

19CV506382

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO: 19CV506382

STATE OF NORTH CAROLINA *ex rel.*
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

APPROVED FINANCIAL, INC.

Defendant;

And

NORTH CAROLINA DIVISION OF
MOTOR VEHICLES;

Nominal Defendant only, named solely
for purposes of injunctive relief.

FILED
2019 MAY 15 PM 1:04
WAKE COUNTY, N.C.
BY [Signature]

COMPLAINT

MOTION FOR TEMPORARY
RESTRAINING ORDER

MOTION FOR PRELIMINARY
INJUNCTION

INTRODUCTION

This is an action brought by the State of North Carolina to enforce its consumer protection laws against illegal, unlicensed lending practices, usury, unlawful debt collection, and unfair and deceptive practices.

Plaintiff State of North Carolina, *ex rel.* Joshua H. Stein, Attorney General (“the State”), brings this case against defendant Approved Financial, Inc. (“Defendant” or “Approved Financial”), alleging that Defendant has made over 380 illegal, unlicensed consumer loans to financially distressed North Carolina borrowers at interest rates of typically between **120% to 200% per annum**—which grossly exceeds the interest rate allowed by North Carolina law for

unlicensed lenders, which is 16% per annum. Many North Carolina consumers have made tens, if not hundreds, of thousands of dollars in payments to Defendant on these usurious loans, without any realistic chance of paying them off due to the loans' exorbitant interest rates. Further, in making these usurious, unlicensed loans, Defendant has taken security interests in consumers' vehicle titles and recorded liens on the titles with the North Carolina Division of Motor Vehicles ("NC-DMV"). In collecting on these illegal loans, Defendant has routinely repossessed and sold consumers' vehicles, thereby deepening consumers' financial distress by causing them to lose their cars and depriving them of essential transportation to their jobs, homes, medical care facilities, and schools. Defendant is actively continuing to make and collect on these illegal loans and to repossess consumers' vehicles in North Carolina.

Defendant's actions violate long-established North Carolina law, including North Carolina's Consumer Finance Act, N.C. Gen. Stat. § 53-164, *et seq.*; usury laws, N.C. Gen. Stat. § 24-1.1, *et seq.*; Debt Collection Act, N.C. Gen. Stat. § 75-50, *et seq.*; Telephonic Seller Registration Act, N.C. Gen. Stat. § 66-260, *et seq.*; and Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1.

The State seeks temporary, preliminary, and permanent injunctive relief against Defendant, together with restitution, disgorgement, civil penalties, attorneys' fees, and other relief. More specifically, the State seeks to restrain Defendant from making and collecting on usurious loans to North Carolina consumers; restrain Defendant from the illegal repossession or sale of North Carolina consumers' vehicles; void Defendant's illegal loans; cancel Defendant's liens; and obtain restitution, among other relief.

PARTIES

1. Plaintiff is the State of North Carolina, acting on relation of its Attorney General, Joshua H. Stein, pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

2. Defendant Approved Financial, Inc. is a Wyoming corporation; and Defendant lists its principal place of business at: 175 SW 7th Street, Suite 1925, Miami, Florida 33130. Defendant is not authorized to conduct business in North Carolina and is not licensed as a consumer finance lender by the North Carolina Commissioner of Banks.

3. Nominal Defendant, the North Carolina Division of Motor Vehicles is a division of the North Carolina Department of Transportation, an administrative agency of the State of North Carolina, which is responsible for generating and maintaining records of motor vehicle titles and recording and releasing any associated liens recorded on motor vehicle titles. NC-DMV has no relationship to Defendant. NC-DMV is named in this action solely for the purpose of fully effectuating injunctive and equitable relief to enjoin Defendant's illegal activities, including Defendant's placement of liens on North Carolina consumers' vehicle titles and Defendant's transfer of the titles; and to effectuate the cancellation of Defendant's liens. The State seeks no monetary relief from NC-DMV. Due to the fact that NC-DMV is included as a party to this action solely for jurisdictional and equitable purposes regarding any future orders of the Court affecting automobile titles and associated liens recorded and maintained as a governmental function of NC-DMV, the term "Defendant" does not include NC-DMV; and NC-DMV is separately identified as "NC-DMV" where applicable.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein are in or affecting commerce in North Carolina.

