preparation and submission. Fed. R. App. P. 29(a)(4)(E). Both parties consented to this brief.

replicates longstanding forms of high-cost, predatory lending that federal law prohibits.

The Center for Responsible Lending ("CRL") is a non-partisan, non-profit research and policy advocacy organization dedicated to promoting financial fairness and economic opportunity for all. CRL advocates eliminating abusive practices in the market for consumer financial services and ensuring that consumers benefit from the full range of consumer protection laws designed to prohibit unfair and deceptive practices by financial services providers. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions, based in North Carolina, with retail credit union branches in California, Connecticut, Florida, Georgia, Illinois, North Carolina, South Carolina, Virginia, Washington, and Wisconsin.

Since its founding as a nonprofit in 1969, the National Consumer Law Center ("NCLC") has used its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy, consumer law, litigation, expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

NCLC has long-standing expertise in consumer lending. NCLC publishes a 21-volume consumer law treatise series, including National Consumer Law Center, Consumer Credit Regulation (4th ed. 2025), updated at www.nclc.org/library, which is a 1,248-page treatise providing in-depth explanations of the laws and regulations governing the regulation of credit at the state level. The treatise has sections devoted to so-called "Earned Wage Access" loans.

INTRODUCTION

In recent years, new forms of payday lenders, like FloatMe Corp. ("FloatMe"), have introduced short-term loans through smartphone applications marketed as "Floats."[2] These products are loans—app-based payday loans. Research

[2] FloatMe is one of several financial technology companies that make payday loans through smartphone applications, which have been challenged in litigation as unlawful extensions of credit under federal and state law. *Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927 (N.D. Cal. 2025); *Johnson v. Activehours, Inc.*, 2025 WL 2299425, 8 (D. Md. Aug. 8, 2025); *Golubiewski v. Activehours, Inc.*, 2025 WL 2484192 (M.D. Pa. Aug. 28, 2025); *Vickery v. Empower Finance, Inc.,* 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025); *Moss v. Cleo AI Inc.*, 799 F. Supp. 3d 1152 (W.D. Wash. 2025); *Russell v. Dave Inc.*, 2025 WL 3691977 (C.D. Cal. Dec. 12, 2025); *Revell v. Grant Money*, 808 F.Supp.3d 1036, 2025 WL 3167318 (N.D. Cal. Nov. 5, 2025); *Moss v. Klover Holdings, Inc.*, 2026 WL 622653 (N.D. Ill Mar. 5, 2026); *Lowe v. MoneyLion Techs. Inc.*, 822 F. Supp. 3d 374 (S.D.N.Y. Mar. 9, 2026); *Ramirez v. Activehours, Inc.*, 2026 WL 828299 (N.D. Cal. Mar. 25, 2026); *Feeman v. Bridge IT, Inc.*, 2026 WL 880508 (S.D.N.Y. Mar. 30, 2026); *Burkhardt v. MoneyLion Tech. Inc.*, Case No. 1:25-cv-06761 (S.D.N.Y. April 15, 2026).

and borrower experiences consistently show app-based loans replicate the fundamental characteristics of payday lending: small-dollar, short-term advances against a borrower's next paycheck with substantial fees that produce triple-digit and quadruple digit annual percentage rates ("APRs") designed to drive repeat borrowing.[3] Thus, research and data examining the broader PLA market are directly relevant in evaluating how FloatMe's "Floats" function as payday loans.[4]

FloatMe's "Floats" reflect the same design features, business model, and consumer harm observed across the PLA industry. FloatMe customers are promised "[f]ast cash when you need it," and "free money." JA17. However, like other PLA lenders, FloatMe generates revenue through fees charged to access its loans, including a fee for "Instant Floats," and a monthly subscription fee. JA18, 20. FloatMe charges escalating fees for access to "fast cash," extracting $1 for its $10 Floats, $3 for a $20 Float, $4 for a $30 Float, and $5 for $50 Floats. JA18. The actual cost to FloatMe to provide "instant" access to funds is less than $.05, regardless of the amount of the loan. JA18.

