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January 15, 2020

Mr. Mark Brnovich
Office of Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004

Mr. Keith Schraad, Superintendent
Department of Financial Institutions
100 N. 15th Avenue, Suite 261
Phoenix, AZ 85007

Delivered electronically

Re: Rent-a-Bank Online Lending in Violation of Arizona Consumer Protections

Dear Attorney General Brnovich and Superintendent Schraad:

We write to request your leadership in enforcing Arizona’s Consumer Lender law and usury cap with online out-of-state lenders that claim to be exempt from your jurisdiction by laundering their loans through banks to make loans at triple-digit rates. High-cost lending harms the economy, traps families in debt, and undermines fair competition with licensed lenders that follow the law.

Arizona’s Consumer Lender law has a tiered rate cap for loans up to \$10,000, with annual rates limited to 36 percent for loans up to \$3,000 and 24 percent for loans over \$3,000 up to \$10,000. For loans made in the Regulatory Sandbox Program, the Consumer Lender law rate cap applies to loans up to \$15,000. In addition, lenders can charge a one-time Administrative Fee of 5 percent of the loan up to a total of \$150. Combining the interest cap and fee, the maximum rate in Arizona for a \$2,000 two-year loan is 41 percent. Some online lenders are charging much higher rates to Arizona consumers.

OppLoans Charges 160% APR

For example, Opportunity Financial LLC (“OppLoans”), based in Chicago, Illinois, offers installment loans of \$400 to \$4,000 with terms of 9-18 months at 160% APR. (See <https://www.opploans.com/licenses/arizona/>). A \$3,000 OppLoans loan at 160% APR repaid over 12 months results in total paid of \$6,859.20. The lender claims that loans are made by FinWise Bank, located in Utah, and “serviced” by OppLoans. These loans cost far more than Arizona law allows.

Loans are offered through the OppLoans website, not the FinWise Bank website. OppLoans markets the loans, services them and carries out collections. This arrangement has all the hallmarks of the rent-a-bank scheme where high-cost lenders evade state usury laws by using banks to originate the loan in hopes of being able to cloak their loans in bank powers.¹ We believe that a close regulatory

¹ Consumer Federation of America, “Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury,” March 30, 2004 <https://consumerfed.org/reports/unsafe-and-unsound-payday-lenders-hide-behind-fdic->

examination of this lender will find that (1) OppLoans is soliciting, advertising, or procuring consumer loans in excess of Arizona's interest rate limits; (2) FinWise Bank immediately (or shortly thereafter) sells the loans to OppLoans, which is subject to Arizona's rate limits on new interest that it charges after the bank sells the loans; and (3) OppLoans is the true lender and is covered by Arizona's usury law because it has the predominant economic interest in these loans to Arizona consumers. OppLoans makes loans directly under state licenses in states that permit 160% APR loans and only makes loans via FinWise Bank in states where its product is illegal. OppLoans may not evade Arizona's usury laws through arrangements with unregulated lenders or through contractual provisions.

Opportunity Financial LLC is licensed in Arizona as a Collection Agency (CA-0945745), not as a Consumer Lender. We believe that this violates the requirements of A.R.S. § 6-601(5) which defines a Consumer Lender that must be licensed as "...a person that advertises to make or procure, solicits or holds itself out to make or procure, or makes or procures consumer lender loans to consumers in this state." Either OppLoans is itself the lender or it is procuring, soliciting or holding itself out to procure consumer lender loans in Arizona. Either role requires a license. Arizona's Consumer Lender law sets the usury cap at up to 36% per year and provides other consumer protections and loan requirements.²

We urge you to conduct an investigation of OppLoans to require the company to obtain a Consumer Lender license and to comply with the protections of the Consumer Lender law, including the rate and fee cap. Unlicensed loans should be ruled null and void with refunds to borrowers.

Elevate Credit's Rise Loans and Elastic Credit are Usurious

Elevate Credit, Inc., headquartered in Fort Worth, Texas, offers two types of high-cost loans in Arizona without holding a state license or complying with the Consumer Lender law's consumer protections. Previously, Elevate's Rise Credit of Arizona subsidiary held Consumer Lender license #0927453, starting August 19, 2014, but apparently is no longer licensed to do business in Arizona. Elevate's Elastic product does not appear to have ever been licensed by DFI. Elevate offers Rise installment loans under state licenses in 13 states and via the "bank model" in 16 states. Elevate/Rise does not lend in states that vigorously defend their usury laws and consumer protections, such as Arkansas, Colorado, and North Carolina.³

Elevate Credit, Inc. uses two banks to offer credit in Arizona. Elevate uses Republic Bank and Trust in Kentucky to offer a line of credit via the Elastic product. Elevate does not disclose an APR to consumers for its line of credit product but its SEC filing provides an example of a \$2,500 advance

[bank-charters-to-peddle-usury/](#) See, also, CFA and U.S. PIRG, "Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections," November 2001 <https://consumerfed.org/pdfs/paydayreport.pdf>

² A.R.S. §6.601 *et seq.*

³ <https://www.risecredit.com/loans-by-state/> viewed 11/22/19.

with an effective APR of 109%.⁴ The National Consumer Law Center has calculated the permissible rate in Arizona for a \$2,000 line of credit repaid over two years, including 36% interest and the 5% Administrative Fee permitted by Arizona's Consumer Lender law to be 41% APR.⁵ The permissible rate for a \$2,500 advance is in the same range.

