# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ROME DIVISION

COURTNEY BLACKMON, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

TITLEMAX OF GEORGIA, INC. D/B/A TITLEMAX, TMX FINANCE LLC, and TRACY YOUNG,

Defendants.

CASE NO. 4:24-cv-00049-WMR

**DEMAND FOR JURY TRIAL** 

### FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff ("Plaintiff" or "Mrs. Blackmon"), on behalf of herself and all others similarly situated, alleges the following based upon personal knowledge as to herself, upon information and belief, and the investigation of her undersigned counsel as to all other matters, and brings this first amended class action complaint against Defendants TitleMax of Georgia, Inc., d/b/a TitleMax ("TitleMax"), TMX Finance LLC ("TMX"), and Tracy Young ("Young"), an individual, (altogether, the "Defendants"), as follows:

### I. NATURE OF THE ACTION

- 1. This First Amended Class Action Complaint seeks to use the protections provided to active-duty service members by the Military Lending Act, 10 U.S.C. § 987 ("MLA"), to void high-interest title loans made to hundreds of soldiers. The MLA was enacted to protect United States active-duty service members and their dependents <sup>1</sup> from predatory lending. Excessive debt endangers our nation's military readiness and impacts service member retention, morale, household stability, security clearances, and career advancement.
- 2. Specifically, the Defendants' standard form Pawn Transaction Disclosure Statement and Security Agreement (the "Agreement") contains several loan terms that are prohibited by the MLA for loans to Covered Members, including: (1) charging interest above the 36% interest rate cap for the Military Annual Percentage Rate ("MAPR"); (2) failing to provide any required MLA Disclosures; (3) rolling over loans to a Covered Borrower using the proceeds of other credit extended by the same creditor; (4) requiring a Class Action Ban and Waiver of Jury Trial which is prohibited by the MLA, (5) requiring a mandatory binding arbitration clause or other onerous legal requirements which is prohibited by the MLA; (6) extending credit and servicing

<sup>1</sup> Active-duty service members and their dependents are identified throughout the Complaint as "Covered Borrowers" as defined by 32 C.F.R. § 232.3(g)(1).

2

loans where the Covered Borrower's vehicle title and bank account are required as security for the loan. See, 10 U.S.C. § 987(b),(c),(e)(2)(5)(6).

- 3. Plaintiff's standard form Agreement is identified as **Exhibit 1**.
- 4. To protect our active-duty service members and their families, Congress declared that any violation of the MLA renders that loan void from inception. 10 U.S.C. § 987(f)(3).
- 5. TMX's business practices, that fail to comply with the MLA, are part of a systematic nationwide scheme that violates the MLA for all TMX loans given to active-duty service members or "Covered Borrowers" as defined by the MLA.
- 6. The scheme was orchestrated and facilitated by Young in his capacity as Chief Executive Officer and TMX's sole shareholder.
- 7. Young, the owner, personally retained the majority of the profits from the operation.
- 8. The Consumer Financial Protection Bureau ("CFPB") has even addressed the specific conduct at issue in this litigation.
- 9. Although the CFPB identified TitleMax and TMX's unlawful conduct, neither Plaintiff nor the proposed Class of Covered Borrowers were fully compensated for payments made on the unlawful loans, and their claims were not released. Plaintiff is precisely the type of Covered Borrower that

Congress and the Department of Defense sought to protect when crafting the MLA.

10. Plaintiff seeks to represent a class of Covered Borrowers who entered into one of TMX's standard form loan agreements during the class period. The loans issued by Defendants to Plaintiff and the purported class violate the Military Lending Act 10 U.S.C. § 987, et seq. in several ways. Plaintiff, and the purported class, seek actual damages, but not less than \$500 for each violation, punitive damages, declaratory relief, prejudgment interest, attorneys' fees and costs, and any other relief provided by law.

## II. JURISDICTION AND VENUE

- 11. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because the claims advanced arise under the Military Lending Act as set forth at 10 U.S.C. § 987, et seq.
- 8. Venue is proper in this district pursuant to 10 U.S.C. § 987 and 28 U.S. § 1391 because TitleMax is doing business in this District, TMX owns and/or leases a TitleMax brick and mortar store located in this District, some or all of the pawn loans at issue were provided by Defendants to Plaintiff in this District, Plaintiff made some or all of her payments to TitleMax at its location within the District.

- 9. Plaintiff's payments ultimately flowed to TMX who retained the contractual right to order the repossession of Plaintiff's car as a result of the Agreement it marketed in this District.
- 10. Plaintiff's Agreement states: "Governing Law: This Agreement and the Pawn involve interstate commerce. Georgia law governs this Agreement[.]" Exhibit 1.
- 11. This Court possesses personal jurisdiction because Defendants deliberately and regularly conducted business, including marketing, distributing, promoting and/or extending consumer credit, in and into Georgia. Defendants maintain a brick and mortar store in Georgia located at 47 North Morningside Drive, Cartersville, Georgia 30121. The title pawn loans at issue are believed to be issued from within this District, and the monetary funds that are the subject of the title loan agreements are disbursed from financial institutions located in the State of Georgia. Plaintiff's interest payments were retained by TMX using a revolving credit line, assets or agreements that it entered to fund Plaintiff's loans. Plaintiff received her title pawn loan at a TitleMax location located within this District. The Defendants have obtained the benefits of the laws of Georgia and profited substantially from Georgia commerce.
- 12. At all times material hereto, Young maintained and orchestrated TMX's headquarters and principal place of business in the State of Georgia.

### III. PARTIES

- 13. Plaintiff, Courtney Blackmon, is a natural person and resident of Bartow County, Georgia.
- 14. At all times relevant hereto, Plaintiff was married to an active-duty service member employed by the United States Army, which makes her a Covered Borrower under the MLA.
- 15. TitleMax of Georgia, Inc., d/b/a TitleMax is a domestic for-profit corporation operating within the State of Georgia with its principal place of business located at 15 Bull Street, Suite 200, Savannah, GA 31401.
- 16. TitleMax is or was a wholly owned subsidiary of TMX during the Class Period.
- 17. Defendant TMX Finance LLC is a foreign limited liability company operating in the State of Georgia. TMX Finance LLC is a citizen of Delaware.
- 18. Defendant TMX Finance LLC has 1 member including TMX Finance Holdings Inc. Citizenship of the LLC is determined by the citizenship of its members. On information and belief, Member TMX Finance Holdings Inc. is a citizen of Delaware.
- 19. During all times material hereto, TMX was owned by Defendant Tracy Young, a citizen, and resident of Georgia. During the pertinent times in material respects he directed and controlled the TMX enterprise as its Chief

Executive Officer. Young owned 100% of TMX's corporate stock and controlled operations at its principal place of business. Young may be served with process at its business address located at 15 Bull Street, Suite 200, Savannah, Georgia 31401.

20. TMX maintained more than 1,000 locations and online title pawns lending in more than 16 states, including the trade names TitleMax, TitleBucks, and InstaLoan. All of the decisions related to lending, appraisals, underwriting, employee training and compensation, compliance with state and federal law, standard form contracts and agreements, and policies and procedures were under the exclusive control of Young and TMX.

### IV. OVERVIEW OF THE MILITARY LENDING ACT

21. In August 2006, the Department of Defense ("DOD") investigated loans directed at military families. In its Report (the "Report"), <sup>2</sup> the DOD uncovered a litany of financial issues plaguing our country's military families that directly resulted in a risk to our national security, including a finding that active duty service members had their clearances revoked or denied due to financial problems. <sup>3</sup> The DOD also found that there was a lack of military

7

<sup>&</sup>lt;sup>2</sup> https://apps.dtic.mil/sti/pdfs/ADA521462.pdf

<sup>3</sup> *Id* 

readiness and morale caused by excessive debt.<sup>4</sup> Shockingly, a five-year study illustrated that between 2000-2005, financial issues resulted in a 1,600 percent increase in financial hardship among the families of Sailors and Marines.<sup>5</sup>

- 22. As early as summer 2006, the Report identified serious issues with creditors and predatory lenders offering loans featuring high fees/interest rates and requiring military allotments as a condition of the loan.<sup>67</sup>
- 23. To curb usurious interest rates and bogus fees, the DOD requested assistance from Congress.<sup>8</sup> "Specifically, lenders should not be permitted to base loans on prospective bad checks, electronic access to bank accounts, mandatory military allotments, or titles to vehicles." <sup>9</sup>
- 24. Predatory lenders like TitleMax make loans based on access to assets (through checks, bank accounts, car titles, tax refunds, etc.) and guaranteed continued income, not on the ability of the borrower to repay the loan without experiencing serious financial difficulties.<sup>10</sup>

<sup>4</sup> *Id*.

<sup>&</sup>lt;sup>5</sup> *Id*.

<sup>6 6</sup> Id.

<sup>&</sup>lt;sup>7</sup> Dr. William O. Brown, Jr., and Dr. Charles B. Cushman, Jr., "Payday Loan Attitudes and Usage Among Enlisted Military Personnel," Consumer Credit Research Foundation, June 27, 2006, p. 10

<sup>&</sup>lt;sup>8</sup> *Id*.

<sup>&</sup>lt;sup>9</sup> https://apps.dtic.mil/sti/pdfs/ADA521462.pdf <sup>10</sup> *Id.* 

25. The DOD identifies title loans like those offered by Defendants as among the worst kind of loans for Covered Borrowers:

Car title lenders make loans secured by the title to vehicles owned free and clear by borrowers. The typical loan is for a fraction of the car's value, costs 300% APR, and has a one-month loan term. Title loans are often renewed month after month, without reduction in principal. Failure to repay can result in repossession of the vehicle .... [T]he high cost and risk of car title loans traps borrowers in repeated loan renewals in order to keep from losing essential transportation and key family assets.<sup>11</sup>

26. For decades, the DOD requested increased statutory protections for Covered Borrowers from unfair and deceptive lending practices and usurious interest rates as well as to require uniform disclosure of credit costs and terms. The MLA was passed by Congress to protect service members from unfair and deceptive and excessively priced loans.

### V. FACTS

### A. Plaintiff's Pawn Loans

- 27. For a period of just over two (2) years, Defendants extended Plaintiff Blackmon at least two title pawn loans and refinanced those same loans at least 14 times using the same extended credit in violation of 10 U.S.C. § 987(e)(1).
- 28. Defendants charged triple digit interest, a rate that exceeded the MLA statutory rate cap of 36% MAPR<sup>12</sup> in violation of 10 U.S.C. § 987(b).

<sup>&</sup>lt;sup>11</sup> *Id*.

 $<sup>^{12}</sup>$  All of Defendants' title pawn loans to Plaintiff had an MAPR between 100% - 152% .

- 29. Each payment made by Plaintiff under these violative loan terms constituted separate and independent violations of the MLA. Defendants provided these pawn loans to Plaintiff without a credit check, without conducting any underwriting, and without providing her with the MLA disclosures required by 10 U.S.C. § 987(c) despite knowing that she was a Covered Borrower prior to extending her any consumer credit.
- 30. Plaintiff was not aware that the MLA applied to her loans because she did not receive any MLA disclosures. Had Plaintiff been made aware of the MLA and its limits, she would not have accepted the Defendants' loans.
- 31. All of Defendants' standard form Agreements required Plaintiff to waive her right to a jury trial, prohibited her from participating in a class action in violation of 10 U.S.C. § 987(e)(2) which prohibits such waivers, and required her to submit to mandatory binding arbitration in violation of 10 U.S.C. § 987(e)(3) which prohibits mandatory arbitration to Covered Members. Worse yet, the Defendants required Plaintiff to secure its usurious loans using her vehicle title in violation of 10 U.S.C § 987(e)(5) of the MLA which prohibits title loans to Covered Members altogether.

# i. Plaintiff's First Loan ("First Loan")

32. On or around September 25, 2021, Mrs. Blackmon appeared at Defendants' location at 47 North Morningside Drive Cartersville, Georgia 30121.

At that time, Plaintiff met with Defendants' employee who conducted a walkaround of Plaintiff's vehicle and assisted with a credit application. Defendants' employee submitted the credit application into its system for approval.

33. Shortly after submitting the credit application, the Defendants initially rejected it. **Exhibit 2**. The Defendants' principal reason for initially denying the loan application was that Plaintiff was ineligible as a military Covered Borrower. Defendants' employee even provided Plaintiff with a copy of the denial, as below:

# TITLEMAX OF GEORGIA, INC. D/B/A TITLEMAX 47 NORTH MORNINGSIDE DR CARTERSVILLE, GA 30121 (770) 382-2298

#### Notice of Action Taken and Statement of Reason(s)

Date: 2021-09-25	Transaction Description: Credit Application	Action Taken: Denial
Applicant Name:	COURTNEY BLACKMON	
Applicant Address:	137 GROGAN RD NE, WHITE, GA 30184	

### Dear Applicant:

Thank you for applying to us for credit. After reviewing your application, we are sorry to advise you that we cannot grant your credit request at this time.

PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT We were not able to approve your credit application or offer you credit on the terms requested for the following reason(s):

Applicant is a military covered borrower and is ineligible for the requested credit product

34. Accordingly, Defendants and their employee, had actual knowledge that the MLA applied to any loan given to Plaintiff.

Case 4:24-cv-00049-WMR

- 35. Following its denial of Plaintiff's credit application, Defendants' employee walked outside for several minutes. Shortly thereafter, Defendants' employee returned and explained to Mrs. Blackmon that ordinarily it was unable to offer title loans to military families but would make an exception for her.
- 36. Defendants' employee provided a digital tablet for Ms. Blackmon to sign to accept the title loan; however, Mrs. Blackmon was not provided a physical copy.
- 37. Indeed, Mrs. Blackmon never received a physical copy of any of her loan agreements, and all of the information contained in Mrs. Blackmon's contract was filled in by Defendants' employee, not Plaintiff.
- 38. As it turns out, Mrs. Blackmon's experience with the Defendants was not unique. Corporate training and sales techniques were created to confuse customers and trap them into an endless cycle of debt. TMX's standard practice is to "simply show customers contracts on a digital screen, not in a physical copy." At least one manager was reprimanded and told to stop printing sales contracts for customers.<sup>13</sup>

12

<sup>&</sup>lt;sup>13</sup> https://www.propublica.org/article/inside-sales-practices-of-biggest-title-lender-in-us

- 39. Defendants extended thousands of title pawn loans to Covered Borrowers, even after learning that they were ineligible for such loans under the MLA.
- 40. Defendants extended Mrs. Blackmon's First Loan via its standard form Agreement on September 25, 2021.
- 41. The First Loan was a title pawn loan secured by Plaintiff's vehicle title in the amount of \$2,518.00. The First Loan was to be paid within 30-days, and Defendants charged Plaintiff an MAPR over 100 percent.
- 42. In exchange for the First Loan, Plaintiff was required to provide the Defendants with a security interest in her vehicle title, a 2018 Chevrolet Traverse, VIN: 1GNERGKW5JJ284394.
- 43. The Defendants' First Loan exceeded the MLA statutory interest rate cap of 36% MAPR in violation of 10 U.S.C. § 987(b).
- 44. The Defendants' First Loan failed to include mandatory MLA loan disclosures in violation of 10 U.S.C. § 987(c).
- 45. The Defendants rolled over, renewed, repaid, refinanced, and/or consolidated the First Loan into a refinance loan (using funds from the First Loan) one (1) time in violation of 10 U.S.C. § 987(e)(1).
- 46. Plaintiff made several payments to TitleMax on her First Loan which totaled approximately \$3,500.00 in unlawful interest and principal.

- 47. The Defendants First Loan required Plaintiff to waive her rights to legal recourse under state and federal law by prohibiting her from participating in a class action or jury trial in violation of 10 U.S.C. § 987(e)(2).
- 48. The Defendants First Loan required Plaintiff to submit to mandatory binding arbitration and onerous legal requirements in violation of 10 U.S.C. § 987(e)(3).
- 49. The Defendants First Loan required Plaintiff to provide her vehicle title and bank account as security for the First Loan obligation in violation of 10 U.S.C. § 987(e)(5).

# ii. Plaintiff's Second Loan ("Second Loan")

- 50. Defendants extended Mrs. Blackmon's Second Loan via its standard form Agreement dated July 27, 2022.
- 51. Defendants' employee showed Mrs. Blackmon a digital copy of her Second Loan; however, Mrs. Blackmon never received a physical copy.
- 52. Indeed, Mrs. Blackmon never received a physical copy of any of her loan agreements, and all of the information contained in Mrs. Blackmon's contract was filled in by Defendants' employee.
- 53. The Second Loan was a title pawn loan secured by Plaintiff's vehicle title in the amount of \$1,318.00. The Second Loan was due within 30-days and Defendants charged Plaintiff an MAPR over 194 percent.

- 54. In exchange for the Second Loan, Plaintiff was again required to provide the Defendants with a security interest in her vehicle title, a 2018 Chevrolet Traverse.
- 55. Again, Defendants knew that Plaintiff was a Covered Borrower when it extended her the Second Loan.
- 56. The Defendants' Second Loan also exceeded the MLA statutory interest rate cap of 36% MAPR in violation of 10 U.S.C. § 987(b).
- 57. The Defendants' Second Loan also failed to include mandatory MLA loan disclosures in violation of 10 U.S.C. § 987(c).
- 58. The Defendants rolled over, renewed, repaid, refinanced, and/or consolidated the Second Loan into a refinance loan (using funds from the Second Loan) at least thirteen (13) times, each in violation of 10 U.S.C. § 987(e)(1). Many of these roll-over loans were made within 7-14 days of the prior loan, using funds from other loans extended by Defendants.
- 59. Plaintiff made several payments to Defendants on her Second Loan which totaled approximately \$13,500.00 in unlawful interest and principal.
- 60. The Defendants' Second Loan required Plaintiff to waive her rights to legal recourse under state and federal law by prohibiting her from participating in a class action or jury trial in violation of 10 U.S.C. § 987(e)(2).