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[3] Nakita Q. Cuttino, *The Rise of "Fringetech": Regulatory Risks in Earned-Wage Access*, 115 Nw. U. L. Rev. 1505, 1542 et seq. (2021) (earned wage access functions as "payday loan 2.0" because they replicate key characteristics of payday loans, including high costs, limited underwriting, credit invisibility, exposing borrowers to similar substantial risks that worsen their health and financial conditions.).

[4] *See e.g.* Lucia Constantine, Christelle Bamona, Sara Weiss, *Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps*, Ctr. Responsible Lending (Apr. 2024) (hereinafter "*Not Free*").

To receive a Float, borrowers must allow FloatMe to constantly monitor their bank balance, spending behavior, repayment history, and income. JA28. This constant underwriting process is used to evaluate eligibility and determine whether, and in what amount, credit will be extended. FloatMe's own terms of service confirm this structure. The agreement states: "We determine the amount of any Float that you are eligible for based on, among other things, your anticipated income, transaction history, and information about your Linked Accounts and accounts." JA70. Determining the credit worthiness of a borrower by analyzing income and spending is a hallmark of traditional lending.

PLAs require the borrower to authorize repayment directly from their bank account. Fees—including expedite or subscription charges—are integral to the business model, difficult or impossible to avoid, and are necessarily connected to accessing the advertised loan.[5] FloatMe imposes additional repayment requirements,

[5] *See* Nat'l Consumer Law Ctr., *Picking Workers' Pockets: Unfair, Deceptive and Abusive Practices by Earned Wage Lenders* (Jan. 2026), https://www.nclc.org/wp-content/uploads/2026/01/2026.01_Report_EWA.pdf. (hereinafter "*Picking Workers' Pockets*") (summarizing data from federal and state enforcement actions demonstrating the business models of DailyPay, EarnIn, Brigit, FloatMe, Dave, and MoneyLion are designed to encourage repeated borrowing to cover shortfalls created by prior loans and that these lenders have employed numerous deceptive, unfair, and abusive practices to prevent borrowers from cancelling loans or subscriptions.); *See also* Monica Burks, Yasmin Farahi, Andrew Kushner, Katelin Kaiser, *Nickel and Dimed: How Payday Loan Apps Drain Workers' Pay and How to Stop Them*, Ctr. for Responsible Lending (Oct. 2025) (hereinafter "*Nickel and Dimed*").

including that borrowers link a bank account, supply a debit card, and preauthorize debits from those accounts. JA26. FloatMe also requires that borrowers must be approved for each advance based on FloatMe's review of their bank account and overall financial activity, and eligibility for the next advance depends on a borrower's repayment of the previous advance. JA26, 69.

Research also shows widespread "loan stacking," where borrowers take loans from multiple PLA lenders against the same paycheck, further compounding fees and depleting take-home pay.[6] Harms extend beyond the price of borrowing. App-based payday loans inhibit borrowers' ability to pay essential bills and increase household difficulties covering mortgage, rent, and utilities.[7]

Federal consumer lending statutes apply to PLAs. Both the Truth in Lending Act, 15 U.S.C. §§ 1601–1667f ("TILA") and the Military Lending Act, 10 U.S.C. § 987 ("MLA") regulate extensions of consumer credit and require lenders to disclose the full cost of borrowing. Congress intended these statutes to promote transparency in lending markets and to protect borrowers from harmful and abusive lending

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https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nickel-and-dimed-oct2025.pdf.

[6] Christelle Bamona, Lucia Constantine, *Escalating Debt: The Real Impact of Payday Loan Apps Sold as Earned Wage Advances (EWA)*, Ctr. for Responsible Lending (Sept. 2025) (*hereinafter* "*Escalating Debt*") at pg. 6. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-loan-apps-ewa-sep2025.pdf.

[7] Cuttino, *The Rise of "Fringetech"*, supra n.3 at 1551-1552.

practices. Regulation Z, which implements TILA, defines credit as the right to defer payment of debt or incur debt and defer its payment. 12 C.F.R. § 1026.2(a)(14). FloatMe's "Floats" operate precisely this way. JA69-73. To receive a loan, borrowers must authorize repayment by a later debit from their bank account. JA71. Finance charges include any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor, as an incident to or condition of the extension of credit. 12 C.F.R. § 1026.2(a). This definition encompasses fees imposed by FloatMe and other PLAs because they are integral to accessing the advertised loan and are incurred by the vast majority of borrowers.