5. The Court has personal jurisdiction over Defendant because Defendant's acts or practices—including but not limited to, the solicitation of North Carolina consumers for illegal loans; the making of loans to North Carolina consumers; the funding of loans to North Carolina consumers; the placement of liens on North Carolina consumers' vehicle titles with NC-DMV; and Defendant's collections on the loans, including Defendant's solicitation and receipt of North Carolina consumers' payments on the loans, and Defendant's repossession of North Carolina consumers' vehicles and subsequent sale of the vehicles—all occur, in whole or in substantial part, in the State of North Carolina.

6. Venue is proper in Wake County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

7. Beginning in or about 2017, Defendant began advertising and offering online loans to consumers in North Carolina and in certain other states. Defendant advertises and solicits loans over the internet at its website www.approved-financial.com, among other websites, and through telephone solicitations.

8. Defendant markets its loans to consumers in financial distress. Defendant's website advertises that Defendant offers "affordable loans" with "low interest rates" to consumers with "bad credit or no credit at all." Defendant's website states:

Seeking financial help in your time of need can be difficult, but asking for help does not have to be hard. If you need help to get through a financial emergency, contact our representatives or apply for an online loan If you have bad credit or no credit at all ...

Approved Financial provides personal loans regardless of your credit score or past credit history.

9. Defendant's website urges consumers that they only need to call Defendant at its toll-free number to receive a "free estimate" of a loan amount, and the consumer can get "instant cash ... the same day!" as Approved Financial "offers a convenient online application process," which provides consumers "with the tools to submit an application in the early morning hours or at night."

10. On its website, Defendant does not disclose its loans' interest rates or other terms. In some instances, in response to consumers' inquiries, Defendant's representatives have quoted—very rapidly over the telephone—the offered loan's *monthly* interest rate, instead of the loan's *annual* interest rate, thereby confusing some consumers and leading them to believe the loan's interest rate is far lower than it actually is.

11. When a consumer contacts Defendant in response to its solicitations, Defendant's representatives, over the phone and/or in email communications, represent that Defendant has "flexible terms, **low interest rates**, and incredible customer service," its "[loan approval] process is fast, easy and dependable" and the consumer can "**get the cash you need in your pocket today!**" In order to be considered for a loan, Defendant's representatives instruct consumers to email, text or fax Defendant the following information: (1) photographs of the exterior and interior of the consumer's vehicle, the vehicle's odometer reading, and VIN number; (2) a copy of the consumer's driver's license; (3) the front and back of the consumer's car title; and (4) proof of the consumer's address, such as a utility bill issued within the last 30 days.

12. If the consumer's vehicle is unencumbered and has a certain value, then Defendant's representatives strongly encourage the consumer to get a loan from Defendant. If a consumer indicates a need for a loan, Defendant's representatives email the prospective consumer

borrower (“borrower” or “borrowers”) loan documents, including a “Loan Agreement, Promissory Note and Security Agreement” (“Loan Agreement”), all of which are completely pre-filled out by Defendant before the documents are sent to borrowers, except for the borrower’s electronic signature. Defendant’s representatives instruct borrowers to electronically sign the loan documents where indicated by Defendant, from the borrower’s computer, and email the completed loan documents back to Defendant.

13. Defendant’s loan documents sent to borrowers include a “Lien Recording Application” (“Application”), which Defendant completely fills out before emailing it to borrowers. The Application is a standard form issued by NC-DMV that NC-DMV requires to be submitted to NC-DMV in order for a lien to be placed on a vehicle titled in North Carolina. Among other information Defendant fills out on the Application, Defendant supplies borrowers’ residential address—which, for North Carolina borrowers, is in North Carolina—and lists Defendant as a lien holder against borrowers’ vehicles—which are titled in North Carolina. Defendant’s representatives instruct borrowers, either over the phone or by email, to go to their nearest NC-DMV office, sign and notarize the Application at the NC-DMV office before an NC-DMV official for recording by NC-DMV.

14. After Defendant receives the electronically signed loan documents from the borrower by email or facsimile, and after Defendant’s lien is placed on the borrower’s vehicle title, Defendant sends the borrower the loan funds. In some instances, Defendant has wired funds from Defendant’s bank account—which is or has been held at BB&T in Winston-Salem, North Carolina—directly to the borrower’s North Carolina bank account to fund the loans.

15. In other instances—in an express attempt to purposefully, but ineffectively, evade North Carolina law—Defendant wires loan funds to the closest Wal-Mart store across the North

Carolina border in South Carolina, and instructs North Carolina borrowers to drive to the Wal-Mart store to pick up their loan funds. In instructing borrowers to drive to South Carolina, Defendant has told borrowers that it is “illegal [for Defendant] to do a loan in North Carolina” and that Defendant “has to have a paper trail if [Defendant] gets audited, [because authorities] want to see that [borrowers] are picking up this money on South Carolina soil.”

