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April 13, 2020

To: The Honorable Mark Brnovich  
Office of Attorney General  
2005 North Central Avenue  
Phoenix, AZ 85004

Cc: The Honorable Doug Ducey  
Office of the Governor, State of Arizona  
1700 W Washington St.  
Phoenix, AZ 85007

*Delivered electronically*

Re: **Protecting Consumers in Covid-19 Crisis**

Dear Attorney General Brnovich,

Thank you for your early leadership to protect consumers in the financial services market and to warn of scams and fraud likely to proliferate during the current crisis. While we appreciate the Arizona effort to stop evictions and mortgage foreclosures, *our focus is on protecting low-and-moderate income consumers who are unbanked and underbanked and who use high-cost credit products.*

We support your call for financial and lending institutions, including title loan companies and consumer lenders, to waive payments for 90 days with those payments placed on the back of the loan with no balloon payments, for an end to repossessions by lenders for at least 90 days, for an end to late fees and default interest for late payments for at least 90 days, and for an end to negative reporting to credit bureaus for borrowers who make late payments.

On April 3, consumer and community organizations sent the attached letter to Governor Ducey and Acting Superintendent of the Arizona Department of Financial Institutions, calling on them to take executive action with financial service providers licensed by the state or by county sheriffs to safeguard families during the Covid-19 crisis and 90 days afterwards as families recover from the disruption of our economy. **We ask that you support this agenda** and work with the Governor and regulators to implement these protections through orders to licensees and enforcement actions against unlicensed lenders.

**We also ask for your attention to practices that put federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds at risk** of being drained or diverted from consumers' bank accounts instead of providing essential support for families as intended. Specifically:

**Take Direct Action to Protect Consumers' Bank Accounts from Debt Collection**

Federal payments of up to \$1,200 per adult are intended to help people pay for necessities, not to help debt collectors. Many citizens will receive their payments via direct deposit to the bank accounts identified in their most recent tax returns. *Debt collectors are eager to garnish the CARES Act funds meant to help Arizonans cover basic necessities.* While the CARES Act protects stimulus payments

from being reduced to pay certain debts owed to federal and state governments, it does NOT provide clear protection from bank account garnishments by creditors or debt collectors. Like all states, Arizona has procedures to contest garnishments and Arizona law exempts some funds from garnishment. However, courts are closed, people are under the Governor's stay-at-home order, and most will not have access to attorneys or legal services to challenge collection cases. *That poses a serious due process issue if payments are seized and entire bank accounts are frozen due to collection activity.*

**To protect scarce family funds and the deposited CARES Act benefits, we urge you to support a moratorium on any new garnishment orders and stay enforcement of any existing garnishment order.** The Las Vegas courts have already done this.<sup>1</sup> We also urge that Arizona clarify that stimulus payments are exempt under existing state law and that the garnishment of such funds is an unfair and deceptive practice. These protections can either be achieved by the Governor issuing an executive order or by a request to the Arizona Supreme Court to immediately halt issuance and enforcement of all debt collection garnishment orders.

### **Support Federal Action to Safeguard CARES funds from being seized by debt collectors**

The U.S. Treasury should prevent garnishment and bank offsets against these deposits by treating CARES funds the same way they do Social Security and other federal benefits which are exempt from garnishment. Treasury is being asked to use its authority under section 2201(a) of the CARES Act to apply the "XX" code specified in 31 C.F.R. § 212.3 to designate the stimulus payment a "Benefit payment," thereby triggering the rules and procedures already in place per 31 C.F.R. § 212.6. Banks already have systems in place to automatically protect federal benefit payments. This simple step by Treasury will save state governments and courts from having to issue emergency orders to protect payments or handle disputes. Consumers should be able to receive direct deposit of CARES funds without fear of losing their funds to collectors. *We ask that you join the call the U.S. Treasury to identify CARES funds deposited to citizens' bank accounts as "Benefit payments."*

### **Stop Title Lenders from collecting debts from borrowers' bank accounts**

Sales Finance licensees that make car title loans under the Secondary Motor Vehicle Finance Transaction section of the Motor Vehicle Time Sales Disclosure Act, Chapter 2.1 of Title 44, are increasingly making loans secured by access to the borrower's bank account by requiring a voided check or other account identifiers as part of the loan application. Lenders call these "*registration loans*" and ask that the borrower show a vehicle registration but do not require a clear title that can be used to repossess the vehicle if the loan is not paid.

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<sup>1</sup> <https://ewscripps.brightspotcdn.com/d1/63/99e6c11e43aba0b2a3e052d352be/admin-order-20-03.pdf>  
See, also, Supreme Court of Texas, "Tenth Emergency Order Regarding the Covid-19 State of Disaster," Misc. Docket No. 20-9054, at <http://www.txcourts.gov/media/1446356/209054.pdf>

There is no provision in Title 44, Chapter 2.1 that permits sales finance licensees to secure loans with access to borrowers' bank accounts. Loans permitted to be made under the Secondary Motor Vehicle Finance Transaction provision are defined as "any contract that includes provisions for either (1) obtaining a **security interest in or lien on a motor vehicle** other than in connection with the sale of that motor vehicle or (ii) the sale or conditional sale of a motor vehicle and the seller's right to retain use of the motor vehicle after the sale or conditional sale."<sup>2</sup> A loan cannot be "secured" by a vehicle that cannot be repossessed to repay a defaulted loan and this definition of the credit product makes no mention of securing the loan via a bank account.