The MLA reinforces, and expands on, TILA's protections. Congress enacted the MLA to protect military servicemembers and their families from high-cost, short-term credit, including payday loans, by establishing a 36% APR cap that incorporates all fees and charges.[8] 10 U.S.C. § 987. The Department of Defense's implementing regulations, revised in 2015, modeled the definition of "consumer credit" to encompass most forms of credit subject to a finance charge to prevent lenders from evading the MLA's statutory protections. 32 C.F.R. § 232.3(f). FloatMe's "Floats"

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[8] U.S. Dep't of Def., *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (2006), https://download.militaryonesource.mil/12038/MOS/Reports/ReportonPredatoryLendingPractices.pdf.

meet these definitions, and the fees associated with these loans squarely fall within the MLA's protections.

Empirical evidence shows that app-based payday loans are neither "innovative" nor "consumer-friendly" products. *See* Br. of Am. Fintech Council and Financial Technology Association at 2, 4. Examination of consumer transaction data and company data disclosed to state Attorneys General demonstrates that these loans generate recurring costs, strain borrowers' ability to cover essential expenses, and produce harms that Congress specifically intended the MLA to prevent. These facts confirm that FloatMe's "Floats" and similar products are extensions of credit and support affirming the district court's decision denying Defendant-Appellant FloatMe's Motion to Compel Arbitration and Stay Action.

ARGUMENT

I. Payday Loan Apps Operate as Payday Loans in Structure, Cost, and Consumer Impact.

A. The Product Design and Business Model of Payday Loan Apps Replicate Payday Lending.

Before the rise of PLAs, traditional payday lending operated through storefronts or online platforms and relied on a similar short-term, high-cost model. These loans provide borrowers with access to $100 to $500, are typically repaid on the borrower's next payday, and carry fees that result in exorbitantly high APRs.[9] If a borrower does not return to the store to repay with a new loan, the lender initiates repayment by cashing the borrower's postdated personal check or effecting a pre-authorized electronic debit.[10] This structure, requiring repayment of the full principal and fees in a single lump-sum or "balloon" payment, often leaves borrowers unable to meet other expenses when the loan comes due, requiring another loan to cover the resulting cash shortfall.[11]

When borrowers cannot repay in full, payday loans are frequently rolled over or replaced with new loans, creating cycles of repeat borrowing and escalating fees. Market research has shown that a substantial share of payday loans are taken out within two weeks of prior loan repayment, and many borrowers remain in debt for months due to "the pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees."[12] Consistent with this pattern, data show that 75% of all payday loan fees are generated by

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[9] Lucia Constantine, Yasmin Farahi, *Down the Drain: Payday Lenders Take $2.4 Billion in Fees from Borrowers in One Year*, Ctr. Responsible Lending (Jan. 2025) (hereinafter "*Down the Drain*") at pg. 1. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-down-the-drain-paydayloanfees-feb2025.pdf

[10] Consumer Fin. Prot. Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data* at *6 (2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[11] *Id.* at 43-44.

[12] *Id.* at 4, 20-22.

borrowers who take out more than 10 loans per year.[13] Payday lenders thus rely heavily on repeat borrowing to generate profit.

Consistent with the MLA, many states have adopted measures, such as 36% interest-rate caps, to protect consumers from the harms associated with payday lending.[14] At the same time, the small-dollar credit market has increasingly migrated online and to smartphone applications, with lenders developing digital "storefronts" in borrowers' pockets that replicate traditional payday loans.[15] The structural features of traditional payday loans—repayment tied to payday, high costs, automatic access to borrowers' bank accounts, and repeat borrowing—have long defined the payday lending model, regardless of how the loan is delivered.