16. Defendant has no employees in any Wal-Mart store in South Carolina, no business offices or other presence in South Carolina, or in any other states bordering North Carolina. Instead, on Defendant’s website, on Defendant’s loan documents issued to borrowers, in Defendant’s communications with consumers, and in documents filed with the Wyoming Secretary of State and to the South Carolina Board of Financial Institutions, Defendant represents that its principal and sole place of business is in Miami, Florida at 175 SW 7th Street, Suite 1925.

17. Upon information and belief, contrary to its representations, Defendant has no meaningful place of business in Miami, Florida; and Defendant has purposefully concealed its actual place(s) of business from state regulatory authorities, consumers, and financial institutions. Upon information and belief, Defendant’s purported place of business in Miami, Florida is actually a “virtual office.” In subscribing to a virtual office service at the named Miami location, upon information and belief, in reality Defendant has the use of a single office consisting of 115 square feet, use of a conference room in the building for 4 hours a month, use of a receptionist, and mail forwarding services—which is wholly insufficient and is not intended for conducting Defendant’s real loan operations.

18. Upon information and belief, Defendant’s loan business is actually and primarily conducted, in large part, from undisclosed locations in and around Lake County, Illinois, where Defendant’s sole owner, President, Secretary and Treasurer, Jeremy B. Tolan (“Tolan”) lives, and

Defendant's loan business—including but not limited to advertising, lead generation, telephone sales solicitations, communications with borrowers, and collections activities—is conducted, at least in part, through other inter-related corporate entities owned and/or controlled by Tolan, Tolan's father Richard P. Tolan, and/or Tolan's brother Joshua M. Tolan, all of whom operate one or more related or other consumer loan companies, together with Peter C. Pochrnich, all of whom are residents of Illinois.

19. In a further attempt to purposefully evade, ineffectively, North Carolina law, Defendant's Loan Agreements with North Carolina borrowers require borrowers to sign a statement stating that the North Carolina borrower is "declar[ing] under penalty of perjury under the laws of the United States of America that you are signing this agreement in the state of South Carolina," and that the borrower "physically traveled to the state of South Carolina to execute [the] Loan." These statements, which are contained within Defendant's Loan Agreements, which are prepared and drafted by Defendant—are false.

20. Defendant knows these statements that it requires North Carolina borrowers to sign in order to get a loan—under a supposed "penalty of perjury"—are false. No North Carolina borrower has ever signed or executed any Loan Agreement of Defendant, or any other loan document of Defendant, at a Wal-Mart store or elsewhere in South Carolina, or in any other state other than North Carolina. Instead—as instructed to do by Defendant—every North Carolina borrower has signed his or her Loan Agreement electronically at his or her personal computer in the borrower's home in North Carolina, or from the home of a friend or family member in North Carolina, from a computer at the borrower's workplace in North Carolina, or other location in North Carolina.

21. Contrary to Defendant's representations, virtually every aspect of Defendant's loan transactions with North Carolina borrowers—and in some instances, **all** aspects of the loan transactions—and Defendant's subsequent collection activities, occur in North Carolina:

- (a) Consumers receive Defendant's loan solicitations, either over the internet or by telephone, in their homes or in other locations in North Carolina.
- (b) Defendant's communications to and from prospective borrowers regarding the offered loan and loan approval occur entirely over email, telephone or facsimile while the borrowers remain in their homes or in other locations in North Carolina.
- (c) Defendant transmits the loan documents to borrowers via email or facsimile, which borrowers access from their home computers, telephones, or other computers in North Carolina.
- (d) As instructed by Defendant, borrowers sign the loan documents electronically from their home computer, telephone, or other computer while the borrowers are located in North Carolina, and borrowers transmit the signed loan documents to Defendant via email or facsimile from their home computer, telephone, or other computer in North Carolina.
- (e) Borrowers travel to their local NC-DMV office in North Carolina to execute Lien Recording Applications, which provide Defendant with a lien on borrowers' vehicle titles, and the liens are recorded by NC-DMV.
- (f) Borrowers' vehicles are, and remain, titled in the State of North Carolina.
- (g) Defendant contacts borrowers by email and telephone—while borrowers are in their homes, workplaces, and other locations in North Carolina—to collect

payments on the loans, including emailing borrowers payoff quotes on the loans.