- 61. The Defendants' Second Loan required Plaintiff to submit to mandatory binding arbitration and onerous legal requirements in violation of 10 U.S.C. § 987(e)(3).
- 62. The Defendants' Second Loan required Plaintiff to provide her vehicle title and bank account as security for the Second Loan obligation in violation of 10 U.S.C. § 987(e)(5).
- 63. All of Plaintiff's title pawn loans were used to cover debt and expenses related to her personal, household, and/or family needs.
- 64. Defendants' employee merely showed Plaintiff her loan documents on a digital screen and not in physical copy. Consistent with their policy, Defendants' orchestrated their scheme by merely showing customers the loan contract on a digital screen and not in physical copy.
- 65. Defendants only show the interest rate on the final contract and the contract is completed by Defendants' employee, not Plaintiff.

### B. TMX's Business Model

66. TMX Finance LLC is a privately held company headquartered in Savannah, Georgia. TMX primarily offers vehicle title pawn loans although it has several secured loan options. It originates and services loans that typically range from \$100 to \$10,000 with terms from 30-days to 48 months. During the relevant time period, TMX operated under several trade names including TitleMax,

InstaLoan and TitleBucks. TMX is located in 15 states and maintains over 1,100 stores.<sup>14</sup>

- 67. At all times relevant hereto, TMX and its subsidiaries like TitleMax abused the corporate form by trapping Covered Borrowers in title pawn loans where it had no legal right to do so.
- 68. Defendants knowingly or intentionally violated the MLA, or had no training, policies, or procedures to comply with the MLA.
- 69. As a title pawn lender, TMX requires Covered Borrowers to provide their vehicle title as a security interest as a condition to its loans. Upon information and belief, TMX maintains ownership of the interest payments made to its more than 1,000 brick and mortar locations.
- 70. At TMX's direction and/or instruction, TMX's stores, like TitleMax, facilitate TMX's scheme by bilking interest payments, originating new loans, rolling over loans, and repossessing vehicles.
- 71. Ultimately, TMX and Young make all decisions related to interest rates, standard forms, training, policies, procedures, compliance, employees, and repossession of vehicles.

.

<sup>&</sup>lt;sup>14</sup> https://www.tmxfinancefamily.com/what-we-do/

- 72. Some or all of the loans at issue that were extended to consumers originated from bank accounts owned by TMX or facilitated through credit obligations entered into by TMX.
- 73. Some or all of the Covered Borrowers' interest payments during the Class Period made on the illegal loans were siphoned by TMX and Young personally.
  - 74. TMX extends credit through closed-end title pawn loans.
- 75. The loans that Defendants originate are subject to the obligations of the MLA when made to a Covered Borrower, including: an interest rate cap of 36% MAPR, mandatory MLA disclosures, and prohibitions against refinanced loans, using a vehicle title as a security interest, eliminating legal remedies under state and federal law, and requiring mandatory arbitration.
- 76. As the Defendants know, the Code of Military Conduct requires active-duty service members to pay their debts. If an active-duty service member fails to pay his or her debts, the service member may lose his or her security clearance, job, rank, pay, etc.
- 77. Upon information and belief, TMX manages all of the branches and evaluates and compensates its employees and managers based upon their operations, including loan origination, payments received from consumers, policies and procedures, form documents, and training, among other things.

TMX focuses on specific goals for each branch manager and branch location and ties its employee's bonus compensation to payments received from consumers, loan origination, and vehicle receivables.

- 78. TMX provides the capital resources to its stores, like TitleMax, using the funds that it received illegally from Covered Borrowers like Plaintiff.
- 79. TMX marketed one or more of Plaintiff's loans through its internet-based lending operations.
- 80. TMX's business model targets consumers in need of money to cover personal, family or household expenses.
  - 81. TMX's main competitors are payday lenders.
- 82. TMX's algorithm determines the wholesale appraisal value of consumers' vehicles and determines the consumers' loan amount based upon that value.
- 83. Upon information and belief, the repossession of consumers' vehicles must be approved by TMX's district and regional managers.
- 84. Upon information and belief, all repossession policies and procedures are subject to the approval of Young.
- 85. Upon information and belief, TMX sends consumers' vehicle titles to applicable state Department of Motor Vehicles to have it named as the first position lienholder of the vehicle.

- 86. Upon information and belief, TMX's risk management system, supported by regional and district managers, provides daily underwriting reviews and periodic store audits, which includes a review of all new loan files and supporting documentation.
- 87. Upon information and belief, all appraisals are set by TMX company policies.
- 88. Upon information and belief, all of the marketing and advertising, including telemarketing, billboards, pay-per click, electronic message centers, referral incentive programs, giveaways, among other things, are generated through TMX and from its headquarters.
- 89. Upon information and belief, all point-of-sale systems used during the Class Period were under the control of TMX.
- 90. All of TMX's employees can be categorized into store management, field management, and corporate.
- 91. TMX pays those employees' wages, benefits, unemployment, sales tax, overtime, bonus payments, and maintains the working conditions and immigration status.
- 92. TMX maintains and controls the policies and procedures of the operation.

- 93. TMX likewise maintains and controls its form documents involving consumer credit transactions, Pawn Transaction Disclosure Statement and Security Agreements, interest rates, roll-over practices, title loan practices, loan disclosures, the contract language related to arbitration, class action waiver, and jury trial waiver.
- 94. Upon information and belief, TMX hires independent repossession agents ("Collateral Agent") among local towing operations.
- 95. Upon information and belief, TMX entered into a written agreement with the Collateral Agent associated with Plaintiff and the Class Members' loans.
- 96. Upon information and belief, TMX extended consumer credit to Plaintiff and the Class Members' directly into each's bank accounts.
- 97. TMX then collected the payments made to the branch locations which were then sent to TMX for its use and profit.
- 98. Upon information and belief, TMX and Young control the strategic direction of the business and control all matters of significance to the Company, including changes to existing products and services.
- 99. Upon information and belief, TMX controls and enters into agreements with third-party providers to facilitate repossessions of Covered Borrowers' vehicles.

- 100. Upon information and belief, TMX enters into agreements with lenders, banks, and/or creditors to fund working capital needs and service debt obligations, including making title pawn loans to Plaintiff and the Class.
- 101. Upon information and belief, TMX maintained, orchestrated, and controlled title pawn loan receivables in its stores.
- 102. TMX hired, trained and retained employees for its stores, obtained permits and licensing for its stores, and worked with third parties to make loans and service loans.
- 103. Upon information and belief, TMX hires and controls some or all of the employees working at its locations, including its location where Plaintiff obtained her loans.
- 104. Upon information and belief, all of the information systems that process consumer loans, account for business activities, generate reporting and decision making are controlled and maintained by TMX.
- 105. Each of TMX's locations are part of an integrated data network designed to facilitate underwriting decisions, reconcile cash balances, and report revenue and expense transaction data.
- 106. TMX maintains and owns the brand names and trademarks of TitleMax, TitleBucks, and InstaLoans.

- 107. Upon information and belief, TMX operates and facilitates the lease agreements at all of its locations.
- 108. Upon information and belief, TMX processes loan applications and pays any related fees that are not collected by its branch locations like TitleMax.
- 109. Upon information and belief, TMX measures its stores' success through measuring key performance indicators that drive revenue and profitability, including: originations, average originations per store, total title loans receivable balance, average receivable balance per store, and net charge-off rate as a percent of aggregate originations over the period.
- 110. Upon information and belief, TMX influences those key performance indicators through store operational execution, information systems and incentives for field level employees.
- 111. Upon information and belief, TMX controls the remodeling of all of its brick-and-mortar locations, signage, and technology.
- 112. Upon information and belief, TMX originated and serviced the title pawn loans for Plaintiff and the Class.
- 113. Upon information and belief, TMX facilitates, initiates, and maintains the right to all repossession activity grounded in Plaintiff and the Class Members' loans.

- 114. Upon information and belief, the property and equipment used by TMX employees at its scores of locations are maintained and paid for by TMX.
- 115. Upon information and belief, TMX maintains a portfolio of automobile title loans with consumers living in 15 states. Should a consumer default on a title loan, TMX's standard agreements, including Plaintiff's, contain language that ostensibly grant it the right to repossess the consumer's vehicle, such as Plaintiff and the Class Members's.
- 116. Upon information and belief, TMX is responsible for bank processing fees, software licensing, maintenance and hosting expenses, travel, office supplies and postage, collateral collection, recruiting, relocation and training expenses.
- 117. Upon information and belief, TMX offers 401(k) and other benefits to all employees that work at its locations and health insurance to all managers.
- 118. Upon information and belief, TMX executives are responsible for managing the performance of its stores.
- 119. Covered Borrowers remit payment on their loans at Defendants' local store locations in cash, Western Union, by money order, cashier's check, or authorize Defendants to collect payments from a debit card. Substantially all of these payments are deposited into bank accounts that are owned, operated, and/or controlled by TMX.

120. Upon information and belief, TMX's business operations require it to issue checks to a large number of customers on a daily basis due to each loan originated that day.

# C. Tracy Young

- 121. Young founded, developed, maintained, and orchestrated the unlawful business model that this lawsuit seeks to eliminate.
- 122. Young is the founder and Chief Executive Officer of TMX Finance LLC and its subsidiaries. Young founded TMX in 1998 and oversees its 4,000 employees and more than 1000 stores in 16 states. Young is the driving force behind the culture and day-to-day operations of TMX.
- 123. During the Class Period, Young directed and controlled the corporate Defendants' conduct, training, policies, and procedures.
- 124. Young was instrumental in developing employee training and retention programs, bonus payments, and in creating processes for trapping Covered Borrowers in monthly interest payments due to its triple digit interest loans.

<sup>&</sup>lt;sup>15</sup> https://theorg.com/org/tmx-finance/org-chart/tracy-young

<sup>&</sup>lt;sup>16</sup> *Id*.

- 125. Young designed the website and systems to appraise Covered Borrowers' vehicles, controlling the flow of process and information, scaling TMX's business, and marking and selling title pawn loans to Covered Borrowers across the country.
  - 126. Young's company puts profits over Covered Borrowers and the law.
- 127. Young's goal is to trap Covered Borrowers in triple digit interest loans which he knows or should know violate the MLA. Young sets or approves of the interest rates offered in Defendants' loans.
- 128. At Young's direction, TMX traps Covered Borrowers in title pawn loans where he required a security interest in Covered Borrowers' vehicles as a condition to their loans.
- 129. Young's business development strengths have been a key component in TMX's growth. Moreover, Young leads TMX's business strategy to design and create the overall business of charging triple digit interest loans to Covered Borrowers in violation of the MLA.
- 130. Young oversees TMX's senior executive team and is in charge of compliance with TMX's governance standards.
- 131. Young assesses and monitors risks to TMX, and sets a majority of the strategic goals for TMX and its subsidiaries.

- 132. In this role, Young was responsible for TMX's compliance with the State and Federal laws that are the subject of this action.
- 133. Young concocted a business model designed to charge Covered Borrowers 194% interest, roll-over loans until TMX could not squeeze another penny.
- 134. TMX then repossesses Covered Borrowers' vehicles when they default on the illegal loans.
- 135. Young silences Covered Borrowers through individual arbitration, jury waivers, class bans, and onerous legal requirements.
- 136. Young created a culture putting profits over federal law and deliberately avoided safeguards established to protect Covered Borrowers.
- 137. Upon information and belief, Young created, controlled, or approved the policies, procedures, collection, appraisals, billing, systems, and training that resulted in violations of the MLA.
- 138. In some instances, Young knew or should have known of intentional employee misconduct which is the result of Young's lack of internal and system controls, and failure of meaningful monitoring or oversight.
- 139. Young trained Defendants' employees to conduct checks to verify a consumer's Covered-Borrower status but to ignore MLA-Database responses indicating that consumers were Covered Borrowers.

- 140. Young trained Defendants' employees to extend prohibited loans, and he allowed employees to process loans even when Defendants' system received automated responses that the consumers were verified as Covered Borrowers.
- 141. Defendants even changed consumers' personally identifiable information to obtain MLA-Database responses stating that consumers were not Covered Borrowers. In other cases, Defendants failed to take any steps to verify the consumers' Covered Borrower status. Exhibit 3.
- 142. Young had the ability to control the corporate Defendants and failed to conduct any periodic monitoring or audits of its origination activity to ensure compliance with the MLA, allowing intentional misconduct and problematic practices to go unchecked.
- 143. As outlined by the CFPB's Consent Order, Exhibit 3, the Defendants, at the direction of Young, made at least 2,670 prohibited loans to Covered Borrowers, collected payments on those prohibited loans to Covered Borrowers, collected interest on those prohibited loans, and, in certain instances, repossessed and sold the Covered Borrowers' vehicles.

# D. The Military Lending Act Prohibits TMX's Title Pawn Loans

144. Plaintiff and the Class Members are "covered members," "dependents," and/or "covered borrowers" subject to the protections and

limitations imposed by the MLA. Specifically, 10 U.S.C. § 987(i)(1) of the MLA defines a "covered member" as "a member of the armed forces who is (A) on active duty under a call or order that does not specify a period of 30 days or less; or (B) on active Guard and Reserve Duty". Section 987(i)(2) of the MLA defines "dependent, with respect to a covered member, [as] a person described in subparagraph (A), (D), (E), or (1) of section 1072(2) of this title". Section 1072(2) defines "dependent" to include a spouse. See also, 32 C.F.R. § 232.3(g)(1) (defining "covered borrower" as a "consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member or a dependent of a covered member").

- 145. Plaintiff is, and has been for the Class Period, the spouse of an active-duty service member.
- 146. As an active-duty service member, Plaintiff's husband is obligated to repay her loans taken for personal, family or household purposes.
- 147. Plaintiff is a "Covered Borrower" with respect to the Defendants' title pawn loans.
- 148. Each Defendant was a "creditor" subject to the requirements and limitations imposed by the MLA in that it engaged in the business of extending consumer credit to covered borrowers under the protection of the MLA. 10 U.S.C. § 987(i)(5); also 32 C.F.R. § 232.3(i).

- 149. The title pawn loan transactions that are the subject of this complaint were "credit offered or extended to a covered borrower primarily for personal, family, or household purposes," that is subject to a finance charge and does not qualify for any of the identified exceptions. 32 C.F.R. § 232.3(f)(1)(i); *also* 10 U.S.C. § 987(i)(6). Accordingly, the transactions constitute "consumer credit" subject to the protections and limitations imposed by the MLA32 C.F.R. § 232.3(f)(1)(i); *also* 10 U.S.C. § 987(i)(6).
- D. The Consumer Financial Protection Bureau ("CFPB"), TMX, TitleMax, and Young entered into a Consent Order (the "Consent Order") as a result of Defendants' illegal title pawn loans to thousands of Covered Borrowers
- 150. On February 23, 2023, the CFPB and Defendants stipulated to a Consent Order addressing Defendants' illegal title pawn loans to Covered Borrowers. The Consent Order and Stipulation are attached as **Exhibit 3** and addresses the specific conduct at issue in this litigation.
- 151. Although the CFPB identified the unlawful conduct, none of the Covered Borrowers were fully compensated for payments made on unlawful loans, and their claims were not released.
- 152. The Consent Order outlines many of Defendants' violations of federal and state law, including violations of the Military Lending Act 10 U.S.C. § 987, et seq. The subject of the Consent Order was TMX Finance LLC and its

subsidiaries, parents, affiliates, and their successors and assigns, and it was executed by Young.

- 153. The Consent Order refers to the corporate Defendants as "TitleMax" and defines an MLA Relevant Period as October 3, 2016 to February 23, 2023, and the Consent Order remains in effect until February 23, 2028. The relevant terms of the Consent Order are set forth below without typographical alteration:
  - On October 3, 2016, the MLA's protections were expanded to prohibit nonbank creditors, like TitleMax, from using vehicle titles to secure loans made to Covered Borrowers. 32 C.F.R. § 232.8(f). (see Consent Order, ¶ 35).
  - The MLA also limits the Military Annual Percentage Rate associated with extensions of credit to 36%, mandates loan disclosures, prohibits mandatory arbitration, and prohibits unreasonable notice provisions. 10 U.S.C. § 987(b), (e)(3)-(4); 32 C.F.R. 232.4(b), 232.6, 232.8(c)-(d). (*Id.* at ¶ 36).
  - Any credit agreement, promissory note, or other contract with a Covered Borrower that fails to comply with any provision of the MLA or contains one or more prohibited provision is void from the inception of the contract. 10 U.S.C. § 987(f)(3); 32 C.F.R. 232.9(c). (*Id.* at ¶ 37).
  - TitleMax states in its own policy that "Due to the Company's product limitations and requirements set forth in the Military Lending Act, military borrowers, their spouses, and dependents ('covered borrowers') are not eligible for a loan." Despite this statement, between October 3, 2016, and September 17, 2021, TitleMax made 2,670 prohibited loans to Covered Borrowers. (*Id.* at ¶ 38).