Against this backdrop, PLAs are short-term advances offered through a smartphone application and repaid in a single lump-sum payment automatically withdrawn from the borrower's bank account on the next payday. Although marketed as early access to earned wages, these advances are simply ordinary loans based on "anticipated income". JA70. The lender provides funds before payday and requires repayment on a future payday. Transaction-level data show average advances ranging from approximately $40 to $120 per transaction, with some lenders

[13] *Down the Drain*, supra n.9 at 6.
[14] Nat'l Consumer La Ctr., *Why Cap Interest Rates at 36%?* (Aug. 2021), https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf.
[15] *Nickel and Dimed*, *supra* n.5 at 4.

allowing higher limits for repeat users.[16] FloatMe advertised maximum offers of $50, but a Federal Trade Commission ("FTC") investigation revealed that first-time users are eligible for a maximum of $20, and only .5% of consumers received a $50 Float. JA27-28.

Repayment is not optional; it is scheduled in advance as a necessary precondition to receiving the loan and automatically debited from the borrower's debit card or bank account. Despite FloatMe's and other PLA lenders' contention that borrowers have no "legal" obligation to repay enforceable in court, the transaction structure and terms make repayment unavoidable.[17] As the district court correctly recognized, "FloatMe offers cash advances to eligible users and [] in return, 'users must link their bank account to their ... profile and authorize automated debits from their linked external bank account on the scheduled repayment date.' . . . FloatMe utilizes a 'constant underwriting process' through which it 'extends loans to borrowers only when it is confident they will repay,' [] FloatMe prevents users with unpaid balances from obtaining additional advances, and that FloatMe 'schedule[s] debits on the payday immediately following any given loan,' This

[16] *Not Free*, *supra* n.4 at 4.
[17] JA71 ("Each time you accept a Float, you will be required to choose or confirm the date you will repay the Float (the "Repayment Date") and authorize us to process an electronic debit from your Linked Account on that date.")

model 'squarely falls within the definition of credit.'" ADD13 (internal citation omitted).

Numerous district courts have similarly rejected the contention that disclaiming recourse in court removes PLAs from the MLA's definition of credit, [18] finding that "Although [PLA lenders] secure repayment through means other than 'legal recourse,' the Court finds that [PLA lenders] nevertheless offer a product that requires promise of repayment, and therefore constitutes 'credit.'" *Revell v. Grant Money, LLC*, 808 F. Supp. 3d 1036, 1050 (N.D. Cal. 2025); *see also Feeman v. Bridge It, Inc.*, 826 F. Supp. 3d 505, 517 (S.D.N.Y. 2026) ("Recourse against an individual is not required to create a debt, and a consumer's ability to rescind repayment authorization does not defeat the debt that is created when she seeks and receives an advance."); *Ramirez v. Activehours, Inc.*, 2026 WL 828299, at *9 (N.D. Cal. Mar. 25, 2026); *Orubo v. Activehours, Inc.,* 780 F. Supp. 3d 927, 936 n.4 (N.D. Cal. 2025).

Why APR Matters for Short-Term Credit. APR is the standardized measure Congress adopted to reflect the full cost of credit, including fees and charges incident to borrowing. APR allows comparison across products

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[18] Nat'l Consumer Law Ctr., *Courts Reject Claims That Payday Loan Apps Don't Offer Loans* (April 15, 2026), https://www.nclc.org/resources/courts-reject-claims-that-payday-loan-apps-dont-offer-loans/ (collecting fourteen cases rejecting arguments that app-based loans are not credit).

regardless of term length.[19] Congress imposed a 36% military APR cap in the Military Lending Act, reflecting a policy determination that high-cost credit is harmful to the members of our Nation's military and their families. 10 U.S.C. § 987(b). For short-term loans, fixed fees account for a larger share of principal and therefore yield especially high APRs. A $10 fee on a $100 advance repaid in two weeks translates to an APR exceeding 260%.[20] APR remains essential to evaluating short-term credit. CRL's analysis of PLA loans repaid within 7 to 14 days found an average APR of approximately 383% once expedited fees, tips, and subscriptions are included.[21] High APRs on short-term loans also often reflect high costs, since they are rarely taken out as one-time loans, leading to long-term reborrowing cycles, as with PLA.