- (h) Borrowers make payments on Defendant's loans from their homes, workplaces, or from other locations in North Carolina by making payments via: MoneyGram; telephone; wire; or personal check, certified check, cashiers' check, or money order mailed to Defendant's ostensible office in Miami, Florida.
- (i) Borrowers' payments are made by the transmission of funds from borrowers' bank accounts located in North Carolina and are, or have been, deposited in Defendant's bank account at BB&T, which is located in Winston-Salem, North Carolina.
- (j) If borrowers default or are late with a payment, Defendant seizes and repossesses borrowers' vehicles from borrowers' homes, workplaces, or other locations in North Carolina, and Defendant sells the vehicles at auction houses located in North Carolina.

22. Based on NC-DMV lien records, Defendant has made over 380 loans to North Carolina borrowers, which Defendant has secured by placing liens on borrowers' vehicle titles. Upon information and belief, the loan amounts typically range in amounts from \$500 to \$5,000. Based on the loan documents available to the State, the interest rates on Defendant's loans range from at least **120% to 200% per annum**. Upon information and belief, the loan term for most of Defendant's loans ranges between 12 to 24 months.

23. Defendant is continuing to solicit North Carolina borrowers for illegal loans, to make loans to North Carolina borrowers, to collect on the loans, and to repossess North Carolina borrowers' vehicles when borrowers default on the usurious loans or are late with a payment.

24. Upon information and belief, in repossessing and selling North Carolina borrowers' vehicles, in some instances, Defendant has: (a) repossessed borrowers' vehicles despite the borrower's lack of default; (b) failed to provide proper, or any, notice of disposition of the repossessed vehicle; (c) failed to sell the repossessed vehicle in a commercially reasonable manner; (d) failed to send borrowers notices of deficiency or surplus post-sale; (e) failed to account to or provide borrowers surpluses due and owing; and/or (f) failed to respond to various information requests from borrowers about their accounts.

CLAIMS FOR RELIEF

CLAIM I VIOLATIONS OF THE CONSUMER FINANCE ACT, N.C. GEN. STAT. § 53-164, *et seq.*

25. The State incorporates by reference the preceding allegations.

26. The North Carolina Consumer Finance Act ("CFA"), N.C. Gen. Stat. § 53-166(a), requires that any person engaged in the business of lending cannot "directly or indirectly" contract for or receive consideration greater than that allowed by Chapter 24 of the North Carolina General Statutes without being licensed by the North Carolina Commissioner of Banks as a consumer finance lender.

27. The maximum rate allowed by Chapter 24, N.C. Gen. Stat. § 24-1.1, on contract loans of \$25,000 or less, is 16% per annum.

28. The CFA provides an exception to the 16% cap on interest rates established by Chapter 24, and allows consumer finance lenders licensed by the Commissioner of Banks to make consumer loans of up to \$15,000 at interest rates permitted by the CFA.

29. Under the CFA, N.C. Gen. Stat. § 53-176, the maximum interest rate that may be charged by *licensed* lenders to North Carolina consumer borrowers on personal loans of up to \$15,000 is 30% per annum.

30. In an effort to address “illicit lending schemes” devised by lenders seeking to evade North Carolina usury laws, in 2006, the North Carolina General Assembly amended the CFA to add a new provision, N.C. Gen. Stat. § 53-166(b), which expressly provides that the prohibitions of N.C. Gen. Stat. § 53-166(a) “*apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.*” (Emphasis added.)

31. Defendant has engaged in the business of lending and is therefore subject to the provisions of the CFA, including N.C. Gen. Stat. § 53-166. Defendant is not licensed as a consumer finance lender by the Commissioner of Banks, and has never been so licensed.

32. Defendant has made, and is regularly making, consumer loans to North Carolina borrowers at rates far in excess of the allowable limits in the CFA.

33. The CFA, N.C. Gen. Stat. § 53-166(d), expressly provides that loans made in violation of the CFA are “**void,**” and further provides that “**any party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the [illegal] loan.**” (Emphasis added.)