- TitleMax's violations were caused by intentional misconduct, a lack of internal and system controls, and no meaningful monitoring or oversight. In some instances, TitleMax employees conducted checks to verify a consumer's Covered Borrower status, but ignored MLA Database responses indicating that consumers were Covered Borrowers and extended prohibited loans. TitleMax's system allowed employees to process loans even when TitleMax's system received automated responses that the consumers were verified as Covered Borrowers. (*Id.* at ¶ 39).
- In other instances, TitleMax changed consumers' personal identifiable information to obtain MLA-Database responses stating that the consumers were not Covered Borrowers. In other case, TitleMax failed to take any steps to verify the consumers' Covered-Borrower status. (*Id. at* ¶ 40).
- TitleMax did not conduct any periodic monitoring or audits of its origination activity to ensure compliance with the MLA, allowing intentional misconduct and problematic practices to go unchecked. TitleMax made 2,670 prohibited loans to Covered Borrowers, collected payments on those prohibited loans, and, in certain instances, repossessed and sold the Covered Borrowers' vehicles. (*Id.*at ¶ 41).
- Between October 3, 2016, and September 17, 2021, Respondent made 2,655 title loans to Covered Borrowers. These title loans are void from their inception and Respondent violated the MLA each time it extended and serviced these title loans. 32 C.F.R. §§ 232.8(f), 232.9(c). (*Id.* at ¶¶ 43-44);
- Between October 3, 2016, and September 17, 2021, Respondent made 2,569 loans to Covered Borrowers with MAPRs greater than 36%, many of those loans had APRs in excess of 100%. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(b); 32 C.F.R. § 232.4(b). (*Id.* at ¶¶ 48-49);
- Between October 3, 2016, and September 17, 2021, Respondent made 2,670 loans to Covered Borrowers without making all loans disclosures

required by the MLA. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(c); 32 C.F.R. § 232.6(a). (*Id.* at  $\P\P$  52-53);

- Between October 3, 2016, and September 17, 2021, Respondent made 2,670 loans to Covered Borrowers through agreements that require the borrowers to submit to arbitration in the case of a dispute. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(e)(3); 32 C.F.R. § 232.8(c). (*Id.* at ¶¶ 56-57);
- Respondent and its owners, officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate sections .... or the Military Lending Act, 10 U.S.C. § 987, or its implementing regulation, 32 C.F.R. part 232, including by: (d) extending or servicing loans that fail to comply with the MLA to Covered Borrowers. (*Id.* at ¶ 62);
- To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, <sup>17</sup> Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such payment will not be considered an additional civil money penalty and

<sup>17</sup> The Consent Order's definition of "Related Consumer Action" refers to a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in § IV of this Consent Order. For this Court's reference, Consent Order § IV refers to the Bureau's Findings and Conclusions. Exhibit 3.

33

- will not change the amount of the civil money penalty imposed in this action. (Id. at  $\P$  89).
- TMX's Chief Executive Officer, Tracy Young, executed the Stipulation and Consent to the Issuance of a Consent Order on February 22, 2023.
- 154. This Class Action seeks to fill the void left by the CFPB Consent Order by obtaining actual damages incurred by the Class, including but not less than \$500 for each violation, punitive damages, declaratory relief, prejudgment interest, attorneys' fees, legal costs, and any other relief provided by law for Covered Borrowers like Plaintiff and the Class, who had title pawn loans that conditioned repayment by using a vehicle title as a security interest and/or interest rates that exceed 36% MAPR, among many other MLA violations.

### VI. CLASS ALLEGATIONS

155. Plaintiff brings this case as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The proposed Class includes:

All MLA Covered Borrowers in the United States that entered into a Pawn Transaction Disclosure Statement and Security Agreement in substantially the same form as Exhibit 1 during the Class Period.

156. Expressly excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest, or which has a controlling interest in Defendants, and its legal representatives, assigns and successors; and (c) all

persons who properly execute and file a timely request for exclusion from the Class.

- 157. The Class Period is five (5) years prior to the original filing date of this action.
- 158. Plaintiff reserves the right to amend the Class definitions if further investigation and discovery indicates that the Class definitions should be narrowed, expanded, or otherwise modified.

### Rule 23(a) Criteria

- 159. Numerosity. Defendants' scheme has harmed and continues to harm Covered Borrowers. The members of the proposed Class are so numerous that joinder of all members is impracticable. Defendants consented to the issuance of the Consent Order whereby the CFPB found that Defendants had illegally extended over 2,000 title pawn loans to Covered Borrowers. The sheer volume of its military pawn loan business supports a finding of numerosity.
- 160. The exact number of Class members is unknown as such information is in the exclusive control of the Defendants. However, upon information and belief, Defendants have issued thousands of loans to (a) Covered Borrowers that exceeded 36% MAPR; (b) do not contain mandatory MLA disclosures; (c) uses previously extended consumer credit to refinance or

roll-over into a new pawn loan; (d) required Covered Borrowers to waive their right to bring a class action or jury trial; (e) required mandatory arbitration provisions and onerous legal requirements; and (f) required that the Covered Borrower provide a security interest in their vehicle title and bank account as a condition to the loan.

- 161. Due to the nature of the consumer loans involved and the fact that TMX has more than 1,000 locations in 16 states, some of which are deliberately located near military bases, and provides loans to Covered Borrowers stationed worldwide, Plaintiff conservatively estimates that the class consists of at least thousands of consumers. Upon information and belief, TitleMax's locations are geographically dispersed throughout Georgia and TMX's locations are geographically dispersed throughout the United States, including locations in Alabama, Arizona, Florida, Georgia, Illinois, Mississippi, Missouri, Nevada, South Carolina, Tennessee, Texas, and Virginia, thus making joinder of all Class members impracticable.
- 162. Commonality. Common questions of law and fact affect the right of each Class member and common relief by way of damages is sought for Plaintiff and Class members.

- 163. The harm that Defendants have caused or could cause is substantially uniform with respect to Class members. Common questions of law and fact that affect the Class members include, but are not limited to:
  - a. Whether Plaintiff and the Class members are "covered borrowers," "covered members," and "dependents," subject to the protections and limitations of the MLA;
  - b. Whether TitleMax and TMX are a "creditor" subject to the protections and limitations of the MLA;
  - c. Whether Defendants' title pawn loans constitute an extension of "consumer credit" subject to the protections and limitations of the MLA;
  - d. Whether Defendants entered into standard form Pawn Transaction

    Disclosure Statement and Security Agreements with Covered

    Borrowers;
  - e. Whether the Defendants learned of Covered Borrowers' ineligibility prior to extending them consumer credit;
  - f. Whether the Defendants' title pawn loans exceed the MLA statutory rate cap of 36% MAPR;
  - g. Whether the Defendants failed to provide required MLA disclosures in violation of the MLA;

- h. Whether the Defendants roll over, renew, repay, refinance, or consolidate any consumer credit extended to an existing Covered Borrower using the proceeds of its other title pawn loans;
- i. Whether the Defendants' standard form Pawn Transaction

  Disclosure Statement and Security Agreements require Covered

  Borrowers to waive their right to participate in a class action or jury

  trial in violation of the MLA;
- j. Whether the Defendants' standard form Pawn Transaction

  Disclosure Statement and Security Agreements requires binding

  arbitration or other onerous legal requirements in violation of the

  MLA;
- k. Whether Defendants' title pawn loans require a Covered Borrower to provide their vehicle title and bank account as a security interest of the loan;
- 1. Whether Defendants' title pawn loans to Covered Borrowers are unlawful and void from inception due to violations of the MLA;
- m. Whether members of the Class have sustained damages and, if so, the proper measure of such damages;

- n. Whether Defendants are subject to punitive damages, and, if so, the proper measure of such damages and remedies to which Plaintiff and the Class are entitled to under 10 U.S.C. § 987(f)(5);
- o. Whether each payment made by Plaintiff and the Class Members' constitutes an independent and separate violation of the MLA;
- p. Whether the Defendants are jointly and severally liable for the violations of the MLA committed;
- q. Any declaratory and/or injunctive relief to which the Class(s) are entitled.
- 164. Typicality. The claims and defenses of the representative Plaintiff are typical of the claims and defenses of the Class because Plaintiff is a Covered Borrower and her pawn loan transactions with the Defendants were typical of the type of personal, household, or family loans that Defendants routinely provide to Covered Borrowers. The documents involved in the transaction were standard form documents and the violations are statutory in nature. Plaintiff suffered damages of the same type and in the same manner as the Class she seeks to represent. There is nothing peculiar about Plaintiff's claims.
- 165. Adequacy. The representative Plaintiff will fairly and adequately assert and protect the interests of the Class. Plaintiff has hired attorneys who are experienced in prosecuting class action claims and will adequately represent the

interests of the Class, and Plaintiff has no conflict of interest that will interfere with maintenance of this class action.

## Rule 23 (b) Criteria

- 166. Predominance and Superiority. A class action provides a fair and efficient method for the adjudication of this controversy for the following reasons:
  - a. The common questions of law and fact set forth herein predominate over any questions affecting only individual Class members. The statutory claims under the MLA require a simple identification of those consumers who are Covered Borrowers under the statute, and an act in violation of the MLA;
  - b. Moreover, Plaintiff can identify members of each class once

    Defendants provide a list of all Covered Borrowers<sup>18</sup> with Pawn

    Transaction Disclosure Statement and Security Agreements where:

    interest exceeds the statutory rate cap of 36%; Defendants did not

    provide MLA disclosures; Defendants refinanced the loan using

    other consumer credit that it had extended to the Covered Borrower;

    Defendants require the Covered Borrower to waive their right to

40

<sup>&</sup>lt;sup>18</sup> Pursuant to the Consent Order, TMX is required to maintain a list of all Covered Borrowers where it issued a pawn loan between October 3, 2016 and present day.

participate in a class action or jury trial; Defendants Agreements require binding arbitration or onerous legal requirements, and Defendants required a Covered Borrower to identify their vehicle title or bank account as a security interest;

- c. Prosecution of thousands of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendants and could create incompatible standards of conduct;
- d. Adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications, or substantially impair their ability to protect their interests; and
- e. The claims of the individual Class members are small in relation to the expenses of litigation, making a Class action the only viable procedural method of redress in which Class members can, as a practical matter, recover.
- 167. Defendants have acted and refused to act on grounds generally applicable to the Class, thereby making declaratory relief and corresponding final injunctive relief under Rule 23(b)(2) appropriate with respect to the Class as a whole. Defendants should be enjoined from making loans to Covered Borrowers in

violation of the MLA; a declaration should be made that the loans are void from inception; and, Defendants must return all vehicle titles to Covered Borrowers.

## **COUNT I**

# Violation of the Military Lending Act 10 U.S.C. §987, et seq. (The Class against All Defendants)

- 168. Plaintiff repeats and re-alleges the allegations set forth in paragraphs above as if set forth fully herein.
- 169. Plaintiff was a "covered borrower" and "covered member" as those terms are defined pursuant to 32 C.F.R. § 232.3(g)(1) and (g)(3), 10 U.S.C. § 1072(2)(A).
- 170. TitleMax and TMX were a "creditor" which extended "consumer credit" to Plaintiff as those terms are defined in 32 C.F.R. §232.3(h) and (i).
- 171. The Defendants has violated the MLA in at least six (6) separate ways: (1) charging interest above the 36% interest rate cap for the Military Annual Percentage Rate; (2) failing to provide any required MLA Disclosures; (3) requiring a Covered Borrower to waive their right to participate in a Class Action or Jury Trial which is prohibited by the MLA; (4) requiring mandatory binding arbitration or onerous legal requirements which is prohibited by the MLA; (5) extending credit and servicing loans where the Defendants required Covered

Borrowers to provide a security interest in their vehicle title or bank account as a condition of the loan; and (6) rolling over loans to a Covered Borrower using the proceeds of other credit extended by the same creditor. See, 10 U.S.C.  $\S$  987(b),(c),(e)(2)(5)(6).

## A. <u>Interest Rate Cap Violations</u>

- 172. Within five (5) years of the original filing date of this case, Defendants violated the MLA's prohibition against extending consumer credit that exceeds the statutory interest rate cap of 36% MAPR.
- 173. In her First Loan, Second Loan, and all fourteen (14) refinances of those same loans, Plaintiff entered into Defendants' standard form Agreements, which was utilized for all class members, that issued title pawn loans with interest that exceeds the MLA statutory rate cap of 36% MAPR in violation of 10 U.S.C. § 987(b); 32 C.F.R. §232.4(c).
- 174. As a result of Defendants' unlawful interest rates exceeding 36%, Defendants violated the MLA and Plaintiff suffered actual damages by paying interest on loans in excess of the MLA's statutory rate cap of 36% MAPR.
- 175. Each payment that Plaintiff and the Class made to repay interest on Defendants' illegal title pawn loans constituted a separate and independent violation of the MLA, and each instance of Defendants voiding the Agreements

of Plaintiff and the Class constituted a separate and independent violation of the MLA.

## **B.** MLA Disclosure Violations

- 176. 10 U.S.C. § 987(c)(1)(A) and 32 C.F.R. § 232.6 makes mandatory the following disclosures in all extension of consumer credit to Covered Borrowers:
  - (a) Required information. With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the covered borrower the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:
  - (1) A statement of the MAPR applicable to the extension of consumer credit;
  - (2) Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and
  - (3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to paragraph (a)(2) of this section satisfies this requirement.

. . . .

- (c) Statement of the MAPR –
- (1) In general. A creditor may satisfy the requirement of paragraph (a)(1) of this section by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the

- consumer credit to calculate the MAPR. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.
- (2) Method of providing a statement regarding the MAPR. A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.
- (3) Model statement. A statement substantially similar to the following statement may be used for the purpose of paragraph (a)(1) of this section: "Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account)."
- 177. Defendants' standard form Agreements to Plaintiff and the Class do not contain any "Statement of MAPR," either in the form of the charges necessary to calculate the MAPR or through the inclusion of the MLA Model Statement.

- 178. Within five (5) years of the original filing date of this case, Defendants violated the MLA and its implementing regulations by extending consumer credit without any MLA disclosures in violation of 10 U.S.C. § 987(c); 32 C.F.R. § 232.6(a) and (c).
- 179. In her First Loan, Second Loan, and all fourteen (14) refinances of those same loans, Plaintiff entered into Defendants' standard form Agreements which were utilized for all Class Members, that failed to contain any MLA disclosures.
- 180. Plaintiff was not aware that the MLA applied to her loans because she did not receive any MLA disclosures. Had Plaintiff been made aware of the MLA and its limits, she would not have accepted the Defendants' loans.
- 181. As a result of Defendants' failure to provide mandatory MLA disclosures, Defendants violated the MLA, and Plaintiff and Class Members suffered actual damages.

## C. <u>Class Action Ban and Waiver of Jury Trial Violations</u>

- 182. 10 U.S.C. § 987(e)(2) of the MLA prohibits creditors from requiring Covered Borrowers to "waive the borrower's rights to legal recourse under any otherwise applicable provision of State or Federal law."
- 183. All of Defendants' standard form Agreements require a Covered Borrower to waive their right to participate in a class action. Specifically,

Defendants required Plaintiff and all Class Members to agree to the following: "For Disputes subject to this Clause, you give up your right to: (5) Bring or be a class member in a class action or class arbitration."

184. Additionally, all of Defendants' standard form Agreements require a Covered Borrower to waive their right to participate in a jury trial. Specifically, Defendants required Plaintiff and all Class Members to agree to the following:

JURY TRIAL WAIVER: YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY CONSTITUTIONAL RIGHT. THIS RIGHT MAY BE WAIVED UNDER CERTAIN CONDITIONS AS ALLOWED BY LAW. YOU AND WE KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED DIRECTLY OR INDIRECTLY TO EACH OF THE FOLLOWING: (A) THIS AGREEMENT; AND (B) THE PAWN THAT IS THE SUBJECT OF THIS AGREEMENT. THIS JURY TRIAL WAIVER WILL NOT CHANGE ANY ARBITRATION CLAUSE TO WHICH YOU AND WE ARE SUBJECT, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.

Exhibit 1.

- 185. Upon information and belief, all of Defendants' standard form Agreements required Class Members to waive their rights to participate in or bring a class action, to waive their rights to a jury trial, or both.
- 186. The right to participate in a jury trial is outlined in the U.S. Constitution's Seventh Amendment, and the right to bring class actions stems

from the Rules of Civil Procedure, under both State and Federal law, these include the right to bring this class actions under the MLA.

187. As a result of unlawfully requiring Covered Borrowers to waive their rights to file or participate in any class action lawsuit or jury trial in violation of 10 U.S.C. § 987(e)(2) of the MLA, the Agreements of Plaintiff and all Members of the Class are "void from inception" pursuant to 10 U.S.C. § 987(f)(3) and 32 C.F.R. § 232.9(c).

## D. <u>Mandatory Binding Arbitration Clause Violations</u>

- 188. 10 U.S.C. § 987(e)(3) of the MLA prohibits creditors like TitleMax and TMX from requiring Covered Borrowers to submit to mandatory arbitration or onerous legal requirements
- 189. Defendants' standard form Agreements require mandatory binding arbitration and onerous legal requirements with no exceptions for Covered Borrowers under the MLA, including all of Defendants' title pawn loan transactions with Plaintiff.
- 190. Specifically, Defendants Agreements include the following arbitration provision, in part, "By signing below, you agree to this Waiver of Jury Trial and Arbitration Clause . . . THIS JURY TRIAL WAIVER WILL NOT CHANGE ANY ARBITRATION CLAUSE TO WHICH YOU AND WE ARE SUBJECT." Exhibit 1.

191. Defendants' Agreements require onerous legal requirements. Specifically, Defendants require Covered Borrowers to:

Before suing or starting arbitration about (i) Pledgor's credit application, (ii) this Agreement, (iii) the Vehicle, or (iv) the Pawn, each party agrees to do all of the following:

- a. The party filing the dispute (the "Claimant") must tell all other parties (the "Defending Party") of the dispute (the "Dispute Notice"). Each Dispute Notice must describe the nature of the claim and relief requested. Each Dispute Notice must be written and, except for Pawnbroker collections letters, must give at least 30 days to solve the dispute.
- b. Claimant must mail Dispute Notices to the Notice Address for Pawnbroker and the Pledgor Address for the Pledger. Dispute Notices to Pawnbroker must include the Pawn transaction number and Pledgor's mailing address and phone number.
- c. If Defending party asks for more information about the dispute, Claimant must give it.

Exhibit 1, ¶ 12.