Elevate uses FinWise Bank in Utah to offer Rise installment loans in Arizona. Installment loans of \$500 to \$5,000 are offered with repayment in seven to twenty-six months at an APR of 99% to 149%. A cost example of a \$2,000 loan at 149.36% APR and 26 bi-weekly payments of \$150 results in repayment of \$3,900.⁶

We believe that Elevate's lending model violates Arizona law for the same reasons described above.

Nonbank Lenders Rent Bank Charters to Evade State Protections

Lenders are turning to the rent-a-bank model as states strengthen their usury laws. California recently enacted AB 539, a law to apply a usury cap to loans up to \$10,000. For loans of \$2,500 to \$10,000, the rate cap will be 36% plus the federal funds rate, currently 2.5%. The current law only caps rates on loans up to \$2,500. A trio of publicly traded high-cost lenders are on record with plans to switch to rent-a-bank schemes to evade this new law.

One of those companies, operating under the Speedy Cash brand, makes title loans secured by consumers' vehicles in Arizona under the Secondary Motor Vehicle Finance Transaction law at rates up to 204% APR. That company, CURO Group Holdings Corp from Wichita, Kansas, discussed plans to evade the new California law on an Earnings Call.⁷

In 2020, Arizona voters may have the opportunity to enact the Arizona Fair Lending Act to cap rates on title loans at 36 percent. If Arizona law enforcement agencies fail to take action to stop rent-a-bank lending, it is likely that Speedy Cash and other title lenders now charging triple-digit rates as Sales Finance licensees will change business models to continue charging high rates. Even if Arizona law stays unchanged, Speedy Cash and other lenders that are moving to rent-a-bank schemes in California may extend them to other loan products that are presently illegal in Arizona.

Arizona has taken steps in the past to enforce Arizona's usury law against out-of-state online lenders. The Arizona Department of Financial Institutions issued an updated Regulatory Alert in

⁴ Elevate Form 10Q, Sept. 30, 2018, at 43,

<http://otp.investis.com/generic/sec/sec-show.aspx?ipage=13054119&Cik=0001651094&Type=PDF>

⁵ National Consumer Law Center Issue Brief, "Stop Payday Lenders' Rent-A-Bank Schemes,"

<https://www.nclc.org/images/Rent-a-bank-one-pager.pdf>

⁶ <https://www.risecredit.com/how-online-loans-work/#WhatItCosts> select Arizona, 11/22/2019

⁷ CURO Group Holdings Cop. Earnings call August 2, 2019 at <https://seekingalpha.com/article/4281081-curo-group-holdings-corp-curo-ceo-don-gayhardt-q2-2019-results-earnings-call-transcript> (paywall). Key statement quoted in National Consumer Law Center Issue Brief, "Payday Lenders Plan to Evade California's New Interest Rate Cap Law Through Rent-A-Bank Schemes," October 2019,

https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/ib-rent-a-bank-plans-oct2019.pdf

2016 that clarified that “any consumer lender (including former payday lenders) issuing consumer lender loans must be licensed in compliance with A.R.S. §§6-601 *et seq.*” The Alert goes on to state: “The Department has received complaints indicating that Arizona consumers are offered online payday loans or consumer loans by companies that are not licensed by the Department, some of which are located in other states or claim to be owned by Indian tribes, and that charge Arizona consumers an interest rate well in excess of that permitted under Arizona law. **These companies are not in compliance with Arizona law.**” (Emphasis added.)⁸

Arizona Record of Enforcing Usury Laws Against Out-of-State Online Lenders

We appreciate that the Arizona Attorney General’s Office filed a civil lawsuit against CashCall, Inc. et. al. for a “coordinated scheme to market, fund, service, and collect payments on high-interest, illegal loans to Arizona consumers utilizing a sham loan program that disguised the fact that the loans were void under Arizona law and violated Arizona usury laws.”⁹ The Arizona Department of Financial Institutions entered into a Consent Order with CashCall two years earlier to stop unlicensed lending in violation of Arizona law and to impose a \$250,000 Civil Penalty.¹⁰

CashCall’s loan costs ranged up to 169%. In the case of CashCall and Western Sky, the lender claimed to be exempt from state usury and licensing laws via a claim of tribal sovereign immunity. We look forward to the conclusion of this case and restitution for Arizona consumers.

The current ominous threat to state authority to enforce usury laws is a return to “rent-a-bank” lending with a handful of nonbank lenders and two rogue banks attempting to evade usury laws. Recently our organizations joined dozens of public interest groups around the country in letters to federal bank regulators, including the FDIC, protesting the misuse of bank charters by online lenders.¹¹ The National Consumer Law Center issued a map of 28 states and the District of Columbia where rent-a-bank lending is going on, which includes Arizona.¹² We note that these lenders avoid states that vigorously enforce their laws and urge that Arizona become a defender against this scheme.