34. Notwithstanding Defendant’s attempt to falsely characterize borrowers’ loan documents as having been signed in South Carolina or ostensibly governed by South Carolina law, the CFA, N.C. Gen. Stat. § 53-190(a), makes manifest that loans made to North Carolina borrowers

are governed by North Carolina law—regardless of any language used in the loan documents—where *any aspect* of the loan transaction occurs within North Carolina; and that any such loans made in violation of North Carolina law are *unenforceable*:

No loan contract made outside this State in the amount or of the value of fifteen thousand dollars (\$15,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

35. Defendant's loans are unenforceable pursuant to N.C. Gen. Stat. § 53-190(a) because the following contractual activities, among others, undisputedly occur in North Carolina:

- (a) All solicitations to North Carolina borrowers by Defendant have been made through the internet, telephone, and other means which have targeted and reached North Carolina borrowers in their homes and other locations in North Carolina;
- (b) All communications by Defendant with North Carolina borrowers regarding the loans have been conducted over the internet or by telephone with borrowers in their homes or while such borrowers were located in North Carolina;
- (c) Defendant transmitted loan documents to North Carolina borrowers by email or by facsimile to borrowers while the borrowers were located in North Carolina;
- (d) North Carolina borrowers were requested by Defendant to acknowledge acceptance of the loans by electronically signing and returning the loan documents via email, facsimile or text, and borrowers signed and returned the loan documents from borrowers' computers, telephones, or facsimile machines located in borrowers' homes or elsewhere in North Carolina;

- (e) Defendant has disbursed loan funds to some North Carolina borrowers by wiring funds directly from Defendant's bank located in North Carolina to borrowers' banks and bank accounts located in North Carolina; and
- (f) Defendant has received loan payments from North Carolina borrowers which were transmitted from borrowers' bank accounts located in North Carolina which were, in many instances, deposited in Defendant's bank account located in North Carolina.

36. The CFA prohibits deceptive acts or practices, both with regard to the making of loans and collecting or attempting to collect money alleged to be due under loans subject to the CFA, pursuant to N.C. Gen. Stat. § 53-180(g).

37. Defendant's loan activities are prohibited by the CFA, and the State is entitled to injunctive relief prohibiting Defendant from offering or making any consumer loans to North Carolina resident borrowers in violation of the CFA, and from collecting on or retaining any principal or charges collected from borrowers. Further, Defendant's loans to North Carolina borrowers are void, and the State is entitled to injunctive relief cancelling Defendant's illegal loan contracts and illegal liens placed on borrowers' vehicle titles.

CLAIM II
VIOLATIONS OF THE USURY LAWS,
N.C. GEN. STAT. § 24-1.1, et seq.

38. The State incorporates by reference the preceding allegations.

39. The usury laws of North Carolina make manifest that the protection of North Carolina borrowers from illegal, usurious loans is a "paramount public policy" of the State, as N.C. Gen. Stat. § 24-2.1(g) provides: "**It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws.**"

40. North Carolina usury law, N.C. Gen. Stat. § 24-1.1, provides that the maximum interest rate that may be charged on contract loans of \$25,000 or less is 16% per annum.

41. North Carolina's usury laws mandate that they are to be applied to protect North Carolina resident borrowers, "**regardless of the situs of the contract.**" N.C. Gen. Stat. § 24-2.1 provides:

- (a) For purposes of this Chapter, any extension of credit *shall be deemed to have been made in this State*, and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this State, or *if such borrower accepts or makes the offer in this State to borrow, regardless of the situs of the contract as specified therein.*
- (b) Any solicitation or communication to lend, oral or written, *originating outside of this State, but forwarded to and received in this State by a borrower who is a resident of this State, shall be deemed to be an offer or agreement to lend in this State.*
- (c) Any solicitation or communication to borrow, oral or written, *originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in this State.*

(Emphasis added.)

42. Thus, under the express statutory provisions of Chapter 24, Defendant's consumer loans to North Carolina borrowers are made in North Carolina, and are governed by North Carolina law. Defendant's loans are usurious because the rates and charges of such loans grossly exceed the rates and charges permitted by North Carolina law.

43. Pursuant to N.C. Gen. Stat. § 24-2, the penalty for usury is the forfeiture of interest on the loan, together with the recovery of twice the amount of interest paid by the borrower. Accordingly, pursuant to N.C. Gen. Stat. § 24-2, the interest on any loans made, held, or collected

on by Defendant should be forfeited, and Defendant should be required to disgorge twice the amount of all interest collected from North Carolina borrowers on such loans.

CLAIM III
VIOLATIONS OF THE DEBT COLLECTION ACT,
N.C. GEN. STAT. § 75-50, *et seq.*

44. The State incorporates by reference the preceding allegations.

45. Defendant's collection activities, including Defendant's demands for payment and collections on its loans made to North Carolina borrowers, including its repossessions and sales of North Carolina borrowers' vehicles, constitute violations of the Debt Collection Act, N.C. Gen. Stat. § 75-50, *et seq.*

46. Among other actions, Defendant's attempted collections and receipt of payments on loans made to North Carolina borrowers, where such loans were illegal and unenforceable, constituted false representations of Defendant's rights and unfair debt collection practices, in violation of N.C. Gen. Stat. §§ 75-51 and 75-54.