- 192. The Agreements between Defendants and Plaintiff are seven total pages, and Defendants' mandatory binding arbitration provision takes up three of seven pages.
- 193. As a result of Defendants unlawfully requiring Covered Borrowers to enter into Agreements that include mandatory binding arbitration and onerous legal requirements in violation of 10 U.S.C. § 987(e)(3) of the MLA, the Defendants' Agreements of Plaintiff and all Class Members are "void from inception" pursuant to 10 U.S.C. § 987(f)(3) and 32 C.F.R. § 232.9(c).

## E. <u>Security Interest Violations</u>

- 194. Defendants have required a Covered Borrower to provide a security interest in their vehicle title as condition of its Agreements in violation of 10 U.S.C. § 987(e)(5).
- 195. Upon information and belief, Defendants have required a Covered Borrower to provide a security interest in their bank account as a condition of its Agreement in violation of 10 U.S.C. § 987(e)(5)
- 196. Defendants required Plaintiff to grant it a security interest in her vehicle title.
- 197. Defendants required all Class Members to grant it a security interest in their vehicle titles.

- 198. Defendants required Plaintiff to grant it a security interest in her bank account.
- 199. Defendants required all Class Members to grant it a security interest in their bank accounts.
- 200. Defendants' standard form Agreements entered into with Plaintiff and the Class contain identical language and explains, "Failure to make your payment as described in this document can result in the loss of your motor vehicle." Exhibit 1. Defendants required that Plaintiff and the Class also agree that "the pawnbroker can also charge you certain fees if he or she actually repossesses the motor vehicle." *Id*.
- 201. As such, Defendants' Agreements required Covered Borrowers to provide an exclusive security interest in their vehicle title to Defendants until the loan is repaid, a blatant violation of the MLA's Security Interest prohibitions in § 987(e)(5).
- 202. Plaintiff and Class Members' damages are a direct and proximate result of Defendants' violations of 10 U.S.C. § 987(e)(5), which prohibits creditors like TitleMax and TMX from taking "the vehicle title as a security for the obligation" when providing a title pawn loan to a Covered Borrower.

203. Plaintiff and Class Members have been harmed and suffered actual damages by granting Defendants an unlawful security interest in their motor vehicles' title or bank account in violation of 10 U.S.C. § 987(e)(5).

## F. Refinance Loan Violations

- 204. Defendants refinanced Plaintiff's First Loan one time using proceeds of other consumer credit extended by Defendants to Plaintiff. Defendants rolled over, renewed, repaid, refinanced, or consolidated Plaintiff's First Loan in violation of 10 U.S.C. § 987(e)(1).
- 205. Defendants refinanced Plaintiff's Second Loan thirteen (13) times using proceeds of other consumer credit extended by Defendants to Plaintiff. Defendants rolled over, renewed, repaid, refinanced, or consolidated Plaintiff's Second Loan in violation of 10 U.S.C. § 987(e)(1).
- 206. Defendants' standard form Agreements executed by Plaintiff and the Class plainly permits Covered Borrowers to use proceeds from other credit extended by Defendants to pay down or pay off other rolled over, renewed, repaid, refinanced, or consolidated loans extended by Defendants. In fact, Defendants refinanced Plaintiff's pawn loans at least fourteen (14) times, each a separate violation of § 987(e)(1).
- 207. Regardless of the Agreement terms, Defendants loans automatically roll-over each month. On several occasions, Defendants rolled-over Plaintiff's

loan within one or two weeks of the prior loan date.

- 208. The MLA's "Penalties and remedies" subsection provides, in part, that "any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract." 10 U.S.C. §987(f)(3).
- 209. Accordingly, all Class members' standard form Agreements that contain one or more of the six (6) violations mentioned herein are void from inception. Plaintiff and Class members are entitled to actual damages for all amounts paid by Plaintiff and Class members to Defendants or \$500 for each separate violation, whatever is greater.
- 210. Each and every payment made by Plaintiff and Class members on the void loan Agreements constitutes a separate violation and independent violation of the MLA.
- 211. As a direct and proximate cause of Defendants' violations, Plaintiff and the Class are entitled to actual damages of not less than \$500 for each separate violation, as well as punitive damages and declaratory relief pursuant to 10 U.S.C. § 987(f)(5)(A).
- 212. Plaintiff and the Class are entitled to attorneys' fees and costs pursuant to 10 U.S.C. § 987(f)(5)(B).

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter an Order:

- a. Certifying this action as a class action as provided by Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiff as Class Representative, and appointing undersigned attorneys and their firms as Class Counsel;
- b. Declaring that Defendants violated the MLA, and adjudging that Plaintiff and Class Members' standard form Agreements are void and determining appropriate relief;
- c. Awarding Plaintiff and Class members actual damages of not less than \$500 for each violation pursuant to 10 U.S.C. § 987(f)(5)(A)(i);
- d. Awarding Plaintiff and Class Members punitive damages pursuant to 10 U.S.C. § 987(f)(5)(A)(ii);
- e. Awarding Plaintiff, and all those similarly situated, reasonable attorneys' fees and costs incurred in this action pursuant to 10 U.S.C. § 987(f)(5)(B);
- f. Enjoining the Defendants from further financing to Covered Borrowers where it refinances loans using proceeds of other credit that it offered to the same Covered Borrowers;

- g. Enjoining the Defendants from further financing to Covered Borrowers where it offers loans in excess of the MLA's statutory rate cap of 36% MAPR;
- h. Enjoining the Defendants from further financing to Covered

  Borrowers where it requires that a Covered Borrower provide a

  security interest in their vehicle title as a condition to the loan;
- i. Awarding Plaintiff, and all those similarly situated, any prejudgment and post-judgment interest as may be allowed under the law; and
- j. Awarding such other and further relief as the Court may deem just and proper.

## **JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all issues so triable.

## LR 5.1 Certification

Plaintiff's counsel hereby certifies that this First Amended Complaint has been prepared using a font and point selection that complies with Local Rule 5.1(B).

Dated: May 10, 2024 Respectfully submitted,

## SKAAR & FEAGLE, LLP

by: /s/ Kris Skaar
Kris Skaar
Georgia Bar No. 649610
kskaar@skaarandfeagle.com
Justin T. Holcombe
Georgia Bar No. 552100
jholcombe@skaarandfeagle.com
133 Mirramont Lake Drive
Woodstock, GA 30189
770 / 427-5600
404 / 601-1855 fax

James M. Feagle
Georgia Bar No. 256916
jfeagle@skaarandfeagle.com
Cliff R. Dorsen
Georgia Bar No. 149254
cdorsen@skaarandfeagle.com
Chelsea R. Feagle
Georgia Bar No. 110863
cfeagle@skaarandfeagle.com
2374 Main Street, Suite B
Tucker, GA 30084
404 / 373-1970
404 / 601-1855 fax

## VARNELL & WARWICK, P.A.

Brian Warwick, FBN: 605573

(pro hac vice)

Janet Varnell, FBN: 71072

(pro hac vice)

Christopher J. Brochu, FBN: 1013897

(pro hac vice)

400 N. Ashley Drive, Suite 1900

Tampa, Florida 33602

Telephone: 352-753-8600

Fax Number: 352-504-3301 bwarwick@vandwlaw.com

jvarnell@vandwlaw.com

cbrochu@vandwlaw.com

ckoerner@vandwlaw.com

Attorneys for Plaintiff and on behalf of all others similarly situated

Case 4:24-cv-00049-WMR Document 21-1 Filed 05/10/24 Page 1 of 8

Exhibit 1

#### PAWN TRANSACTION DISCLOSURE STATEMENT AND SECURITY AGREEMENT

THIS PAWN TRANSACTION DISCLOSURE STATEMENT AND SECURITY AGREEMENT CONTAINS A WAIVER OF JIRY TRIAL AND ARBITRATION CLAUSE (THE "CLAUSE"). UNLESS YOU OPT OUT OF THE CLAUSE, IT WILL SUBSTANTIALLY IMPACT YOUR RIGHTS IF YOU HAVE A DISPUTE WITH PAWNBROKER, INCLUDING YOUR RIGHT TO TAKE PART IN A CLASS ACTION.

Original Accour	nt #: Account #:		Pawn Ticket #: 1099013	Pawn Date 10/08/2021	9:37 AM	Maturity Date: 11/07/2021
Pawnbroker:			Vehicle Identifi	cation #:	Vehicle Title #:	
TitleMax of Georgia, Inc. d/b/a TITLEMAX 47 NORTH MORNINGSIDE DR CARTERSVILLE, GA 30121 (770) 382-2298 Hours of Operation: Monday to Friday 10 a.m. to 6 p.m., Saturday 10 a.m. to 2 p.m., Closed Sunday		Vehicle Year: 2018 Vehicle Make: Chevrolet		Title State:	Lic. Plate #:	
				GA Vehicle Color: MAROON	Odometer: 42304	
		Vehicle Model: Traverse		# of Doors:	# of Cylinders: Unknown	
Pledgor: Sex: COURTNEY LYNN BLACKMON SSN  Date of Birth: Rac		: N/A	-Pledgor: te of Birth: N	/A	Sex: SSN: Race:	
ID Number: 059882395	Height:	Weig	ght: ID	Number:	Height:	Weight: LBS

In this Pawn Transaction Disclosure Statement and Security Agreement (this "Agreement"), "you," "your," "pledgor," and "co-pledgor" each means the Pledgor(s) identified above. "Pawnbroker," "we," "us," and "our" each mean TitleMax of Georgia, Inc. "Pawn" and "Transaction" mean the pawn transaction entered into between Pawnbroker and Pledgor hereunder. "Vehicle" means the motor vehicle described above. "Title" means the certificate of title for the Vehicle. Pawnbroker operates under Georgia law applicable to pawnbrokers, including, without limitation, O.G.C.A. § 44-12-130 et seq. and O.G.C.A. § 44-14-400 et seq.

This is a pawn transaction. Failure to make your payments as described in this document can result in the loss of the pawned item. The pawnbroker can sell or keep the item if you have not made all payments by the specified maturity date. Failure to make your payment as described in this document can result in the loss of your motor vehicle. The pawnbroker can also charge you certain fees if he or she actually repossesses the motor vehicle.

#### FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL	FINANCE CHARGE	Amount Financed	Total of Payments
PERCENTAGE RATE	The dollar amount the	The amount of credit	The amount you will have
The cost of your credit as a yearly rate. 133.71%	credit will cost you.	provided to you or on your behalf.	paid after you have made all payments as
	\$364.65	\$3,318.00	scheduled. \$3,682,65

Payment Schedule: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	\$3,682.65	11/07/2021

Security: You are giving a security interest in the Vehicle described above.

Lien Filing Fee: \$0.00

If you pay off early, you will not be entitled to a refund of part of the finance charge. Prepayment: See the remainder of this Agreement for additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment penalties.

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 1 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

#### Itemization of Amount Financed:

Amount given to you directly: \$800.00 Plus: Amount paid on my account (Transaction # 12942-1098951-63500372 \$2,518.00 Plus: Amount paid to public official for Lien Filing Fee \$0.00 Plus: Amount paid to others on your behalf: Payment to: N/A \$0.00 Payment to: N/A \$0.00 Equals: Amount Financed/Principal Amount \$3,318.00

1. Pawn and Security Agreement; Lien Filing Fee; Possession of Title: You promise to pay Pawnbroker, or to Pawnbroker's order, the principal sum of \$3 318 00 plus a Pawnshop Charge in the amount of \$364.65 with the











\$800.00

\$0.00

\$2.518.00

2 of 7

.....saction Agreement - V.3.2 - 01.22.2019

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

#### Itemization of Amount Financed: Amount given to you directly: Plus: Amount paid on my account (Transaction # 12942-1098951-63500372 Plus: Amount paid to public official for Lien Filing Fee Plus: Amount paid to others on your behalf:

Payment to: N/A

\$0.00 \$0.00 Equals: Amount Financed/Principal Amount \$3,318.00

- Pawn and Security Agreement; Lien Filing Fee; Possession of Title: You promise to pay Pawnbroker, or to Pawnbroker's order, the principal sum of \$3,3418,00 plus a Pawnshop Charge in the amount of \$364,65 with the total amount of \$3,682,65 (being the amount to redeem the Vehicle) due and payable on \$1,707/2021 (the "Maturity Date"). The Pawnshop Charge is further described in Section 2. You also promise to pay all other amounts that become due and payable under this Agreement. To secure Pledgor's obligations to Pawnbroker hereunder, Pledgor grants to Pawnbroker a security interest in the Vehicle and the Title, together with all Vehicle improvements, attachments, insurance proceeds and refunds and sale proceeds. You agree that Pawnbroker will record its security interest in the Vehicle by noting a lien on the Title. Pawnbroker charges the Lien Filing Fee identified above to register its lien on the Vehicle (which Lien Filing Fee will not exceed any fee actually charged by the appropriate state to register such lien and will only be charged if Pawnbroker actually registers such lien). Pawnbroker may file any documents and take any actions to ensure Pawnbroker's security interest in the Vehicle. If Pawnbroker asks, you will sign other documents and take other actions to support Pawnbroker's security interest. You agree that we shall hold the Title for the entire length of this Agreement.
- 2. Pawnshop Charge: The Pawnshop Charge for the initial 30-day period of the Pawn Transaction is 10,9900 % of the principal amount advanced, with a minimum Pawnshop Charge of \$10.00 for such period. The Pawnshop Charge shall be deemed earned, due, and owing as of the Pawn Date. If this Agreement is continued and extended as provided in Section 4, the Pawnshop Charge for the first two extension periods will be 10.9900 % of the principal amount outstanding, with a minimum Pawnshop Charge of \$10.00 for such period. For extensions that continue the Pawn beyond the first three 30-day periods, the Pawnshop Charge for each subsequent 30-day period will not exceed 12.5% of the principal amount outstanding, with a minimum Pawnshop Charge of \$5.00 for each such period.

The Annual Percentage Rate ("APR") for the initial 30-day period of this Pawn, and each of the first two renewal periods thereafter, is 133,71 %, and the amount to redeem the Vehicle during each such period is \$3,682.65. The foregoing APR and redemption amount are calculated assuming that the principal of the Pawn will not be increased or decreased after the Pawn Date and that you will pay all Pawnshop Charges in full and on time. After the first three 30-day terms of this Pawn, for each subsequent 30-day term, assuming that the principal of the Pawn will not be increased or decreased after the Pawn Date, that you will pay all Pawnshop Charges in full and on time, and that the periodic Pawnshop Charge is equal to 10,990 % of the principal amount advanced, the APR for each 30-day term is 133,71 % and the amount to redeem the Vehicle during each such period is \$3,682.65. If you pay any amount to reduce the principal amount of the Pawn or borrow additional funds and sign a new Agreement, the foregoing disclosures no longer apply

- Right to Cancel: You may cancel this Agreement by returning the check by which we disbursed the Pawr proceeds to you or an equivalent amount of cash to us by the close of business on the business day following the date of this Agreement. If you timely cancel by returning the proceeds, we will credit the Pawnshop Charge earned and any Lien Filing Fee assessed when you signed this Agreement and cancel the Pawn.
- Prepayment, Payments, and Application of Payments; Redemption: You may prepay in full at any time without additional charge, fee or penalty. If you prepay the Pawn in full, then you will not be entitled to a rebate and/or refund of any part of the Pawnshop Charge for this Pawn.

Pawnbroker accepts payments by cash, cashier's check, money order, debit card or other method specified by Pawnbroker from time to time. If we are not open on a payment due date, we will treat payments made on the next business day as timely made. The truth-in-lending disclosures provided above assume that you will pay all amounts owing hereunder on the Maturity Date. We apply payments first to the outstanding Pawnshop Charge and then to principal.

You have the exclusive right to redeem the Vehicle and Title by repaying the Pawn in full and complying with this Agreement. Upon the payment in full of all amounts owing hereunder, we will release the security interest in the Vehicle and return the Title to you unless the Vehicle and/or the Title have been taken into custody by a court or by a law enforcement office or agency. Any person presenting proper identification as Pledgor and this Agreement to Pawnbroker shall be presumed to be the Pledgor and shall be entitled to redeem the Vehicle and Title pledged here

Initial Term; Extension and Continuation: The initial term of the Pawn is 30 days, and the Pawn may be extended and continued for additional 30-day periods with the agreement of Pledgor and Pawnbroker. We may agree to

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

extend the Maturity Date in our discretion. As a condition to extending the Maturity Date, for the initial extension and each subsequent extension, you must pay an amount equal to the then outstanding Pawnshop Charge (including any charges accrued after the Maturity Date, as described in Section 7 below), and (b) satisfy Pawnbroker's applicable criteria for extensions. If you do not request additional funds as part of your extension request, then the original Pawn will be continued and the Maturity Date will be extended. If you request additional funds as part of your extension request, then you will be required to enter into a new Pawn Transaction Disclosure Statement and Security Agreement. This Agreement remains in full force and effect during any extension and continuation.

- Non-Recourse: This Pawn is non-recourse to you. You shall have no obligation to redeem the Vehicle or make any payment on this Pawn. Nothing in this Agreement gives us any recourse against you personally other than our right to take possession of the Vehicle upon your default, and to sell or otherwise dispose of the Vehicle in accordance with Georgia law.
- Default and Grace Period; Additional Charges: If you choose not to redeem the Vehicle on or before the Maturity Date or extend the Maturity Date as provided in Section 5, then you will be in default. Upon default, Pawnbroker may take possession of the Vehicle. You will have a grace period of 30 calendar days following the Maturity Date (as extended) to redeem this Pawn. If the last day of the grace period falls on a non-business day, the grace period will extend to the next business day. During any such grace period, Pawnbroker will not sell the Vehicle. The Vehicle and Title may be redeemed within the grace period by the payment of any unpaid accrued Pawnshop Charges and fees (including, if applicable, the fees described in Section 8), the repayment of the principal, and the payment of an additional interest charge not to exceed 12.5 percent of the principal. To redeem the Vehicle and Title in the grace period immediately following the Maturity Date specified above, you must pay a redemption amount of \$4,163.76

rou have the excusive right to redeem the vehicle and three by repaying the Pawh in this and complying with this Agreement. Upon the payment in full of all amounts owing hereunder, we will release the security interest in the Vehicle and return the Title to you unless the Vehicle and/or the Title have been taken into custody by a court or by a law

pency. Any person presenting proper identification as Pledgor and this Agreement to Pawnbroker the Pledgor and shall be entitled to redeem the Vehicle and Title pledged hereunder.