The ability to unilaterally withdraw payment from a deposit account makes "registration" loans function as payday loans and puts vulnerable borrowers at risk of having the CARES Act payments to be direct deposited into their bank accounts *unexpectedly withdrawn to pay off triple-digit-rate debt instead of the intended purpose of putting food on the table and keeping the lights on during this crisis.*

**The now-expired Deferred Presentment (payday loan) law** did authorize a loan product secured by access to the borrower's bank account, defined as: "Deferred presentment services' means a transaction pursuant to a written agreement in which the **licensee accepts a check and agrees to hold the check** for at least five days before presentment for payment or deposit."<sup>3</sup> *The payday loan law expired July 1, 2010 following defeat of the payday loan industry's Prop 200 in 2008.*<sup>4</sup> No creditor licensed by AZDFI is currently authorized to secure a loan with a check.

The Center for Economic Integrity has published two survey reports on title lending in Arizona and documented that title lenders are increasingly becoming "payday lenders" by making registration or "personal loans" to consumers who do not own a vehicle outright but who do have a bank account.<sup>5</sup>

Payday loans under the auspices of the car title loan law are expanding in Arizona. In our most recent survey of Arizona title loan licensees, we found that 25 licensed lenders with 359 licensed locations or 75 percent of all stores now make "registration loans," up from 50 percent of licensed locations in 2016.<sup>6</sup> We found that nine of the ten largest "registration" lenders require borrowers to provide a blank or void check, a debit card, a prepaid debit card or an Automated Clearing House (ACH) authorization form to permit the lender to directly withdraw funds if not paid on the due date.<sup>7</sup>

Instead of holding borrowers' personal checks made for the amount of the payday loan and finance charge, title lenders ask for a blank or void check or other access device to be later used to make

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<sup>2</sup> A.R.S. 44-281.12 at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/44/00281.htm>

<sup>3</sup> A.R.S. 6-1251.3 at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/6/01251.htm>

<sup>4</sup> A.R.S. 6-1263 at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/6/01263.htm>

<sup>5</sup> CEI/CFA, "Wrong Way: Wrecked by Debt/Auto title Lending In Arizona," January 2016 at <http://bit.ly/wrongwayreport> and CEI, "Still Wrong: Wrecked by Debt/Title Lending in Arizona 2019 at <http://bit.ly/AZTitleLending2019>

<sup>6</sup> CEI, "Still Wrong," p. 15

<sup>7</sup> CEI, "Still Wrong," p. 33

electronic withdrawals or generate a remotely created check as a back-up form of payment. *Title loan store clerks told surveyors that bank account access is required to get a registration loan.*<sup>8</sup>

Sales finance licensees who hold borrowers' blank checks or bank account information will be able to unilaterally withdraw funds from bank accounts into which CARES Act funds have been deposited when loans come due at the end of the month or any time payment is overdue. *Buying food and other necessities should come before paying for loans that cost 120 to 204% APR.*

**In the immediate crisis, we urge you to work with AZDFI to prohibit licensed Sales Finance title loan lenders from using voided checks or bank account information to collect on loans.** Going forward, we request that you issue a ruling that licensed sales finance companies making loans under the Secondary Motor Vehicle Finance Transaction law do not have authorization to require or accept a blank check or bank account information that can be used to create a demand draft or remotely created payment order or require payment via electronic funds transfer as a condition of receiving credit. *We request that this ruling permit title loans to be only secured by a clear title to a borrower's vehicle as intended by the legislature.*

### **Unlicensed Online Lenders Withdraw Funds from Borrowers' Accounts to Pay Triple-digit Debt**

In January we wrote you to ask for enforcement action against a few online lenders that make high-cost loans in this state without an Arizona Consumer Lender license. These lenders claim to be exempt from state usury laws by using banks to make loans that cost up to 160% APR.<sup>9</sup> *We urged you to enforce the Consumer Lender law, find these loans void and uncollectible, and require all online lenders to comply with Arizona's usury law.* All of these lenders accept payment via electronic funds transfer from borrowers' bank accounts and will be able to withdraw CARES funds from Arizonans' accounts to repay usurious loans unless action is taken.<sup>10</sup>

We urge you to open an investigation of unlicensed Consumer Lenders and stop their ACH withdrawals to pay usurious loans.

Arizona consumers need prompt action by your office to prevent deposited CARES Act funds from being diverted to pay debts, to collect loans made without the security of vehicle titles, and to drain bank accounts to pay usurious loans made by unlicensed out-of-state online lenders.

Please let us know if we can answer any questions or provide further information.

[Signature page below]

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<sup>8</sup> See CEI, "Still Wrong," p. 34, 35

<sup>9</sup> CEI and coalition letter to Attorney General and Superintendent of the Department of Financial Institutions re Rent-a-Bank Lending, January 15, 2020 at <https://nomoreloansharksaz.org/gallery/2020-01-15%20rab%20letter%20to%20az%20ag%20and%20azdfi.pdf>

<sup>10</sup> See Arizona on the map at NCLC High-Cost Rent-a-Bank Loan Watch List at <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>

Sincerely,

*Kelly S Griffith*

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

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

Eric Schindler, President & CEO, for **Child and Family Resources, Inc**

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

Emily Yetman, Executive Director, for **Living Streets Alliance**

Thomas Litwicki, CEO, for **Old Pueblo Community Services**

Molly McGovern, Legislative Director, for **UFCW Local 99**

Peggy Hutchison, CEO, for **Primavera Foundation**

Beth Morrison, CEO, for **Our Family Services**

*And the following individuals*

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Enclosures: "2020-04-03 Arizona COVID-19 letter to Gov and AZDFI"