47. Pursuant to N.C. Gen. Stat. § 75-56, violations of the Debt Collection Act constitute unfair or deceptive acts or practices proscribed by N.C. Gen. Stat. § 75-1.1; and remedies under the Act are cumulative and in addition to those otherwise available.

CLAIM IV
VIOLATIONS OF THE TELEPHONIC SELLER REGISTRATION ACT,
N.C. GEN. STAT. § 66-260, *et seq.*

48. The State incorporates by reference the preceding allegations.

49. North Carolina's Telephonic Seller Registration Act, N.C. Gen. Stat. §§ 66-260 and 66-261, requires any non-exempt person engaged in telephonic solicitations directed to North Carolina consumers to: (a) register with the North Carolina Secretary of State not less than 10 days before commencing telephone solicitations; (b) provide specified information on a form provided

by the Secretary of State that contains the notarized signature of each principal of the telephonic seller; and (c) pay a \$100.00 filing fee.

50. Pursuant to N.C. Gen. Stat. § 66-261(c), a registration of a telephonic seller is valid for one year from the effective date of the provision of all required information, and may be renewed annually by making the filing required by N.C. Gen. Stat. § 66-262, and paying the filing fee of \$100.00.

51. Defendant is a “telephonic seller” as defined in N.C. Gen. Stat. § 66-260(11), as Defendant has caused directly, or through employees or agents, telephone solicitations or attempted telephone solicitations to occur, and Defendant is not exempt from the Act.

52. Defendant has engaged in violations of the Telephonic Seller Registration Act, N.C. Gen. Stat. § 66-260, *et seq.*, by failing to register with the North Carolina Secretary of State as a telephonic seller; by failing to provide the North Carolina Secretary of State with the information mandated by N.C. Gen. Stat. § 66-262; by failing to pay the filing fee of \$ 100.00; and by failing to register in each year Defendant has engaged in telephonic solicitations.

53. N.C. Gen. Stat. § 66-266(a) provides that any violation of the Telephonic Seller Registration Act “shall constitute an unfair and deceptive trade practice in violation of N.C. Gen. Stat. § 75-1.1.”

54. N.C. Gen. Stat. § 66-266(c) provides that the remedies and penalties available under the section shall be supplemental to others available under the law.

55. Pursuant to N.C. Gen. Stat. § 66-266(b), in an action by the Attorney General against a telephonic seller for violation of the Telephonic Seller Registration Act, or for any other act or practice by a telephonic seller constituting a violation of N.C. Gen. Stat. § 75-1.1, the Court

may impose civil penalties of up to \$25,000 for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

CLAIM V
VIOLATIONS OF THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACT,
N.C. GEN. STAT. § 75-1.1

56. The State incorporates by reference the preceding allegations.

57. In the course of offering, arranging, making and collecting on its illegal consumer loans, Defendant has engaged in unfair and deceptive acts or practices in trade or commerce in North Carolina, in violation of N.C. Gen. Stat. § 75-1.1.

58. Defendant's unfair and deceptive acts or practices include, but are not limited to, the following:

- (a) Engaging in misrepresentations and omissions of material facts in soliciting and making loans to North Carolina consumers, including but not limited to the following:
 - (i) Misleading numerous consumers regarding the loans' interest rates, by verbally quoting to consumers the monthly interest rates on the loans, rather than the loans' annual interest rates; and
 - (ii) Representing that Defendant's loans have "low interest rates," when in truth and in fact, the interest rates of Defendant's loans typically range from 100% to 200% per annum.
- (b) Engaging in an unfair business enterprise of offering, making, and collecting on consumer loans to financially distressed North Carolina borrowers, when such loans are in gross violation of the usury laws of this State and violate the public policy of this State.