3 of 7

**Extension and Continuation:** The initial term of the Pawn is 30 days, and the Pawn may be for additional 30-day periods with the agreement of Pledgor and Pawnbroker. We may agree to

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 2 of

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

extend the Maturity Date in our discretion. As a condition to extending the Maturity Date, for the initial extension and each subsequent extension, you must pay an amount equal to the then outstanding Pawnshop Charge (including any charges accrued after the Maturity Date, as described in Section 7 below), and (b) satisfy Pawnbroker's applicable criteria for extensions. If you do not request additional funds as part of your extension request, then the original Pawn will be continued and the Maturity Date will be extended. If you request additional funds as part of your extension request, then you will be required to enter into a new Pawn Transaction Disclosure Statement and Security Agreement. This Agreement remains in full force and effect during any extension and continuation.

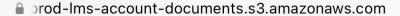
- 6. Non-Recourse: This Pawn is non-recourse to you. You shall have no obligation to redeem the Vehicle or make any payment on this Pawn. Nothing in this Agreement gives us any recourse against you personally other than our right to take possession of the Vehicle upon your default, and to sell or otherwise dispose of the Vehicle in accordance with Georgia law.
- 7. Default and Grace Period; Additional Charges: If you choose not to redeem the Vehicle on or before the Maturity Date or extend the Maturity Date as provided in Section 5, then you will be in default. Upon default, Pawnbroker may take possession of the Vehicle. You will have a grace period of 30 calendar days following the Maturity Date (as extended) to redeem this Pawn. If the last day of the grace period falls on a non-business day, the grace period will extend to the next business day. During any such grace period, Pawnbroker will not sell the Vehicle. The Vehicle and Title may be redeemed within the grace period by the payment of any unpaid accrued Pawnshop Charges and fees (including, if applicable, the fees described in Section 8), the repayment of the principal, and the payment of an additional interest charge not to exceed 12.5 percent of the principal. To redeem the Vehicle and Title in the grace period immediately following the Maturity Date specified above, you must pay a redemption amount of \$4,163.76. You must contact Pawnbroker to obtain the amount to redeem the Vehicle and Title during a grace period that follows an extended maturity date. If the Vehicle and Title are not redeemed within the grace period, Pledgor's ownership interest in the Vehicle and Title are automatically extinguished, and the Vehicle and Title become the property of Pawnbroker.
- 8. Recovery and Costs of Recovery; Sale of the Vehicle: Following default, we or our agent may take possession of the Vehicle with judicial process or without judicial process can be done without breaching the peace. You agree to pay any recovery fee we incur if we or our recovery vendor recovers the Vehicle after default. The amount of the recovery fee is based on the distance traveled to recover the Vehicle, as follows: (a) \$50.00, if the Vehicle is recovered within 50 miles of the Pawnbroker location identified above; (b) \$100.00, if the Vehicle is recovered within 51 to 100 miles of the Pawnbroker location identified above; (c) \$150.00 if the Vehicle is recovered within 101 to 300 miles of the Pawnbroker location identified above; and (d) \$250.00 if the Vehicle is recovered beyond 300 miles of the Pawnbroker location identified above; and (d) \$250.00 if the Vehicle is recovered Vehicle not to exceed \$5.00 per day for each day that the Vehicle is actually stored. We may not charge a storage fee unless we recover the Vehicle after default. If there are personal possessions in the Vehicle that you request to be shipped to you, you agree to pay the actual shipping costs incurred by Pawnbroker plus a handling fee equal to no more than 50 percent of the actual costs to ship such items.
- 9. Lost or Destroyed Agreement: If this Agreement is lost or destroyed, Pledgor must notify Pawnbroker in writing, and receipt of such notice shall invalidate this Agreement if the Vehicle and Title have not previously been redeemed. Before delivering the Vehicle and Title or issuing a new Agreement, Pledgor must make a statement of the loss or destruction of the Agreement, which Pawnbroker will record. We may impose a \$2.00 fee in connection with each lost or destroyed Agreement.
- 10. Waivers: If Pawnbroker delays or does not enforce it rights every time, Pawnbroker can still do so later. Pawnbroker need not sue, arbitrate or show diligence in collecting against you or others. Pawnbroker may sue or arbitrate with a person without joining or suing others. Pawnbroker may release or modify a person's liability without changing other persons' liability.
- 11. Communications: Send all communications to Pawnbroker, including bankruptcy notices, to TitleMax of Georgia, Inc., Legal Department, P.O. Box 8323, Savannah, Georgia 31412 (the "Notice Address"). Send all notices to Pledgor to the address above or any other address you give to Pawnbroker in writing ("Pledgor Address"). If you believe that you have been the victim of identity theft in connection with your Pawn, write to us at the Notice Address. In your letter: (a) provide your name and Pawn transaction number; and (b) submit an identity theft affidavit or identity theft report. You may contact customer service at 1-800-804-5368
- 12. Notice and Cure: Before suing or starting arbitration about (i) Pledgor's credit application, (ii) this Agreement, (iii) the Vehicle, or (iv) the Pawn, each party agrees to do all of the following:
- a. The party filing the dispute (the "Claimant") must tell all other parties (the "Defending Party") of the dispute (the "Dispute Notice"). Each Dispute Notice must describe the nature of the claim and relief requested. Each Dispute Notice must be written and, except for Pawnbroker collections letters, must give at least 30 days to solve the dispute.
- b. Claimant must mail Dispute Notices to the Notice Address for Pawnbroker and the Pledgor Address for Pledgor. Dispute Notices to Pawnbroker must include the Pawn transaction number and Pledgor's mailing address and phone number.

TM-TB – Georgia Pawn Transaction Agreement - V.3.2 – 01.22.2019

Page 3 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

- c. If Defending Party asks for more information about the dispute, Claimant must give it.
- 13. Reporting to Credit Bureaus: Pawnbroker may report information about this Pawn to credit bureaus. Your credit report may reflect late payments, missed payments or other defaults on your account.
- 14. Important Information About Opening Accounts: To help fight terrorism and money laundering, Pawnbroker must identify each person who opens an account. You must give Pawnbroker your name, address, date of birth and other requested information and documents, such as your driver's license.
- 15. Telephone Recording: Pawnbroker may monitor and record any phone conversation Pawnbroker and you have.
- 16. Severability: Invalid terms hereof will be changed to comply with law. Such change will not affect any other term hereof. If a class action suit or class-wide arbitration is allowed, either party may require that a judge (with no jury) hear the dispute. Such judge will apply relevant court rules and procedures.
- 17. Successors and Assigns: This Agreement binds your heirs, successors and assigns and Pawnbroker's successors and assigns. Pawnbroker may assign all of its rights hereunder. Following any assignment by Pawnbroker, the Pawn remains in full force and effect and due and payable in accordance with its terms. Pledgor may not assign its rights hereunder without Pawnbroker's written consent.
- 18. Governing Law: This Agreement and the Pawn involve interstate commerce. Georgia law governs this Agreement, but the Federal Arbitration Act governs the Waiver of Jury Trial and Arbitration Clause in Section 20.
  - 19. JURY TRIAL WAIVER: YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A



later. Pawnbroker need not sue, arbitrate or show diligence in collecting against you or others. Pawnbroker may sue or arbitrate with a person without joining or suing others. Pawnbroker may release or modify a person's ing other persons' liability.

4 of 7

tions: Send all communications to Pawnbroker, including bankruptcy notices, to TitleMax Department, P.O. Box 8323, Savannah, Georgia 31412 (the "Notice Address"). Send all he address above or any other address you give to Pawnbroker in writing ("Pledgor ave that you have been the victim of identity theft in connection with your Pawn, write to us at the Notice Address. In your letter: (a) provide your name and Pawn transaction number; and (b) submit an identity theft affidavit or identity theft report. You may contact customer service at 1-800-804-5368.

- Notice and Cure: Before suing or starting arbitration about (i) Pledgor's credit application, (ii) this Agreement, (iii) the Vehicle, or (iv) the Pawn, each party agrees to do all of the following:
- The party filing the dispute (the "Claimant") must tell all other parties (the "Defending Party") of the dispute (the "Dispute Notice"). Each Dispute Notice must describe the nature of the claim and relief requested. Each Dispute Notice must be written and, except for Pawnbroker collections letters, must give at least 30 days to solve the dispute.
- b. Claimant must mail Dispute Notices to the Notice Address for Pawnbroker and the Pledgor Address for Pledgor. Dispute Notices to Pawnbroker must include the Pawn transaction number and Pledgor's mailing address and phone number.

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 3 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

- c. If Defending Party asks for more information about the dispute, Claimant must give it.
- 13. Reporting to Credit Bureaus: Pawnbroker may report information about this Pawn to credit bureaus. Your credit report may reflect late payments, missed payments or other defaults on your account.
- 14. Important Information About Opening Accounts: To help fight terrorism and money laundering, Pawnbroker must identify each person who opens an account. You must give Pawnbroker your name, address, date of birth and other requested information and documents, such as your driver's license.
- 15. Telephone Recording: Pawnbroker may monitor and record any phone conversation Pawnbroker and you
- Severability: Invalid terms hereof will be changed to comply with law. Such change will not affect any other term hereof. If a class action suit or class-wide arbitration is allowed, either party may require that a judge (with no jury) hear the dispute. Such judge will apply relevant court rules and procedures.
- 17. Successors and Assigns: This Agreement binds your heirs, successors and assigns and Pawnbroker's successors and assigns. Pawnbroker may assign all of its rights hereunder. Following any assignment by Pawnbroker, the Pawn remains in full force and effect and due and payable in accordance with its terms. Pledgor may not assign its rights hereunder without Pawnbroker's written consent.
- Governing Law: This Agreement and the Pawn involve interstate commerce. Georgia law governs this Agreement, but the Federal Arbitration Act governs the Waiver of Jury Trial and Arbitration Clause in Section 20.
- 19. JURY TRIAL WAIVER: YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT. THIS RIGHT MAY BE WAIVED UNDER CERTAIN CONDITIONS AS ALLOWED BY LAW. YOU AND WE KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED DIRECTLY OR INDIRECTLY TO EACH OF THE FOLLOWING: (A) THIS AGREEMENT; AND (B) THE PAWN THAT IS THE SUBJECT OF THIS AGREEMENT. THIS JURY TRIAL WAIVER WILL NOT CHANGE ANY ARBITRATION CLAUSE TO WHICH YOU AND WE ARE SUBJECT, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.
- WAIVER OF JURY TRIAL AND ARBITRATION CLAUSE: By signing below, you agree to this Waiver of Jury Trial and Arbitration Clause ("Clause"). We have drafted this Clause in question and answer form so it is easier to understand. This Clause is part of this Agreement and is legally binding.

	BACKGROUND AND SCOPE		
Question	Short Answer	Further Detail	
What is a Dispute?	A disagreement	In this Clause, "Dispute" has a broad meaning. "Dispute" includes all claims and disagreements related to your application, this Agreement, the Vehicle, the Transaction, or your relationship with Pawnbroker. It includes claims and disagreements about any prior applications and agreements. It includes extensions, renewals, refinancings, and payment plans. It includes claims related to collections, privacy, and customer information. It includes claims and disagreements that usually would be resolved in court. "Dispute" also includes claims and disagreements you have with Related Parties.	
Who is a "Related Party"?	Usually a person or company related to Pawnbroker	"Related Parties" are Pawnbroker's affiliates. They also are employees, directors, officers, shareholders, members, and representatives of Pawnbroker and its affiliates. "Related Parties" also means any person or company involved in a Dispute you pursue while you pursue a Dispute with Pawnbroker (like a repossession company).	
What is arbitration?	An alternative to court	In arbitration, a third party arbitrator ("TPA") solves Disputes in a hearing ("hearing"). It is less formal than a court case.	
Is it different from court and jury trials?	Yes	The hearing is private. There is no jury. It is usually less formal, faster, and less costly than a lawsuit. Pre-hearing fact finding is limited. Appeals are limited. Courts rarely overturn arbitration awards.	
Is it confidential?	Yes, it can be	Pawnbroker or you can ask that arbitration be confidential. That means things people say, and documents and information disclosed as part of the arbitration, will be used only for the arbitration and will not be shared with anyone who is not part of the arbitration. That also means that people involved in the arbitration may be asked to sign a separate confidentiality agreement. Confidential information may be used to appeal or enforce an arbitration award.	

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 4 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

Can you opt-out of this Clause?	Yes, within 60 days	If you do not want this Clause to apply, you have 60 days from the Transaction Date to opt out. To opt out, you must tell Pawnbroker by a writing you send to the Notice Address. You must give your name, address, Transaction number and Transaction Date and state that you "opt out" of this Clause. You may not send your notice electronically.
What is this Clause about?	This is an agreement to arbitrate Disputes	Pawnbroker and you agree that any party may demand arbitration of or arbitrate any Dispute unless you opt out or the law does not allow it.



		disagreements you have with Related Parties.
Who is a "Related Party"?  5 of 7	Usually a person or company related to Pawnbroker	"Related Parties" are Pawnbroker's affiliates. They also are employees, directors, officers, shareholders, members, and representatives of Pawnbroker and its affiliates. "Related Parties" also means any person or company involved in a Dispute you pursue while you pursue a Dispute with Pawnbroker (like a repossession company).
What is arbitration?	An alternative to court	In arbitration, a third party arbitrator ("TPA") solves Disputes in a hearing ("hearing"). It is less formal than a court case.
Is it different from court and jury trials?	Yes	The hearing is private. There is no jury. It is usually less formal, faster, and less costly than a lawsuit. Pre-hearing fact finding is limited. Appeals are limited. Courts rarely overturn arbitration awards.
Is it confidential?	Yes, it can be	Pawnbroker or you can ask that arbitration be confidential. That means things people say, and documents and information disclosed as part of the arbitration, will be used only for the arbitration and will not be shared with anyone who is not part of the arbitration. That also means that people involved in the arbitration may be asked to sign a separate confidentiality agreement. Confidential information may be used to appeal or enforce an arbitration award.

TM-TB – Georgia Pawn Transaction Agreement - V.3.2 – 01.22.2019

Page 4 of 7

#### DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

Can you opt-out of this Clause?	Yes, within 60 days	If you do not want this Clause to apply, you have 60 days from the Transaction Date to opt out. To opt out, you must tell Pawnbroker by a writing you send to the Notice Address. You must give your name, address, Transaction number and Transaction Date and state that you 'opt out' of this Clause. You may not send your notice electronically.
What is this Clause about?	This is an agreement to arbitrate Disputes	Pawnbroker and you agree that any party may demand arbitration of or arbitrate any Dispute unless you opt out or the law does not allow it.
Who does the Clause cover?	Pawnbroker and you	This Clause covers Pawnbroker and you. This Clause also applies if you have a Dispute with a Related Party related in some way to your application, this Agreement, the Vehicle, the Pawn, or your dealings with Pawnbroker. Related Parties are not bound by this Clause. You may not compel a Related Party to arbitration. A Related Party may compel you to arbitrate Disputes covered by this Clause.
What Disputes does the Clause cover?	Most Disputes that would normally go to court (except certain Disputes about this Clause)	This Clause covers Disputes involving you and Pawnbroker (or a Related Party). This Clause does not cover disputes about the validity, coverage, or scope of this Clause or any part of this Clause. These are for a court to decide, not the TPA. Also, this Clause does not cover cases you file to stop Pawnbroker from taking or selling the Vehicle.
Who handles the arbitration?	A Third Party Arbitrator	Arbitrations must be conducted under this Clause. The TPA will be one of the following:     An individual, independent TPA the parties choose together;     JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, www.jamsadr.org; or
		Any other arbitration company the parties choose together.  No arbitration may be held without Pawnbroker's consent by an arbitration company or TPA that would allow class arbitration under this Clause. Unless Pawnbroker and you agree otherwise, the TPA must be a lawyer with 10+ years of experience or a retired judge.
What rules apply to the arbitration?	Usually, the arbitration company rules	If the parties use an arbitration company such as JAMS, that company's consumer arbitration rules will apply. If the parties chose an individual TPA, then such TPA will follow the JAMS consumer arbitration rules, unless the parties mutually agree to an alternative. In any case, the TPA will not apply any state or federal rules of civil procedure or evidence. Arbitration rules that conflict with this Clause do not apply.
Can Disputes be brought to court?	Sometimes	Either party may sue if the other party does not demand arbitration. Pawnbroker will not demand arbitration of any lawsuit you bring for yourself in small claims court. But, Pawnbroker may demand arbitration of any appealed small claims decision or any small claims action brought as a class.
Are you giving up any rights?	Yes	For Disputes subject to this Clause, you give up your right to:  Have a jury decide Disputes.  Have a court other than a small claims court decide Disputes.  Serve as a private attorney general or in a representative capacity.  Join a Dispute you have with a dispute by other consumers.  Bring or be a class member in a class action or class arbitration.  Pawnbroker also waives its jury trial right and its right to have a court decide Disputes Pawnbroker starts.
Can you or anyone else start class arbitration?	No	TPAs may not handle a class or representative Dispute. All Disputes under this Clause must be arbitrated or decided by individual small claims case. This Clause will be void if a court allows a TPA to decide a Dispute on a class basis and such ruling is not reversed on appeal.