ACH Authorization: Automatic Recourse. To use direct-to-consumer PLAs, borrowers must link their bank accounts and provide lenders authorization to debit their bank account on a specified future date, typically the next paycheck.[22] If sufficient funds are unavailable, lenders initiate repeated ACH withdrawal attempts, which expose borrowers to overdraft fees that often cost approximately $35 per

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[19] *See* Nat'l Consumer La Ctr., *Comparing APRs on Small Loan Alternatives* (Jan. 7, 2025), https://www.nclc.org/wp-content/uploads/2024/10/202501_Issue-Brief_Comparing-APRS-on-Small-Loan-Alternatives-1.pdf.
[20] *Not Free*, *supra* n.4 at 11.
[21] *Escalating Debt*, *supra* n.6 at 6.
[22] *Not Free, supra* n.4 at 6.

occurrence.[23] The scheduled withdrawal model is intended to ensure that repayment coincides with the borrower's receipt of wages, ensuring high collection rates for lenders but reducing borrowers take-home pay and generating new cash flow gaps, resulting in high rates of reborrowing. Enforcement actions by the District of Columbia, New York, the City of Baltimore, and the FTC confirm that some app-based lenders have employed numerous deceptive and unfair business practices to prevent borrowers from canceling subscriptions or loan repayments.[24] Enforcement actions brought against FloatMe, Dave, and Brigit show that the lenders misled borrowers and imposed barriers that made it difficult to end ACH authorization.[25] Likewise, Float borrowers cannot cancel their subscription to FloatMe if they have not repaid all loans. JA21-22. Also, FloatMe does not allow users to cancel debits for loan repayments in the app. JA30. FloatMe's terms state that ACH authorization may be revoked only by email with at least three business days' notice. JA72.

Repeat Transactions Escalate Fee Extraction. The PLA business model is designed to foster repeat usage and fee extraction, particularly from high-frequency users. High-frequency users accounted for 38% of all borrowers but 86% of all

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[23] *Id.*
[24] *Picking Workers' Pockets*, *supra* n.5 at 22-23.
[25] *Id.* (describing enforcement actions alleging use of friction and dark patterns designed to thwart canceling subscriptions or stopping recurring charges).

advances.[26] For example, in transaction data from the PLA lender EarnIn, 22% of borrowers paid 62% of all expedite fees. This concentration of revenue among repeat borrowers demonstrates that sustained borrowing is not incidental but central to the PLA business model.

Advertised Advance Amounts Overstate Available Credit and Encourage Repeat Use. Although PLA lenders advertise advances of up to several hundred dollars "instantly," the amounts actually provided to consumers are often much smaller.[27] This structure effectively forces borrowers who need meaningful sums to take successive loans, each carrying its own fee, thereby incurring successive fees. The artificially low loan limits are designed to increase transaction frequency and maximize fee extraction. The paltry loan limits also minimize the risk of loss to PLA lenders like FloatMe, who can generate recurring income flows while minimizing the risk of default.

Although FloatMe purports to limit borrowers to one transaction at a time, the company also extends credit only in relatively small amounts. FloatMe's limits minimize losses arising from non-payment while ensuring profits through subscription fees. Indeed, for some subscription paying customers FloatMe does not

[26] Candice Wang, Lucia Constantine, Monica Burks, Yasmin Farahi, *A Loan Shark In Your Pocket: The Perils of Earned Wage Advance*, Ctr. For Responsible Lending, at *7 (Oct. 2024) (hereinafter "*Loan Shark*").
[27] *Picking Workers' Pockets*, *supra* n.5 at 20-22.

offer any Floats. Indeed, the FTC found that FloatMe users were "charged subscription fees even though they were unable to get any cash advances at all." JA21.

Enforcement actions by the FTC have recognized that such disparities between the marketing promise of "cash now" and actual access as deceptive, particularly where consumers are induced to pay subscription fees for access to loans that are smaller than advertised or unavailable in practice. [28] In its action against FloatMe's PLA peer, lender Brigit, the FTC alleged that "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." *Complaint*, Federal *Trade Commission v. Bridge It, Inc.*, 2023 WL 7318787 (S.D. NY Nov. 2, 2023).