- (c) Making and collecting on loans at oppressive and unfair rates, and making such loans without accounting for borrowers' ability to repay.
- (d) Taking North Carolina borrowers' car titles as security for the loans, when the loans are illegal and are void from inception.
- (e) Purposefully, and knowingly, engaging in a subterfuge to attempt to evade North Carolina lending and consumer protection laws by falsely asserting that the online loans made to North Carolina resident borrowers are made in South Carolina and are not subject to North Carolina law, when in fact, North Carolina law governs the loans.
- (f) Engaging in prohibited collections activities, including seeking and collecting payments on loans that are illegal and unenforceable under North Carolina law, and repossessing and selling North Carolina borrowers' vehicles in collecting on Defendant's illegal loans, thereby causing further harm to North Carolina borrowers.
- (g) In repossessing and selling North Carolina borrowers' vehicles, in some instances: (i) repossessing borrowers' vehicles despite the borrower's lack of default; (ii) failing to provide proper, or any, notice to borrowers of disposition of the repossessed vehicle; (iii) failing to sell repossessed vehicles in a commercially reasonable manner; (iv) failing to send borrowers notices of deficiency or surplus post-sale; (v) failing to account to or provide borrowers surpluses due and owing; and/or (vi) failing to respond to various information requests from borrowers about their accounts, all in violation of the Uniform Commercial Code, N.C. Gen. Stat. §§ 25-9-601, *et seq.*

(h) Engaging in violations of the Consumer Finance Act, N.C. Gen. Stat. § 53-164, *et seq.*; usury laws, N.C. Gen. Stat. § 24-1.1, *et seq.*; Debt Collection Act, N.C. Gen. Stat. § 75-50, *et seq.*; Telephonic Seller Registration Act, N.C. Gen. Stat. § 66-260, *et seq.*; and Uniform Commercial Code, N.C. Gen. Stat. § 25-9-615; as set forth in the preceding paragraphs.

59. Pursuant to N.C. Gen. Stat. § 75-14, the Attorney General has the right to obtain injunctive relief to restrain Defendant from further violations of N.C. Gen. Stat. § 75-1.1.

60. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain disgorgement of illegal proceeds and refunds to North Carolina borrowers of moneys obtained by Defendant as a result of Defendant's violations of N.C. Gen. Stat. § 75-1.1.

61. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain civil penalties for Defendant's willful violations of North Carolina law.

**REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION UNDER N.C. GEN. STAT. § 75-14**

62. The State incorporates by reference the preceding paragraphs.

63. In light of the evidence that Defendant engaged in illegal lending and collections activities and unfair and deceptive practices, as set forth in this complaint and the attached exhibits and affidavits, the State requests that Defendant, its owner(s), officers, agents, employees, representatives, and successors and assigns, and any persons in active concert or participation with any of the foregoing, be enjoined as set forth in detail in paragraphs 65-67 of this Complaint.

64. Unless Defendant is restrained and enjoined, Defendant will continue to violate North Carolina law and to financially harm citizens of North Carolina.

PRAYER FOR RELIEF

WHEREFORE, THE STATE PRAYS THE COURT for the following relief:

65. That Defendant, together with its owner(s), officers, agents, employees, representatives, successors and assigns, and any persons in active concert or participation with any of the foregoing, be temporarily restrained, under N.C. Gen. Stat. § 75-14, from:

- (a) Engaging in unfair or deceptive practices in violation of N.C. Gen. Stat. § 75-1.1, including but not limited to the acts and practices listed above;
- (b) Engaging in illegal, unlicensed lending in North Carolina or to North Carolina resident borrowers in violation of the Consumer Finance Act, N.C. Gen. Stat. § 53-164, *et seq.*, and Chapter 24 of the North Carolina General Statutes;
- (c) Advertising, soliciting, offering, making, arranging, or collecting on consumer loans, including loans secured by vehicle titles, to North Carolina consumers;
- (d) Repossessing or selling any vehicle currently or previously owned by a North Carolina consumer or located in the State of North Carolina on which Defendant has or previously had a lien; and to the extent any such vehicle(s) has been repossessed by Defendant but not yet sold, that such vehicle immediately be returned to the North Carolina consumer;
- (e) Placing liens on vehicles or vehicle titles of North Carolina consumers, and from transferring such titles, except to transfer titles back to the consumer;
- (f) Destroying, removing, transferring, erasing, or otherwise disposing of any business or financial records relating to Defendant's business activities, including but not limited to any business or financial records relating to any

North Carolina consumer or monies obtained from any North Carolina consumer; and

(g) Transferring, withdrawing, concealing, disposing or encumbering any of Defendant's assets without permission of the Court.