 $\label{eq:TMTB} \textbf{TM-TB} - \textbf{Georgia Pawn Transaction Agreement - V.3.2} - \textbf{01.22.2019}$ 

Page 5 of 7

What law applies?	The Federal Arbitration Act ("FAA")	The FAA governs this Clause. The TPA must apply law consistent with the FAA. The TPA must honor statutes of limitation and privilege rights. Constitutional standards that apply in court proceedings govern punitive damage awards.
Will anything you do negate this	No, though you can opt out	This Clause stays in force if you: (1) cancel the Pawn; (2) default, renew, prepay or pay the Pawn in full; or (3) go into bankruptcy. You

of 8



		Pawnbroker also waives its jury trial right and its right to have a court decide Disputes Pawnbroker starts.
Can you or anyone else start class arbitration?	No	TPAs <u>may not</u> handle a class or representative Dispute. All Disputes under this Clause must be arbitrated or decided by individual small claims case. This Clause will be void if a court allows a TPA to decide a Dispute on a class basis and such ruling is not reversed on appeal.

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 5 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

What law applies?	The Federal Arbitration Act ("FAA")	The FAA governs this Clause. The TPA must apply law consistent with the FAA. The TPA must honor statutes of limitation and privilege rights. Constitutional standards that apply in court proceedings govern punitive damage awards.
Will anything you do negate this Clause?	No, though you can opt out	This Clause stays in force if you: (1) cancel the Pawn; (2) default, renew, prepay or pay the Pawn in full; or (3) go into bankruptcy. You can opt out as described above.
		PROCESS
Question	Short Answer	Further Detail
What must be done before starting a lawsuit or arbitration?	Send a written Dispute Notice and work to resolve the Dispute	Before starting a lawsuit or arbitration, Claimant must give a Dispute Notice as Section 12 above requires. If you are the Claimant, you or your attorney must sign the Dispute Notice. You must give the Pawn number and a contact number for you or your attorney. Collections letters from Pawnbroker are Dispute Notices. Each Dispute Notice (other than collections letters), must give at least 30 days to settle the dispute.
How does arbitration start?	Following the rules of the arbitration company	If the parties do not settle the Dispute within the 30-day period, Claimant may file a small claims case or start arbitration. To start arbitration, the Claimant picks the arbitration company. If one party sues or threatens to sue, the other party can demand arbitration. This demand can be made in court papers. It can be made if a party sues on an individual basis and then tries to pursue a class action. Once an arbitration demand is made, no suit can be brought and any current suit must stop.
Will any hearing be held nearby?	Yes	Any in-person hearing must be at a place convenient to you. The TPA may decide that an in-person hearing is not needed. A Dispute may be resolved in writing and by conference call.
What if you need an accommodation for a disability or due to language?	Pawnbroker shall work with you on accommodations	If you require assistance in a language other than English, or special services to accommodate a disability, Pawnbroker and you shall agree to proceed in a way that accommodates your needs.
What about appeals?	Very limited	The FAA limits appeal rights. For Disputes over \$50,000, any party may appeal the award to a panel of three TPAs. The arbitration company or the parties choose the panel. This panel will review anything appealed in the initial award. The panel's decision will be final, except for any FAA appeal right. Any suitable court may enter judgment upon the TPA panel's award.
	ARBIT	RATION FEES AND AWARDS
Question	Short Answer	Further Detail
Who pays fees of arbitration?	Usually, Pawnbroker does	Pawnbroker will pay all filing, hearing and TPA fees if you act in good faith, you cannot get a fee waiver and you ask Pawnbroker to pay.
When will Pawnbroker cover your legal fees and costs?	If you win	If the TPA finds for you, Pawnbroker will pay your reasonable fees and costs for attorneys, experts, and witnesses. Pawnbroker also will pay these costs if the law or the TPA rules require or if required to enforce this Clause. Even if your Dispute is for a small amount, the TPA will not limit the award of such costs.
Will you ever owe Pawnbroker for fees?	If you act in bad faith	The TPA can make you pay Pawnbroker's arbitration, attorney, expert and witness fees if it finds that you have acted in bad faith (per the Federal Rules of Civil Procedure § 11(b) standard). This power does not void this Clause.
Can a failure to resolve a Dispute informally mean a larger recovery for you?	Yes	If Pledgor wins the arbitration, Pledgor may be entitled to a minimum award of \$7,500. To get the minimum award, you first must comply with this Clause. Secondly, the TPA must award money damages to you in an amount that is greater than the last amount you asked for in settlement, if you asked for such amount at least ten days before arbitration began. The base award is separate from attorneys' fees

 $\label{eq:TMTB} \textbf{TM-TB} - \textbf{Georgia Pawn Transaction Agreement - V.} \\ 3.2 - 01.22.2019$ 

Page 6 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

		and expenses, and expert witness costs which you may get. The minimum award applies to all Disputes you raise or could raise. This Clause does not allow multiple awards of \$7,500. Settlement demands and offers are confidential. They may not be used in any way by either party except to support a minimum award.
Can an award be	Yes	Within 14 days of the ruling, a party may ask the TPA to explain its



🔒 t-documents.s3.amazonaws.com 💍









7 04 7	ARBIT	company or the parties choose the panel. This panel will review anything appealed in the initial award. The panel's decision will be final, except for any FAA appeal right. Any suitable court may enter judgment upon the TPA panel's award.  RATION FEES AND AWARDS
7 of 7	Short Answer Further Detail	
arbitration?	Usually, Pawnbroker does	Pawnbroker will pay all filing, hearing and TPA fees if you act in good faith, you cannot get a fee waiver and you ask Pawnbroker to pay.
When will Pawnbroker cover your legal fees and costs?	If you win	If the TPA finds for you, Pawnbroker will pay your reasonable fees and costs for attorneys, experts, and witnesses. Pawnbroker also will pay these costs if the law or the TPA rules require or if required to enforce this Clause. Even if your Dispute is for a small amount, the TPA will not limit the award of such costs.
Will you ever owe Pawnbroker for fees?	If you act in bad faith	The TPA can make you pay Pawnbroker's arbitration, attorney, expert and witness fees if it finds that you have acted in bad faith (per the Federal Rules of Civil Procedure § 11(b) standard). This power does not void this Clause.
Can a failure to resolve a Dispute informally mean a larger recovery for you?	Yes	If Pledgor wins the arbitration, Pledgor may be entitled to a minimum award of \$7,500. To get the minimum award, you first must comply with this Clause. Secondly, the TPA must award money damages to you in an amount that is greater than the last amount you asked for in settlement, if you asked for such amount at least ten days before arbitration began. The base award is separate from attorneys' fees

TM-TB - Georgia Pawn Transaction Agreement - V.3.2 - 01.22.2019

Page 6 of 7

DocuSign Envelope ID: FA350800-61CB-4C16-BE8C-2886569ABE5E

min Clar den		and expenses, and expert witness costs which you may get. The minimum award applies to all Disputes you raise or could raise. This Clause does not allow multiple awards of \$7,500. Settlement demands and offers are confidential. They may not be used in any way by either party except to support a minimum award.
Can an award be explained?	Yes	Within 14 days of the ruling, a party may ask the TPA to explain its ruling. Upon such request, the TPA will explain the ruling in writing.

- 21. Pledgor Acknowledgments and Representations: By signing this Agreement, Pledgor represents, warrants, acknowledges and agrees as follows:
  - a. All information you gave to Pawnbroker in your application is true, complete and correct.
  - b. The Vehicle is not stolen and it has no liens or encumbrances against it.
  - c. You are a rightful owner of the Vehicle.
  - d. You have inspected the Vehicle, and it is in good repair and condition.
  - e. You will not apply for a duplicate certificate of title while this Agreement is in effect.
- f. You have received an exact copy of this fully completed Agreement. This Agreement was filled in before you signed it.
- g. You have read, understand and agree to this entire Agreement, including the Waiver of Jury Trial and Arbitration Clause in Section 20. You may opt out of arbitration as described in Section 20. If you do not timely opt out of arbitration, your right to sue Pawnbroker is limited.
- h. You are 18 years of age or older. You are not intoxicated. You have full legal authority and capacity to sign this Agreement.
  - i. You have received Pawnbroker's Privacy Policy.
  - j. You are not a debtor in bankruptcy. You do not intend to file a federal bankruptcy petition.
- k. YOU ARE NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).
- You are liable for Vehicle damage and loss. You hold Pawnbroker harmless for all claims and costs arising from your using the Vehicle, including all judgments, attorneys' fees, court costs and expenses.
- 22. Entire Agreement: This Agreement is the only agreement between Pawnbroker and Pledgor for this Pawn. Pawnbroker and Pledgor have no oral agreements about this Pawn. Pawnbroker and Pledgor may change this Agreement only by a writing signed by all of the undersigned.

PLEDGOR:
COURTELLYNN BLACKMON
Decoding by LYNN BLACKMON
TIZEMAD TOTAL AT THE MAN THE M

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, CORTLAND CAPITAL MARKET SERVICES LLC AND WELLS FARGO BANK, NATIONAL ASSOCIATION, EACH AS COLLATERAL AGENT.









Case 4:24-cv-00049-WMR Document 21-2 Filed 05/10/24 Page 1 of 2

Exhibit 2

## TITLEMAX OF GEORGIA, INC. D/B/A TITLEMAX 47 NORTH MORNINGSIDE DR CARTERSVILLE, GA 30121 (770) 382-2298

#### Notice of Action Taken and Statement of Reason(s)

Date: 2021-09-25	Transaction Description: Credit Application Action Taken: Denia	
Applicant Name:	COURTNEY BLACKMON	
Applicant Address:		

#### Dear Applicant:

Thank you for applying to us for credit. After reviewing your application, we are sorry to advise you that we cannot grant your credit request at this time.

PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT

We were not able to approve your credit application or offer you credit on the terms requested for the following reason(s):

Applicant is a military covered borrower and is ineligible for the requested credit product

#### Sincerely,

#### The TitleMax Team

**Notice:** The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding 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. The federal agency that administers compliance with this law concerning this creditor is Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

TitleMax - TitleBucks - Multi-State Combined NOAA (Vehicle Secured w/Counter) - V 1.0 02.26.2021

Page 1 of 1









Exhibit 3

## UNITED STATES OF AMERICA CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2023-CFPB-0001

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has identified the following unlawful acts or practices of TMX Finance LLC and its subsidiaries, parents, affiliates, and their successors and assigns (Respondent, as defined below): (1) charging and collecting non-file-insurance fees on loans where the product provided no coverage or benefit; (2) charging and collecting non-file-insurance fees on loans when it failed to obtain non-file-insurance coverage; (3) failing to properly disclose non-file-insurance fees as part of the finance charge and annual percentage rate on certain loans; (4) extending and servicing prohibited title loans to active-duty servicemembers or their dependents; (5) extending and servicing prohibited loans that exceeded the 36% military annual percentage rate cap to active-duty servicemembers or their dependents; (6) extending and servicing loans

to active-duty servicemembers or their dependents without making the requisite disclosures; (7) extending and servicing loans to active-duty servicemembers or their dependents with prohibited arbitration provisions; and (8) extending and servicing loans to active-duty servicemembers and their dependents that demand unreasonable notice as a condition for legal action and impose onerous legal notice provisions in the case of a dispute. The Bureau has concluded that Respondent's acts or practices violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536; the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; and the Military Lending Act, 10 U.S.C. § 987, and its implementing regulation, 32 C.F.R. part 232, (collectively, the MLA). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this consent order (Consent Order).

I.

## **Jurisdiction**

1. The Bureau has jurisdiction over this matter under the CFPA, 12 U.S.C. § 5563 and 5565, the MLA, 10 U.S.C. § 987(f)(6), and TILA, 15 U.S.C. § 1607(a)(6).

## II.

## **Stipulation**

2. Respondent has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated February 22, 2023 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.

## III.

## **Definitions**

- 3. The following definitions apply to this Consent Order:
  - a. "Affected Consumers" mean Non-File-Insurance Affected Consumers and Affected Covered Borrowers, collectively.
  - b. "Affected Covered Borrower" means a borrower who qualified as a
    Covered Borrower at the time the borrower became obligated on the
    consumer credit transaction that was extended during the MLA
    Relevant Period.

- c. "Annual Percentage Rate" or "APR" mean the measure of the cost of credit, expressed as a yearly rate, as determined under 12 C.F.R.§ 1026.22.
- d. "Board" means Respondent's duly elected and acting Board of Managers.
- e. "Covered Borrower" is a consumer who, at the time the consumer becomes obligated on a consumer credit transaction, or establishes an account for consumer credit, is a covered member, as defined in 32 C.F.R. § 232.3(g)(2), or a dependent, as defined in 32 C.F.R. § 232.3(g)(3), of a covered member. 32 C.F.R. § 232.3(g)(1).
- f. "Effective Date" means the date on which the Consent Order is entered on the administrative docket.
- g. "Enforcement Director" means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- h. "Finance Charge" means the cost of consumer credit expressed as a dollar amount, as defined in 12 C.F.R. § 1026.4.
- i. "MLA Database" means the database maintained by the Department of Defense, available at https://www.dmdc.osd.mil/mla/welcome.xhtml, as set forth in 32 C.F.R. § 232.5(b)(i).

- j. "Military Annual Percentage Rate" or "MAPR" means the cost of consumer credit expressed as an annual rate and calculated in accordance with 32 C.F.R. § 232.4(c), as set forth in 32 C.F.R. § 232.3(p).
- k. "MLA Relevant Period" includes from October 3, 2016, to the Effective Date.
- "Non-File-Insurance Affected Consumer" means a borrower who was charged a non-file-insurance fee in connection with the extension of credit during the Relevant Period when TitleMax:
  - a. had a recorded lien on the collateral securing the loan at the time the non-file-insurance fee was charged;
  - b. extended an unsecured loan; or
  - c. failed to obtain non-file-insurance coverage for the loan.
- m. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- n. "Relevant Period" includes from July 21, 2011, to the Effective Date.

o. "Respondent" or "TitleMax" means TMX Finance LLC and its subsidiaries, parents, affiliates, and their successors and assigns.

### IV.

### **Bureau Findings and Conclusions**

The Bureau finds the following:

- 4. TitleMax is a privately held company that is headquartered in Savannah,
  Georgia. During the Relevant Period, TitleMax operated using the trade
  names TitleMax, InstaLoan, and TitleBucks in 20 states with more than
  1,000 stores. TitleMax primarily offers automobile title loans although it has
  a limited number of unsecured loan options. It originates and services loans
  that typically range from \$100 to \$10,000 over terms that range from 30
  days to 48 months.
- 5. Respondent is a "covered person" under the CFPA, 12 U.S.C. § 5481(6), because, during the Relevant Period, it engaged in offering or providing consumer financial products or services.
- 6. Respondent is a "creditor" under Regulation Z, 12 C.F.R. § 1026.2(a)(17), because, during the Relevant Period, it regularly extended consumer credit that was subject to a finance charge or was payable by written agreement in more than four installments, and the obligation was initially payable to the Respondent.

- 7. Respondent is a "creditor" under the MLA, 10 U.S.C. § 987(i)(5). During the Relevant Period, Respondent either:
  - a. by itself or together with its affiliates, engaged in the business of extending consumer credit, meeting the transaction standard for a "creditor" under Regulation Z, 12 C.F.R. part 1026, with respect to extensions of consumer credit to borrowers covered by the MLA. 32 C.F.R. § 232.3(i)(1)&(3); or
  - b. was the assignee of a person engaged in the business of extending consumer credit with respect to any consumer credit extended. 32
     C.F.R. § 232.3(i)(2).

### Finding and Conclusions as to TitleMax's Non-File-Insurance Practices

- 8. When TitleMax extends a title loan, it takes a security interest in the borrower's vehicle to secure the loan. To protect itself from loss,

  Respondent can either record its lien on the vehicle title or it can obtain non-file insurance.
- 9. For title loans, non-file insurance only covers losses due to the lender's failure to record its lien on the vehicle title and thereby perfect its security interest. When TitleMax elects to purchase non-file insurance, it charges the borrower a non-file-insurance fee, typically \$35, and the fee is financed through the loan.

- 10. During the Relevant Period, Respondent charged borrowers non-file-insurance fees on 15,386 loans when it had already recorded its liens.
- 11. When its liens are already recorded, Respondent can't incur losses from its failure to record and, as a result, the non-file insurance provided no coverage.
- 12. During the Relevant Period, Respondent also charged borrowers non-file-insurance fees on 54 unsecured loans where there was no collateral for non-file insurance to cover, and on 28 loans where Respondent failed to obtain the insurance coverage.
- 13. In each of these instances, Respondent charged borrowers for a product that provided no benefit.
- 14. TitleMax lacked system and internal controls, and exercised no discernable oversight. Despite TitleMax having a policy that barred assessing a non-file-insurance fee on a loan where a lien had been previously recorded, TitleMax failed to implement any controls or reviews to ensure this did not occur. It also failed to monitor non-file-insurance fees to ensure they were appropriate when charged and collected.