Fine-print disclosures also do not cure this deception, and this problem is not unique to any one PLA lender. Across the PLA industry, key limitations on eligibility, timing, and loan size are routinely buried in fine print, obscured behind hyperlinks, or only visible after scrolling through mobile interfaces. The same misleading impression is conveyed by FloatMe's advertising, which claims that consumers can instantly receive up to $50 for the cost of a subscription, but fails to disclose that the

[28] *Picking Workers' Pockets*, *supra* n.5 at 19-20.

actual loan amounts offered are generally much lower and FloatMe may decline to offer a Float at all. JA21.

"Instant Delivery" Fees are a Central Feature of PLA Lenders Like FloatMe. Lenders advertise loans as available "in minutes," but immediate funding requires payment of an expedite fee that ranges from $0.99 to $25, depending on the loan size and lender,[29] even though the cost of sending money instantly is a few cents.[30] By contrast, the no-fee option requires waiting up to three to five business days. App-based loans are sometimes artificially delayed, rendering the promises of no-cost, "instant access" illusory.[31] Expedite fees are not optional add-ons; they are necessarily connected to the price borrowers must pay to obtain timely access to the loan as advertised. *See Lowe v. Moneylion Techs. Inc.*, 822 F. Supp. 3d 374, 380 (S.D.N.Y. 2026) (explaining how customers are unlikely to choose to use a payday advance service without an instant delivery feature, as waiting multiple days would defeat the purpose of early wage access.)

Subscription Fees are Imposed by Some Lenders, like FloatMe, as a Requirement for PLA Use. Some lenders, like FloatMe, charge borrowers a recurring monthly subscription fee as an incident to accessing advances. JA20. These fees are imposed regardless of whether a borrower actually receives a loan during

[29] *Loan Shark*, *supra* n.26 at 7.
[30] *See Picking Workers Pockets*, *supra* n.5 at 14.
[31] *Id.*

the billing period. FloatMe denies Floats to some customers who set up an account, pay the subscription fee, and apply for an advance. JA20-21. The subscription-based model requires borrowers to pay recurring fees merely for the possibility of accessing credit, even when no loan is ultimately provided.

Banking Fees and Penalties Further Increase Cost Burdens. Repayment through pre-authorized ACH withdrawal can trigger overdraft fees if funds are insufficient at the time of debit. In a review of transaction data, CRL found the average number of overdraft fee events for PLA users increased from 3.0 in the three months before their first use of a PLA advance to 4.7 in the three months after the first use.[32] In a larger dataset used by CRL, 67% of users who experienced overdrafts saw their overdrafts increase after beginning to use app-based loans.[33] In one documented case, a borrower incurred 58 overdrafts in three months, totaling $1,740 in overdraft fees.[34]

"Non-Recourse" in court Does Not Eliminate the Obligation to Repay. Although FloatMe and other PLA lenders label loans as "non-recourse," repayment authorizations are required at the time the loan is made, and future access to advances is conditioned on repayment of outstanding balances. Borrowers must repay to avoid repeated debit attempts. In litigation involving the PLA lender,

[32] *Not Free*, *supra* n.4 at 6.
[33] *Loan Shark*, *supra* n.26 at 8.
[34] *Id.*

EarnIn, the court rejected the "non-recourse" characterization, holding that repayment authorizations and future product access together created an obligation to repay under MLA. *Ramirez v. Activehours, Inc.,* 2026 WL 828299, at *9 (N.D. Cal. Mar. 25, 2026); *see also Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927, 936 n.4 (N.D. Cal. 2025) ("It is entirely possible that [this] system is in fact *more* effective in guaranteeing repayment than one that depended on pursuing legal debt collection remedies.").[35] Courts from coast to coast have unanimously rejected the argument that the purported non-recourse nature of app-based loans precludes a finding that the product is "credit."[36] The district court here correctly recognized as much, finding that FloatMe's "model squarely falls within the definition of credit." ADD13 (internal quotation omitted).