66. That Defendant be ordered to produce the following records no later than three days prior to the preliminary injunction hearing or within ten days of entry of a temporary restraining order, whichever is sooner:

(a) A verified list of the names and addresses of all North Carolina consumer borrowers to whom Defendant has made loans, together with an accounting or itemization of: (i) the date of the loan; (ii) the loan amount; (iii) all payments received from the borrower; (iv) whether the borrower's loan is or was secured by the borrower's vehicle or vehicle title; (v) whether the borrower's vehicle has been repossessed; (vi) the identity and contact information of the agent that repossessed the vehicle, if repossessed; (vii) the date or scheduled date of the vehicle's resale, if resold, together with identification of the auction house and location of resale; (viii) identification of the purchaser; (ix) the amount paid by the purchaser; and (x) the amount of any surplus, and if any, whether such surplus was paid to the borrower, the amount of any such surplus paid and date of payment.

(b) Identification, including the name, address and state of incorporation, of: (i) every entity related to Defendant, including any entity under common ownership or control of Defendant, of the owner of Defendant, or of any immediate family member of the owner of Defendant; and (ii) every entity that

has participated in or has been involved in any way with Defendant's loan business, including but not limited to: management or consulting, advertising, lead generation, solicitation, telemarketing, underwriting, approval, funding, or collection of any consumer loans, together with identification of the owners of such entities.

- (c) The name and address of every bank at which Defendant maintains corporate deposit, checking or other bank accounts, and the account number for each such account.
- (d) A statement of the current monetary balance in each such account held by Defendant, together with a copy of the most recent bank statement for each such account.
- (e) A current balance sheet and the most recent profit and loss statement, and any other statement showing the current assets and liabilities of Defendant.

67. That the Court enter an order temporarily, preliminarily and permanently authorizing NC-DMV to reject, block and/or cancel any and all liens currently recorded, in the process of being recorded, or sought to be recorded on North Carolina vehicle titles by Defendant, including blocking any transfers of such titles by Defendant.

68. That the Court schedule a hearing within ten days to determine whether the Temporary Restraining Order, or some reasonable modification thereof, should not be continued in the form of a Preliminary Injunction pending the final adjudication of this cause.

69. That upon final adjudication of this cause, the terms of the Preliminary Injunction continue in the form of a Permanent Injunction, pursuant to N.C. Gen. Stat. § 75-14.

70. That Defendant's liens on North Carolina consumers' vehicle titles be cancelled; and that Defendant, its owner(s), officers, agents, employees, representatives, successors and assigns, and any persons in active concert or participation with any of the foregoing, be ordered to surrender any North Carolina vehicle titles, and/or any and all titles to vehicles owned by a North Carolina resident consumer, back to the North Carolina consumer.

71. That all usurious loans made to North Carolina consumers by Defendant be declared void pursuant to N.C. Gen. Stat. § 53-166(d), and all money collected by Defendant pursuant to such unlawful loans be refunded or disgorged, including principal, interest, fees, resale proceeds, and any other charges or proceeds.

72. That all loans made or collected on by Defendant at rates in excess of the interest rates allowed by Chapter 24 of the General Statutes, be declared usurious and Defendant be ordered to forfeit all interest and to refund two times the interest collected from North Carolina borrowers.

73. That all loans made or collected on by Defendant in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*, be cancelled pursuant to N.C. Gen. Stat. § 75-15.1, and that Defendant be ordered to refund all money collected from such loans.

74. That Defendant be ordered to account for and refund all surpluses collected and retained in connection with sales of North Carolina borrowers' vehicles, in violation of the Uniform Commercial Code, N.C. Gen. Stat. § 25-9-615.

75. That Defendant be ordered to pay civil penalties of up to \$5,000.00 for each violation of the Unfair and Deceptive Trade Practices Act, pursuant to N.C. Gen. Stat. § 75-8 and § 75-15.2.

76. That Defendant be ordered to pay civil penalties of up to \$4,000.00 for each violation of the Debt Collection Act, pursuant to N.C. Gen. Stat. §§ 75-56, 75-8, and 75-15.2.

77. That Defendant be ordered to pay civil penalties of up to \$5,000.00 for each violation of the Telephonic Seller Registration Act, pursuant to N.C. Gen. Stat. §§ 66-266, 75-8, and 75-15.2.

78. That Defendant be ordered to pay civil penalties of up to \$25,000 for each violation of the Telephonic Seller Registration Act involving North Carolina purchasers or prospective purchasers who are 65 years of age or older, pursuant to N.C. Gen. Stat. § 66-266.

79. That Defendant be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1.

80. That the costs of this action be taxed to Defendant.

81. That the State be granted such other and further relief as may be just and proper.

This the 15th day of May, 2019.

JOSHUA H. STEIN
NORTH CAROLINA ATTORNEY GENERAL

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