## Respondent Violated the CFPA by Unfairly Charging Borrowers Non-File-Insurance Fees When the Product Provided No Coverage

- 15. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). Under § 1031(c)(1), an act or practice is unfair if it causes or is likely to cause a substantial injury that is not reasonably avoidable by consumers and that does not provide countervailing benefits to consumers or competition. 12 U.S.C. § 5531(c)(1).
- 16. When Respondent charged borrowers non-file-insurance fees but had already recorded its liens on the vehicle titles that secured the loans, it charged borrowers for a product that provided no coverage, causing substantial injury to borrowers.
- 17. When Respondent charged non-file-insurance fees on unsecured loans with no collateral securing the loan, it charged borrowers for useless coverage, causing substantial injury to borrowers.
- 18. When Respondent charged borrowers non-file-insurance fees without obtaining non-file-insurance coverage, it charged borrowers for unusable coverage, causing substantial injury to borrowers.
- 19. Borrowers could not reasonably avoid these injuries as they had no reason to anticipate the Respondent was charging them for a product that provided no coverage. Borrowers also did not have reasonable means to discover and

mitigate the injury, because borrowers had no control over Respondent's non-file-insurance practices, and borrowers lacked reasonable means to determine that:

- a. Respondent already had recorded its lien on the vehicle,
- b. Respondent failed to obtain non-file-insurance coverage for the loan, or
- c. non-file insurance provided no coverage on unsecured loans.
- 20. Respondent's conduct was not outweighed by countervailing benefits to consumers or competition.
- 21. Therefore, Respondent's practices described in Paragraphs 8-14 and 16-20 constitute unfair acts or practices in violation of §§ 1031(a) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. § 5531(a), 5536(a)(1)(B).

# Respondent Violated TILA and the CFPA by Understating and Inaccurately Disclosing the Finance Charge and APR on its Loans

- 22. Before consummating a closed-end credit transaction, Respondent, as the creditor, must disclose the Finance Charge and the APR to the borrower. 12 C.F.R. §§ 1026.17(b); 1026.18(d)-(e).
- 23. The Finance Charge includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. 12 C.F.R. § 1026.4(a).

- 24. Non-file-insurance fees are charges paid directly by the consumer that are imposed by the Respondent as an incident to or a condition of the extension of credit.
- 25. Regulation Z allows certain non-file-insurance fees to be excluded from the Finance Charge when the premium is for insurance in lieu of perfecting a security interest. 12 C.F.R. § 1206.4(e)(2). Comment 4(e)-4 of Regulation Z states that this exclusion is available only if non-file insurance is purchased, so if the creditor collects and simply retains a fee as "a sort of self-insurance," it may not be excluded from the Finance Charge.
- 26. Respondent excludes non-file-insurance fees in its calculation and disclosure of the Finance Charge on all loans.
- 27. When Respondent charged borrowers non-file-insurance fees but it had already recorded its liens on the vehicle titles that secured the loans, the non-file insurance was not in lieu of perfecting a security interest and had to be included in the Finance Charge.
- 28. When Respondent charged borrowers non-file-insurance fees on unsecured loans, the non-file insurance was not in lieu of perfecting a security interest, because there was no collateral in which to take a security interest. The non-file-insurance fees, therefore, had to be included in the Finance Charge.

- 29. When Respondent charged for but failed to obtain non-file-insurance coverage, the non-file insurance was not purchased, and the non-file-insurance fees had to be included in the Finance Charge.
- 30. By impermissibly excluding the non-file-insurance fees from the Finance Charge on these loans, Respondent understated and inaccurately disclosed the Finance Charge on 15,468 loans.
- 31. When understating the Finance Charge and cost of credit on 15,468 loans, Respondent's calculation of the APR, using either permitted calculation method, was also understated and inaccurately disclosed.
- 32. Respondent's inaccurately disclosed Finance Charges and APRs exceed the applicable Regulation Z tolerances. 12 C.F.R. §§ 1026.18(d)(2), 22(a).
- 33. By violating TILA, Respondent committed acts or omissions in violation of Federal consumer financial laws. Accordingly, Respondent violated § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

# Findings and Conclusion as to TitleMax's Military Lending Act Practices

34. The MLA was enacted to protect members of the United States Armed Services from predatory lending that endangers our Nation's military readiness and impacts servicemember retention.

- 35. On October 3, 2016, the MLA's protections were expanded to prohibit nonbank creditors, like TitleMax, from using vehicle titles to secure loans made to Covered Borrowers. 32 C.F.R. § 232.8(f).
- 36. The MLA also limits the Military Annual Percentage Rate associated with extensions of credit to 36%, mandates loan disclosures, prohibits mandatory arbitration, and prohibits unreasonable notice provisions. 10 U.S.C. § 987(b), (c), (e)(3)-(4); 32 C.F.R. §§ 232.4(b), 232.6, 232.8(c)-(d).
- 37. Any credit agreement, promissory note, or other contract with a Covered Borrower that fails to comply with any provision of the MLA or contains one or more prohibited provision is void from the inception of the contract. 10 U.S.C. § 987(f)(3); 32 C.F.R. § 232.9(c).
- 38. TitleMax states in its own policy that "Due to the Company's product limitations and requirements set forth in the Military Lending Act, military borrowers, their spouses, and dependents ('covered borrowers') are not eligible for a loan." Despite this statement, between October 3, 2016, and September 17, 2021, TitleMax made 2,670 prohibited loans to Covered Borrowers.
- 39. TitleMax's violations were caused by intentional misconduct, a lack of internal and system controls, and no meaningful monitoring or oversight. In some instances, TitleMax employees conducted checks to verify a

consumer's Covered-Borrower status, but ignored MLA-Database responses indicating that consumers were Covered Borrowers and extended prohibited loans. TitleMax's system allowed employees to process loans even when TitleMax's system received automated responses that the consumers were verified as Covered Borrowers.

- 40. In other instances, TitleMax changed consumers' personally identifiable information to obtain MLA-Database responses stating that the consumers were not Covered Borrowers. In other cases, TitleMax failed to take any steps to verify the consumers' Covered-Borrower status.
- 41. TitleMax did not conduct any periodic monitoring or audits of its origination activity to ensure compliance with the MLA, allowing intentional misconduct and problematic practices to go unchecked. TitleMax made 2,670 prohibited loans to Covered Borrowers, collected payments on those prohibited loans, and, in certain instances, repossessed and sold the Covered Borrowers' vehicles.

## **Respondent Extended MLA-Prohibited Title Loans to Covered Borrowers**

42. The MLA makes it unlawful for any nonbank creditor to extend consumer credit to a Covered Borrower when the creditor uses the title of a vehicle as security for the obligation involving the consumer credit. 32 C.F.R. § 232.8(f).

- 43. Between October 3, 2016, and September 17, 2021, Respondent made 2,655 title loans to Covered Borrowers.
- 44. These title loans are void from their inception and Respondent violated the MLA each time it extended and serviced these title loans. 32 C.F.R. §§ 232.8(f), 232.9(c).

# Respondent Extended Loans to Covered Borrowers that Violate the MLA's 36% MAPR Cap

- 45. The MLA provides that the cost of consumer credit to Covered Borrowers may not exceed an annual percentage rate of 36%. 10 U.S.C. § 987(b). The annual percentage rate applicable to extensions of credit to Covered Borrowers is called the Military Annual Percentage Rate, 32 C.F.R. §§ 232.3(p), 232.4.
- 46. For closed-end-credit transactions—such as the loans that Respondent made to Covered Borrowers—the MAPR is calculated following the rules for calculating and disclosing the Annual Percentage Rate for credit transactions under Regulation Z, 12 C.F.R. part 1026. But the MAPR must also include certain charges, costs, and fees listed in the MLA. 32 C.F.R. § 232.4(c).
- 47. Respondent is prohibited from imposing an MAPR greater than 36% in connection with the extension of closed-end consumer credit to Covered Borrowers. 32 C.F.R. § 232.4(b).

- 48. Between October 3, 2016, and September 17, 2021, Respondent made 2,569 loans to Covered Borrowers with MAPRs greater than 36%, many of those loans had APRs in excess of 100%.
- 49. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(b); 32 C.F.R. § 232.4(b).

# Respondent Extended Loans to Covered Borrowers Without Making the MLA Mandated Disclosures

- 50. The MLA requires creditors to make certain loan disclosures to Covered Borrowers before or at the time they become obligated on a transaction or establish an account for consumer credit. 10 U.S.C. § 987(c); 32 C.F.R. § 232.6(a).
- 51. The mandatory loan disclosures must include a statement of the MAPR applicable to the extension of consumer credit and must be provided to the Covered Borrower orally and in writing. 10 U.S.C. § 987(c)(1)(A); 32 C.F.R. § 232.6(a)(1)&(d).
- 52. Between October 3, 2016, and September 17, 2021, Respondent made 2,670 loans to Covered Borrowers without making all loan disclosures required by the MLA.

53. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(c); 32 C.F.R. § 232.6(a).

# Respondent Extended Loans to Covered Borrowers with MLA-Prohibited Arbitration Clauses

- 54. The MLA makes it unlawful for any creditor to extend consumer credit to a Covered Borrower under which the creditor requires the borrower to submit to arbitration in the case of a dispute. 10 U.S.C. § 987(e)(3); 32 C.F.R. § 232.8(c).
- 55. Respondent's agreements include an arbitration provision that states that any party may arbitrate or demand arbitration of any dispute unless the borrower opts out (generally by written notice in the first 60 days) or if the law does not allow it.
- 56. Between October 3, 2016, and September 17, 2021, Respondent made 2,670 loans to Covered Borrowers through agreements that require the borrowers to submit to arbitration in the case of a dispute.
- 57. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(e)(3); 32 C.F.R. § 232.8(c).

## Respondent Extended Loans to Covered Borrowers with Onerous Legal Notice and Unreasonable Notice Demands

- The MLA makes it unlawful for any creditor to extend consumer credit to a Covered Borrower under which the creditor imposes onerous legal notice provisions in the case of a dispute, or demands unreasonable notice as a condition for legal action. 10 U.S.C. § 987(e)(3)-(4); 32 C.F.R. § 232.8(c)-(d).
- 59. Respondent's agreements include notice provisions that require, in the case of a dispute and before taking legal action, that the borrower must provide a 30-day written notice and produce any additional information requested by the Respondent.
- 60. Between October 3, 2016, to September 17, 2021, Respondent made 2,670 loans to Covered Borrowers through agreements that impose onerous legal notice in the case of a dispute and demand unreasonable notice from the covered borrower as a condition for legal action.
- 61. These loans are void from their inception and Respondent violated the MLA each time it extended and serviced these loans. 10 U.S.C. § 987(e)(3)-(4); 32 C.F.R. § 232.8(c)-(d).

### **CONDUCT PROVISIONS**

V.

### **Prohibited Conduct**

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

- Act, 15 U.S.C. §§ 5531, 5536, the Truth in Lending Act, 15 U.S.C. § 1601 et seq., or its implementing regulation, Regulation Z, 12 C.F.R. part 1026, or the Military Lending Act, 10 U.S.C. § 987, or its implementing regulation, 32 C.F.R. part 232, including by:
  - a. charging or collecting non-file-insurance fees when Respondent already has a recorded lien on the collateral securing the loan at the time the non-file-insurance fee was charged;
  - b. charging or collecting non-file-insurance fees on unsecured loans;
  - c. charging or collecting non-file-insurance fees when Respondent fails to obtain non-file-insurance coverage; and
  - d. extending or servicing loans that fail to comply with the MLA to Covered Borrowers.

- 63. Respondent and its owners, officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, are prohibited from collecting, selling, assigning, or otherwise transferring the right to payment of any amounts associated with the extension of credit to Affected Covered Borrowers.
- 64. Respondent and its owners, officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, are prohibited from collecting, selling, assigning, or otherwise transferring the right to payment of non-file-insurance fees charged to Non-File-Insurance Affected Consumers.

### **Required Conduct**

- 65. Respondent must take the following affirmative actions:
  - a. Implement and maintain policies and procedures to prevent and detect MLA, TILA, and CFPA violations, including ensuring no credit is extended to a Covered Borrower in an unlawful manner, including by having manual and system controls that do not permit the extension of credit when the MLA-Database search or other information verifies the consumer is a Covered Borrower.
  - b. Record and maintain consumer and loan data to ensure the accuracy, completeness, and authorization of the extension of credit and loan

transactions for all outstanding and future extensions of credit, including:

- establishing separate development, staging, and production environments, such that new systems or modifications to existing systems are fully vetted with both test and production data before implementation;
- ii. maintaining testing procedures, validating data quality, including at the point of entry and against external systems, and recording all resolutions and methodologies to address all findings in both the existing and going-forward data;
- iii. recording all changes to code and data, including maintaining an audit log of all modifications, and preserving a user-readable record of every action taken by an operator that alters stored data, including additions, modifications, and deletions;
- iv. retaining data and modifications to data in a manner that allows for historical analysis without delayed recovery from archives or deep storage; and
- v. limiting the access and change permissions of each personnel group within its systems to the performance of the segregated personnel duties and to their designated business function

purposes, any exceptions to these permissions must be documented in an audit trail and approved by a manger in writing, and the permissions must prevent unnecessary elevated access to data and systems.

- c. Design and execute control and compliance reports that test compliance with this Consent Order, are created and reviewed by internal audit, are automated and replicable reports, are provided to and reviewed by the Compliance Committee on at least a quarterly basis, and all issues indicated by such reports are resolved by the Compliance Committee, including:
  - i. a report that identifies any fees charged in connection with a loan where there is information indicating that a fee that was charged was not appropriate, not authorized, or Respondent failed to provide the service, coverage, or benefit for which the fee was charged; why the fee was charged; and the scope of the practice;
  - ii. a report that identifies every non-file-insurance fee charged when Respondent already had a recorded lien on the collateral securing the loan at the time the non-file-insurance fee was charged, why the fee was charged, and the scope of the practice;

- iii. a report that identifies every loan that charged a non-file-insurance fee in connection with an unsecured loan, why the fee was charged, and the scope of the practice;
- iv. a report that identifies every loan that charged the consumer for a product or service that TitleMax failed to obtain or perform, why the fee was charged, and the scope of the practice;
- v. a report that identifies every extension of credit to a consumer on or after the Effective Date where the MLA-Database search or other information verified the consumer was a Covered Borrower at the time the credit was extended, why the credit was extended despite information indicating the consumer was a Covered Borrower, and the scope of the practice;
- vi. a report that identifies where the consumer's personally identifiable information was modified or deleted (excluding changes to the consumer's address or phone number) on or after the Effective Date, why the information was modified or deleted, and the scope of the practice; and
- vii. a report that identifies every extension of credit on or after the

  Effective Date where there was no determination of the

  consumer's Covered-Borrower status at the time the credit was

extended, why there was no determination of the consumer's Covered-Borrower status, and the scope of the practice.

- d. For all outstanding and future extensions of credit, maintain loan files accurately and completely and in an electronic format that allows them to be readily and accurately produced on demand.
- e. Form an internal audit group that is independent of management and reports directly to the Compliance Committee.
- f. Monitor and test compliance with the Respondent's policies and procedures, the MLA, TILA, CFPA, and this Consent Order through reviews conducted by internal audit and report all findings to the Compliance Committee for resolution. These reviews must be conducted at least quarterly so that every provision of this Consent Order and the Compliance Plan are reviewed and tested over the course of every calendar year starting on February 24, 2023.
- g. Redress any unlawful extensions of credit to Covered Borrowers made after the Effective Date in the same manner as Affected Covered Borrowers are redressed under this Consent Order.
- h. Redress any borrowers charged non-file-insurance fees after the

  Effective Date when Respondent already had a recorded lien on the

  collateral securing the loan, Respondent failed to obtain non-file-

insurance coverage, or Respondent extended an unsecured loan in the same manner as Non-File-Insurance Affected Consumers are redressed under this Consent Order.

### VI.

# Compliance Committee and Compliance Plan

### **IT IS FURTHER ORDERED** that:

- 66. The Respondent must establish a Compliance Committee that, at a minimum, includes the Chief Executive Officer, Chief Executive Officer on December 1, 2022, President, Chief Operating Officer, Chief Information Officer, and Chief Compliance Officer. Within 14 days of the Effective Date, the Respondent must provide in writing to the Bureau the name of each member of the Compliance Committee. If there is a change of membership to the Compliance Committee, the Respondent must submit the name of any new member in writing to the Bureau.
- 67. The Compliance Committee will be responsible for monitoring and coordinating Respondent's adherence to the provisions of this Consent Order. The Compliance Committee must meet at least every quarter and must maintain minutes of its meetings.
- 68. Within 75 days of the Effective Date, the Compliance Committee must review, and the Board must approve, a comprehensive compliance plan

which details the actions taken to ensure compliance with this Consent

Order, and the results and status of those actions (Compliance Plan). The

Respondent must submit the Board-approved Compliance Plan to the Bureau

within 75 days of the Effective Date. The Compliance Plan must also, at a

minimum, address:

- a. detailed steps for addressing each prohibition and action required by this Consent Order;
- b. a mechanism to ensure that the Board is kept apprised of the status of compliance actions; and
- c. specific timeframes and deadlines for implementation of the steps described above.
- 69. Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

### VII.

### Role of the Board

### IT IS FURTHER ORDERED that:

- 70. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
- 71. Although this Consent Order requires Respondent to submit certain documents for review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.
- 72. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
  - a. authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
  - b. require timely reporting by management to the Board on the status of compliance obligations; and
  - c. require timely and appropriate corrective action to remedy any material non-compliance with Board directives related to this Section.

### MONETARY PROVISIONS

### VIII.

### **Order to Pay Redress**

### **IT IS FURTHER ORDERED** that:

- 73. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account an amount not less than \$5,050,000, for the purpose of providing redress to Non-File-Insurance Affected Consumers and Affected Covered Borrowers as required by this Section.
- 74. Within 60 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Redress Plan, Respondent must revise and resubmit the Redress Plan to the Enforcement Director within 15 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

- 75. Respondent agrees to retain an independent third-party consulting firm (Consultant), and Respondent must, with the Consultant, develop and execute the Redress Plan described in this Section. The Consultant must verify to the Bureau the accuracy and completeness of every list, report, or plan set forth in this Section.
- 76. Within 60 days of the Effective Date, Respondent must produce a report of all extensions of credit made from October 3, 2016, to the Effective Date that:
  - a. identifies every extension of credit made to a consumer who was a
     Covered Borrower at the time credit was extended based upon
     information available to the Respondent;
  - b. states all iterations (current and historic) of the information below and any other information the Bureau requests:
    - i. loan unique identifier and parent loan unique identifier;
    - ii. loan date and loan product type; and
    - iii. all consumer information necessary to verify the consumer's

      Covered-Borrower status through the MLA Database for both the
      borrower and co-borrower; and
  - c. includes any additional information requested by the Bureau.