PLA lenders characterize repayment authorization as revocable, but in practice, borrowers do not know how to revoke it and are often unable to revoke within the short repayment term. FloatMe requires borrowers to send an email at

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[35] *See* Nat'l Consumer Law Ctr., *MoneyLion's Costly "0% APR" "Earned Wage" Payday Loans* (May 2025), https://www.nclc.org/wp-content/uploads/2025/05/Issue-Brief_MoneyLionEWALoans.pdf. (hereinafter "*MoneyLion's Costly '0% APR'*") (citing data disclosed to the New York Attorney General showing that in most circumstances, PLA lender MoneyLion collected on its loans nearly 98% of the time).

[36] Nat'l Consumer Law Ctr., *Courts Reject Claims That Payday Loan Apps Don't Offer Loans* (April 15, 2026), https://www.nclc.org/resources/courts-reject-claims-that-payday-loan-apps-dont-offer-loans/ (collecting fourteen cases rejecting arguments that app-based loans are not credit).

least three business days before the scheduled repayment with the borrower's name, email address, telephone number associated with the FloatMe User Account, and a statement that the borrower wishes to revoke the ACH authorization. JA72. Before receiving a Float, borrowers must demonstrate regular income sufficient to cover repayment, link their bank account, supply a debit card, authorize automatic debit on or around payday, and remain current on prior advances and subscription charges. JA25-26. If the scheduled repayment fails for insufficient funds or other reasons, then FloatMe "will reattempt your repayment up to two (2) additional times." JA71. This confirms that repayment is required and operationally enforced, notwithstanding the "non-recourse" label. FloatMe does not need to sue or use debt collectors to collect from its borrowers because it has already secured repayment through preauthorized access to borrowers' debit cards and bank accounts. *See Feeman*, 826 F. Supp. 3d at 519 ("[H]aving an ACH authorization against the consumer's bank account (much like having a physical check) is undoubtedly more valuable to the creditor and provides greater security than being forced to go to court and enforce a judgment.").

PLA lenders also impose procedural hurdles on revocation, often requiring notice before the scheduled withdrawal and navigation through multiple in-app steps. For example, company data disclosed to the New York Attorney General in litigation against PLA lender MoneyLion shows that borrowers must "navigate an unintuitive and…complex process across multiple menus" that makes stopping repayment, "needless[ly] difficult," requires three business days' notice, and renders revocation "entirely impossible" for loans with short terms.[37] FloatMe imposes similar constraints. It does not permit cancellation through the app and requires borrowers to revoke ACH authorization by email, with at least three business days' advance notice. JA72-73. Advance notice requirements, automated debit authorization, and lender-imposed procedures render revocation effectively illusory.

B. Payday Loan Apps Produce Cycles of Repeat Borrowing and Escalating Financial Harms.

Research examining transaction-level consumer data demonstrates that payday loan apps do not function as a "pro-consumer product." *See* Br. of Am. Fintech Council at 3. Instead, PLAs produce patterns of repeated borrowing, escalating costs, and financial instability among borrowers, harms long associated with traditional payday lending.

Borrowers Are Caught in Cycles of Escalating Debt. Studies tracking borrowers over time show that reliance on these app-based payday loans increases rapidly after initial use. An analysis of anonymized bank account transaction data conducted by CRL found that borrowers' use of advances doubled in the first year, rising from an average of two loans per month to four.[38] These studies demonstrate

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[37] *MoneyLion's Costly "0% APR"*, *supra* n.18.
[38] *Nickel and Dimed*, *supra* n.5 at 4.

that the loans are not addressing "short-term liquidity" needs, but instead are creating the very cash shortfalls that drive continued borrowing.

Rapid repeat borrowing is the norm, not the exception. CRL's analysis found that nearly 75% of PLA borrowers took out at least one loan on the same day or the day after making a repayment.[39] Nearly 72% of borrowers took out more than one loan within a two-week period, and 27% of borrowers took 25 or more loans in a single year, mimicking traditional payday loan rollover cycles.[40] Plaintiff-Appellee's experience reflects this broader pattern, taking out a loan each pay period and being forced to take another loan immediately after repaying his previous advance. JA33.