⁸ Arizona Department of Financial Institutions, Regulatory and Consumer Alert CL/CO-16-01, “Unlicensed Consumer Lending Transactions,” Updated June 9, 2016, at https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf

⁹ Press Release, Arizona Office of Attorney General, “AG Brnovich Announces Consumer Fraud Lawsuit Against CashCall,” March 2019, and complaint, posted at: <https://www.azag.gov/press-release/ag-brnovich-announces-consumer-fraud-lawsuit-against-cashcall>
https://www.azag.gov/sites/default/files/docs/press-releases/2019/complaints/CashCall_Complaint.pdf

¹⁰ Arizona Department of Financial Institutions, Consent Order, In the Matter of the Consumer Lender License of CashCall, Inc. and John Paul Reddam, President, No. 17F-BD015-SBD, signed October 17, 2017, posted at https://dfi.az.gov/sites/default/files/media/CashCall_%20IncandJohnPaulReddam_President_Consent.pdf

¹¹ CEI and national group letter to FDIC re rent-a-bank lending, November 7, 2019 at https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/letter-to-fdic-rent-a-bank-nov2019.pdf

¹² National Consumer Law Center Brief, “Stop Payday Lenders’ Rent-A-Bank Schemes!” updated as of 12/12/19 <https://www.nclc.org/images/Rent-a-bank-one-pager.pdf>

It is especially important that you take action to enforce Arizona’s usury law in order to support the will of Arizona voters. In 2008, the payday lenders’ Prop 200 to enact a 400% rate cap by ballot was defeated on a 60 to 40 percent margin. When the payday loan law sunset in 2010, all loans up to \$10,000 were subject to the Consumer Lender law. The Arizona Legislature has refused to reauthorize high-cost payday lending or to enact laws authorizing new forms of high-cost credit, such as “flex loans” at triple-digit interest rates.¹³

Federal Bank Regulators Threaten Arizona Laws

Arizona’s power to protect consumers is also threatened by the recent proposals from the Office of Comptroller of the Currency (OCC) and the FDIC to issue rules that could encourage payday and other high-cost lenders to use banks to make loans that are prohibited by state law. The OCC and FDIC are proposing rules that would state that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer.¹⁴ While the OCC/FDIC proposals do not include any exception for assignments that are intended to evade state interest rate limits, the agencies do note that they are not addressing whether the bank is the “true lender” fronting for a high-cost lender. Nonetheless, we fear that these overbroad proposals – which we believe to be outside the authority of the OCC and FDIC – will be exploited by usurious lenders to undercut state authority as it will eliminate the clean line that state laws apply to the interest charged by state-regulated lenders after they purchase loans nominally originated by banks. We urge your offices to oppose the OCC and FDIC proposals and defend our state’s authority to curb usury.

We request the opportunity to meet with you to discuss rent-a-bank lending and vigorous enforcement of Arizona’s usury law.

[Signature page below]

¹³ CEI Factsheet, “Arizona Lawmakers Said NO to Usury Since Prop 200 Vote in 2008,” February 2019 at <https://nomoreloansharksaz.org/gallery/2019%20az%20factsheet%20no%20on%20usury%20since%202008.pdf>

¹⁴ Federal Register Notice, FDIC 12 CFR Part 331, RIN 3064-AF21 “Federal Interest Rate Authority, Dec. 6, 2019 <https://www.fdic.gov/news/board/2019/2019-11-19-notice-dis-c-fr.pdf> and Federal Register Notice, OCC 12 CFR Part 7 and Part 160, RIN 1557-AE73 “Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred,” November 21, 2019 <https://www.occ.gov/news-issuances/federal-register/2019/84fr64229.pdf>

Sincerely,

Kelly S. Griffith

Maury Bois, President, Tucson Diocesan Council, **Society of St. Vincent de Paul**

Diane Brown, Executive Director, **Arizona PIRG Education Fund**

Kelly Griffith, Executive Director, **Center for Economic Integrity**

Ellen Sue Katz, Director, **William E. Morris Institute of Justice**

David Lujan, Director, **Arizona Center for Economic Progress**

James J. McLaughlin, President, **UFCW Local 99**

Shannon Schell, Executive Director, **Protecting Arizona's Family Coalition (PAFCO)**

Jay Young, Executive Director, **Southwest Fair Housing Council**

Cynthia Zwick, Executive Director, **Wildfire: Igniting Community Action to End Poverty in Arizona**

Penelope Bussell, Individual

Alexander Kouvel, Individual

M. Angelica Velez, Individual

Robert White, Individual

Enclosures:

- 1) CEI comment to FDIC re Small-Dollar Lending, January 22, 2019
<https://nomoreloansharksaz.org/gallery/2019%20cei%20comment%20fdic%20january%2022%202019.pdf>
- 2) CEI and Group Letter to FDIC and OCC re FDIC and OCC support for predatory small business lender, October 24, 2019
<https://www.nclc.org/issues/ltr-opp-rent-a-bank.html?print=print>