- 77. Within 60 days of the Effective Date, Respondent must produce a report of all extensions of credit where a non-file-insurance fee was charged from July 21, 2011, to the Effective Date that:
  - a. identifies every extension of credit made when Respondent:
    - had a recorded lien on the collateral securing the loan at the time
       the non-file-insurance fee was charged;
    - ii. extended an unsecured loan; or
    - iii. failed to obtain non-file-insurance coverage for the loan.
  - b. states all iterations (current and historic) of the information below and any other information the Bureau requests:
    - i. loan unique identifier and parent loan unique identifier;
    - ii. loan date, loan product type, and loan term;
    - iii. vehicle identification number for the collateral securing the loan;
    - iv. every lien the Respondent recorded on the collateral securing the loan, and for each lien, the lien date, lien received dated, and lien release date (if applicable);
    - v. amount of non-file-insurance fee charged, amount of non-file-insurance fee paid, and date of payment;

- vi. amount of interest charged on the non-file-insurance fee, amount of interest paid on the non-file-insurance fee, and date of payment; and
- vii. all information necessary to identify the borrower and coborrower; and
- c. includes any additional information requested by the Bureau.

### 78. The Redress Plan must:

- a. Specify how Respondent will identify all Non-File-Insurance Affected Consumers and Affected Covered Borrowers for the purpose of providing redress, including the source code used to identify all Non-File-Insurance Affected Consumers and Affected Covered Borrowers;
- b. Include every Non-File-Insurance Affected Consumer and Affected Covered Borrower identified by the Bureau as a consumer entitled to redress under this Section;
- c. Include the form of the letters (Redress Notices) and envelope (Redress Envelope) to be sent to Non-File-Insurance Affected Consumers and Affected Covered Borrowers notifying them of their right to redress; the Redress Notices must include a statement that the payment is made in accordance with the terms of this Consent Order; the Redress Notices must state if the consumer is a Non-File-Insurance Affected Consumer,

Affected Covered Borrower, or both (as applicable); the Redress Envelope must only contain the appropriate Redress Notice and redress check, if applicable, unless Respondent has written confirmation from the Enforcement Director that the Bureau does not object to the inclusion of other materials that must have been previously submitted to the Bureau for review and non-objection;

- d. Specify how Respondent will comply with each provision of paragraph 80;
- e. Describe the process for providing redress to Affected Consumers entitled to redress, and must include the following requirements:

i.

Prior to sending redress checks and Redress Notices, Respondent must make reasonable attempts to obtain a current address for every Affected Consumer entitled to redress using, at minimum, the National Change of Address System (NCAS). If no updated address is provided for Affected Covered Borrowers, Respondent will provide the list of Affected Covered Borrowers with their personally identifiable information to the Bureau, including their last known address to the Bureau. If no updated address is provided by NCAS or the Bureau, Respondent may mail the check to the last known mailing address;

- Respondent must mail a redress check and the Redress Notice to every Affected Consumer, or their authorized representative, entitled to redress;
- iii. Respondent must send the redress check by United States Postal

  Service first-class mail, address correction service requested, to the

  most recent address for every Affected Consumer entitled to

  redress;
- iv. If a redress check is returned to Respondent as undeliverable,
  Respondent must make additional reasonable attempts to contact
  the Affected Consumer and obtain a current address using a
  commercially available database other than the NCAS or by skiptracing, emailing, or contacting them at their last known email
  address or phone number. Respondent must identify Affected
  Consumers with undelivered checks to the Bureau within 30 days
  of the returned mail. Respondent must promptly re-mail all
  returned redress checks and the Redress Notice to the current
  addresses, if any, obtained through such reasonable attempts or
  through Bureau-provided addresses;
- v. If a redress check remains uncashed for 90 days, Respondent must make reasonable attempts to contact the Affected Consumer and

obtain a current address by skip-tracing, emailing, and calling them at their last know email address and phone number. Respondent must identify all Affected Consumers with uncashed checks for 90 days to the Bureau within 120 days of the checks being mailed. Respondent must promptly re-mail the redress check and the Redress Notice to the address provided by the consumer or the current addresses, if any, obtained through such reasonable attempts or through Bureau-provided addresses;

- vi. If a redress check that Respondent sent to an Affected Consumer entitled to redress, is returned to Respondent or remains uncashed for 90 days after the re-mailing under paragraph 78(e)(iv) and (v), Respondent must retain the redress amount for a period of one hundred and eighty (180) days from the date the check was mailed or remailed, whichever is later, and make the redress available to be claimed by such consumer upon appropriate proof of identity; and
- vii. Any redress amount remaining unclaimed after three hundred and sixty (360) days from the date the check was mailed or re-mailed, whichever is later, will be turned over to the Bureau as set forth in paragraph 82.

- 79. Respondent must mail all redress checks and Redress Notices no later than 30 days after the Enforcement Director has made a determination of non-objection to the Redress Plan.
- 80. Respondent must:
  - a. Pay redress to all Non-File-Insurance Affected Consumers, identified by the Bureau or the Respondent, in the following amounts:
    - i. all payments of non-file-insurance fees;
    - ii. all interest accrued and paid from the financing of the non-file-insurance fees; and
    - iii. the loss of use of funds of the amounts in paid in paragraph 80(a)(i)-(ii) above calculated by applying a 20% annual interest rate from every payment date of a non-file-insurance fee and interest accrued on the financing of the non-file-insurance fee to the Effective Date.
  - b. Pay redress to all Affected Covered Borrowers, identified by the Bureau or the Respondent, in the following amounts:
    - all payments made by the Affected Covered Borrower on every extension of credit when the Affected Covered Borrower was a Covered Borrower;

- ii. transportation costs for the loss of use of the vehicle securing the extension of credit in the amount of \$75 per day from the repossession date to the date the vehicle was returned or sold; and
- iii. replacement cost of the vehicle securing the extension of credit if it was sold or not returned by the Effective Date in the amount of the fair market retail value of the vehicle, determined by a dataset or methodology that receives a Bureau non-objection.
- c. Produce a report to the Bureau identifying each Non-File-Insurance
  Affected Consumer and Affected Covered Borrower and the amount of redress due broken out by the categories set forth in paragraph 80(a)(i)-(iii) and (b)(i)-(iii) within 60 days of the Effective Date.
- d. Request and take all reasonable steps to ensure the removal of all negative information Respondent furnished on every extension of credit to an Affected Covered Borrower, as identified by the Bureau or the Respondent.
- e. Buy back every extension of credit to an Affected Covered Borrower that was sold, assigned, or was otherwise being collected on by a third party and require the third party to remove all negative information furnished on every extension of credit to an Affected Covered Borrower.

- 81. At the time unclaimed redress is turned over to the Bureau, as set forth in paragraph 78(e)(vii), the Compliance Committee must submit a redress plan report to the Enforcement Director, which must include the Compliance Committee's and Consultant's review and assessment of Respondent's compliance with the terms of this Section, including:
  - a. identifying each Non-File-Insurance Affected Consumer, the amount of redress due each borrower broken out by the categories set forth in paragraph 80(a)(i)-(iii), the amount of the redress check and date the redress check was cashed, and all steps taken under paragraph 78(e) for each borrower;
  - b. identifying each Affected Covered Borrower, the amount of redress due each borrower broken out by the categories set forth in paragraph 80(b)(i)-(iii), the amount of the redress check and the date the redress check was cashed, and all steps taken under paragraph 78(e) for each borrower;
  - c. the procedures used to issue and track redress payments;
  - d. the work conducted by the Consultant to develop and implement the Redress Plan and to verify to accuracy and completeness of all lists, reports, and plans described in this Section; and
  - e. any additional information requested by the Bureau.

- 82. After completing the Redress Plan, if the amount of redress checks cashed by Affected Consumers is less than the amount of redress Affected Consumers are entitled to under this Consent Order, which may not be less than \$5,050,000, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress checks cashed by Affected Consumers and the amount of redress Affected Consumer are entitled to under this Consent Order.
- Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
- 84. Respondent may not condition the payment of any redress to any Affected

  Consumer under this Consent Order on that Affected Consumer waiving any
  right.

### IX.

### **Order to Pay Civil Money Penalty**

### **IT IS FURTHER ORDERED** that:

- 85. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, Respondent must pay a civil money penalty of \$10,000,000 to the Bureau.
- 86. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
- 87. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
- 88. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
  - a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any

insurance policy, with regard to any civil money penalty paid under this Consent Order.

89. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

# X.

# **Additional Monetary Provisions**

- 90. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
- 91. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
- 92. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
- 93. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Bureau of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is

required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

## **COMPLIANCE PROVISIONS**

## XI.

# **Reporting Requirements**

- 94. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case, no later than 14 days after the development.
- 95. Within 7 days of the Effective Date, Respondent must:
  - a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent;

- b. identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
- c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
- 96. Respondent must report any change in the information required to be submitted under Paragraph 94 at least 60 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
- 97. Within 180 days of the Effective Date, and again each year after the

  Effective Date, Compliance Committee must submit to the Bureau an
  accurate written compliance progress report (Compliance Report) that has
  been approved by the Compliance Committee, sworn to under penalty of
  perjury, which, at a minimum:
  - a. lists each applicable paragraph and subparagraph of the Consent Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
  - b. describes in detail the manner and form in which Respondent has complied with the Redress Plan and Compliance Plan; and

c. attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

# XII.

# Order Distribution and Acknowledgment

- 98. Within 7 days of the Effective Date, Respondent must submit to the Bureau an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
- 99. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
- 100. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents

- and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
- 101. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
- 102. Within 90 days of the Effective Date, the Compliance Committee must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 99-100 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 101.

## XIII.

# Recordkeeping

- 103. Respondent must create and retain the following business records:
  - a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau, all approvals by the Board and Compliance Committee

- related to the Consent Order, and all minutes of Board and Compliance Committee meetings;
- b. all documents and records necessary to demonstrate internal audit reviews, testing, and findings;
- c. all documents and records necessary to demonstrate internal audit's reporting of its findings to the Compliance Committee;
- d. all documents and records necessary to demonstrate the Compliance
   Committee's resolution for each finding reported to it by internal audit or others;
- e. quarterly reports documenting implementation and adherence to the Compliance Plan;
- f. all documentation and records pertaining to the Redress Plan, described in Section VIII above;
- g. the information and documents required by Paragraphs 65(c), 65(f)-(h),76, and 77 from the Effective Date forward prepared on at least a quarterly basis; and
- h. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
- 104. Respondent must make the documents identified in Paragraph 103 available

to the Bureau upon the Bureau's request.

## XVI.

## **Notices**

## **IT IS FURTHER ORDERED** that:

105. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "In re TMX Finance LLC, File No. 2023-CFPB-0001," and send them by overnight courier or first-class mail to the addresses below and contemporaneously by email to CFPB Enforcement Compliance@cfpb.gov:

Assistant Director for Enforcement Consumer Financial Protection Bureau ATTENTION: Office of Enforcement 1700 G Street, N.W. Washington D.C. 20552

-and-

Regional Director, Southeast Region Consumer Financial Protection Bureau 1700 G Street, N.W. Washington D.C. 20552

# XV.

# **Cooperation with the Bureau**

# IT IS FURTHER ORDERED that:

- 106. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.
- 107. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony.

## XVI.

# **Compliance Monitoring**

# **IT IS FURTHER ORDERED** that:

108. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information,

- which must be made under penalty of perjury; provide sworn testimony; or produce documents.
- 109. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
- or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section IV; or (c) compliance with the Consent Order. The person interviewed may have counsel present.
- 111. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

## XVII.

# **Modifications to Non-Material Requirements**

## **IT IS FURTHER ORDERED** that:

- 112. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.
- 113. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

# **ADMINISTRATIVE PROVISIONS**

#### XVIII.

## **IT IS FURTHER ORDERED** that:

114. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 115. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.

- 115. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
- 116. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
- 117. This Consent Order will terminate on the later of 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent, if such action is initiated within 5 years of the Effective Date. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any

provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

- 118. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted. Deadlines that fall on a weekend or federal holiday shall carryover to the following business day.
- 119. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
- 120. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under §1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

- 121. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
- 122. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 23rd day of February, 2023.

Rohit Chopra

Director

Consumer Financial Protection Bureau

# UNITED STATES OF AMERICA CONSUMER FINANCIAL PROTECTION BUREAU

File No. 2023-CFPB-0001	
	STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER
In the matter of:	
TMX Finance LLC	

The Consumer Financial Protection Bureau (Bureau) intends to initiate an administrative proceeding against TMX Finance LLC and its lending subsidiaries (Respondent), under 12 U.S.C. §§ 5563 and 5565, for (1) charging and collecting non-file-insurance fees on loans where the product provided no coverage or benefit; (2) charging and collecting non-file-insurance fees on loans when it failed to obtain non-file-insurance coverage; (3) failing to properly disclose non-file-insurance fees as part of the finance charge and annual percentage rate on certain loans; (4) extending and servicing prohibited title loans to active-duty servicemembers or their dependents; (5) extending and servicing prohibited loans that exceeded the 36% military annual percentage rate cap to active-duty

servicemembers or their dependents; (6) extending and servicing loans to active-duty servicemembers or their dependents without making the requisite disclosures; (7) extending and servicing loans to active-duty servicemembers or their dependents with prohibited arbitration provisions; and (8) extending and servicing loans to active-duty servicemembers and their dependents that demand unreasonable notice as a condition for legal action and impose onerous legal notice provisions in the case of a dispute. The Bureau has concluded that Respondent's acts or practices violated the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; the Military Lending Act, 10 U.S.C. § 987, and its implementing regulation, 32 C.F.R. part 232, (collectively, the MLA); and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536.

Respondent, in the interest of compliance and resolution of the matter, consents to the issuance of a Consent Order substantially in the form of the one to which this Stipulation and Consent to the Issuance of a Consent Order is attached (Consent Order), and which is incorporated by reference.

In consideration of the above premises, Respondent agrees to the following:

# **Jurisdiction**

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565.

## Consent

- 2. Respondent agrees to the issuance of the Consent Order, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.
- 3. Respondent agrees that the Consent Order will be deemed an "order issued with the consent of the person concerned" under 12 U.S.C. § 5563(b)(4) and agrees that the Consent Order will become a final order, effective upon its entry on the administrative docket, and will be fully enforceable by the Bureau under 12 U.S.C. §§ 5563(d)(1) and 5565.
- 4. Respondent voluntarily enters into this Stipulation and Consent to the Issuance of a Consent Order (Stipulation).
- 5. The Consent Order resolves only Respondent's potential liability for law violations that the Bureau asserted or might have asserted based on the practices described in Section IV of the Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about

them as of the Effective Date. Respondent acknowledges that no promise or representation has been made by the Bureau or any employee, agent, or representative of the Bureau, about any liability outside of this action that may have arisen or may arise from the facts underlying this action or immunity from any such liability.

- 6. Respondent agrees that the facts described in Section IV of the Consent
  Order will be taken as true and be given collateral estoppel effect, without
  further proof, in any proceeding before the Bureau to enforce the Consent
  Order, or in any subsequent civil litigation by the Bureau to enforce the
  Consent Order or its rights to any payment or monetary judgment under the
  Consent Order, such as a non-dischargeability complaint in any bankruptcy
  case.
- 7. The terms and provisions of this Stipulation and the Consent Order will be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.
- 8. Respondent agrees that the Bureau may present the Consent Order to the Bureau Director for signature and entry without further notice.

## Waivers

- 9. Respondent, by consenting to this Stipulation, waives:
  - a. Any right to service of the Consent Order, and agrees that entry of the
     Consent Order on the administrative docket will constitute notice to
     Respondent of its terms and conditions;
  - b. Any objection to the jurisdiction of the Bureau, including, without limitation, under section 1053 of the CFPA, 12 U.S.C. § 5563;
  - c. The rights to all hearings under the statutory provisions under which the proceeding is to be or has been instituted; the filing of proposed findings of fact and conclusions of law; proceedings before, and a recommended decision by, a hearing officer; all post-hearing procedures; and any other procedural right available under section 1053 of the CFPA, 12 U.S.C. § 5563, or 12 CFR Part 1081;
  - d. The right to seek any administrative or judicial review of the Consent Order;
  - e. Any claim for fees, costs or expenses against the Bureau, or any of its agents or employees, and any other governmental entity, related in any way to this enforcement matter or the Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to the Equal Access to Justice Act and the Small Business

Regulatory Enforcement Fairness Act of 1996; for these purposes,
Respondent agrees that Respondent is not the prevailing party in this
action because the parties have reached a good faith settlement;

- f. Any other right to challenge or contest the validity of the Consent Order;
- g. Such provisions of the Bureau's rules or other requirements of law as may be construed to prevent any Bureau employee from participating in the preparation of, or advising the Director as to, any order, opinion, finding of fact, or conclusion of law to be entered in connection with this Stipulation or the Consent Order; and
- h. Any right to claim bias or prejudgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

CEO, TMX Finance LLC

The undersigned Members of the Board of Managers of TMX Finance LLC each acknowledges having read this Stipulation and the Consent Order, and approves of TMX Finance LLC entering into this Stipulation.

Case 4:24-cv-00049-WMR Document 21-3 Filed 05/10/24 Page 61 of 61 2023-CFPB-0001 Document 2 Filed 02/23/2023 Page 7 of 7

O2 22 2023

Tracy Young Date

Manager, TMX Finance LLC

O2 22 20 23

Theodore Helgesen Date

Manager, TMX Finance LLC

O2 22 20 23

Date

Manager, TMX Finance LLC