Excessive Fees Drive Financial Strain. In practice, borrowers overwhelmingly pay fees—as many as 90% of borrowers.[41] In an online survey conducted by CRL, 79% of respondents reported paying expedited fees most of the time to receive funds quickly.[42] Similarly, PLA lender EarnIn reported in its own study that 86% of its borrowers paid an expedited transfer fee to receive funds immediately.[43] Here, Plaintiff-Appellee paid numerous Instant Float fees, a fact which the district court noted in concluding that "at least the expedite fee plausibly

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[39] *Id.*
[40] *Loan Shark*, *supra* n.26 at 7.
[41] *Picking Workers' Pockets*, *supra* n.5 at 8.
[42] *Not Free*, *supra* n.4 at 3.
[43] Ctr. For Responsible Lending, *November 2025 EarnIn Study Shows the Harms of Payday Loan Apps ("EWA")* (Jan. 2026).

represents a charge FloatMe imposed on Burrison (and other FloatMe users) 'as an incident to or a condition of the extension of credit.'" ADD15.

Additionally, although FloatMe claims its Floats "help you avoid overdrafts," JA67, research finds evidence of the opposite. Overdrafts on consumers' checking accounts increased 67% on average after initial use of app-based loans.[44]

These patterns reflect the design of PLAs, like FloatMe, that condition access to a cash advance on monthly subscription fees, instant delivery fees, and automatic ACH withdrawals that borrowers cannot easily avoid—resulting in exploitative, high-cost loans. For example, some of FloatMe's loans made to Plaintiff-Appellee carried Military APRs over 1,000%, far exceeding the 36% Military APR cap. JA32-33.

App-Based Loans Are Used to Cover Everyday Expenses. CRL survey evidence further indicates that when left with a hole in their paychecks, borrowers are forced to reborrow repeatedly to cover everyday expenses, including food, transportation, housing costs, and bill and utility payments; advances are rarely used for unexpected emergencies.[45]

These outcomes are reinforced by product design. Some PLA lenders encourage repeated use for recurring expenses by allowing funds to be delivered

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[44] *Loan Shark*, *supra* n.26 at 8.
[45] Ctr. For Responsible Lending, *Survey Summary of Earned Wage Advance and Cash Advance Apps* at *1 (Aug. 2023).

directly for services like ride-share credits, online retail balances, or bill payments.[46] When one loan is used to cover the shortfall created by repaying a prior loan, the borrower is not getting additional liquidity; they are merely trying to restore the hole in the paycheck while continuing to incur charges for each subsequent transaction. This pattern, again, replicates the payday lending rollover cycle.

Multiple Repayment Obligations Multiply Risks. CRL's transaction-level analysis found that more than half of users borrowed from multiple payday loan apps during their first year of use,[47] with one borrower using as many as 8 different lenders in a single month.[48] The prevalence of "loan stacking," borrowing from multiple PLAs against the same paycheck, increased over time, rising from 16% of borrowers in their first month of use to 42% by the end of the first year.[49] Borrowing across multiple apps multiplies repayment obligations and fees, increasing the likelihood that borrowers will require additional loans to meet routine expenses. As one borrower from a CRL qualitative diary study wrote, "Since last week, I have

[46] Marshall Lux and Cherie Chung, *Earned Wage Access: An Innovation in Financial Inclusion?*, M-RCBG Associate Working Paper Series, No. 214 at 16 (June 2023), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/214_AWP_final_2.pdf.
[47] *Escalating Debt*, *supra* n.6 at 6.
[48] *Loan Shark*, *supra* n.26 at 8.
[49] *Escalating Debt*, *supra* n.6 at 6.

only used EarnIn. But, last payday I used EarnIn, Cleo, Empower, and Brigit, all once except for EarnIn, I used them twice."[50]

Taken together, the data and borrower experience demonstrate that app-based loans replicate the same cycle of repeat borrowing, escalating high costs and fees, and financial instability long associated with the payday lending industry.

CONCLUSION

The Court should affirm the district court's order denying Defendant-Appellant FloatMe's Motion to Compel Arbitration and Stay Action.

Respectfully submitted,

Dated: July 17, 2026

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[50] *Not Free*, *supra* n.4 at 9.

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 17, 2026

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<u>CERTIFICATE OF COMPLIANCE</u>

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,466 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word. The text is in 14-point Times New Roman type.

Dated: July 17, 2026

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