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July 15, 2020

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

Mr. Evan Daniels, Director
Department of Insurance and Financial Institutions
100 N. 15th Avenue, Suite 261
Phoenix, AZ 85007

Delivered electronically

Re: Rent-a-Bank Online Lending Update, Action Requested

Dear Attorney General Brnovich and Director Daniels,

On January 15 of this year, consumer and community organizations wrote to request prompt supervision and enforcement action to stop out-of-state nonbank online lenders from operating without Arizona Consumer Lender licenses to make loans in violation of Arizona usury laws.¹ We documented lenders that launder their triple-digit rate loans through banks in an effort to evade Arizona's voter-supported usury laws. The online tracking of rent-a-bank lenders by the National Consumer Law Center lists all of those companies as still targeting our state.²

In April, you also received letters from Arizona consumer groups urging both the Office of Attorney General³ and Governor Ducey and the Department of Financial Institutions⁴ to exercise your authority to protect Arizonan's from harmful credit products and rate gauging during the Covid-19 emergency and the economic crisis that is impacting Arizona consumers. In that letter, we again urged you to stop rent-a-bank lenders from harming Arizona borrowers by charging usurious interest rates for unlicensed loans.

¹ Arizona Consumer Coalition letter to AZ AG and AZDFI, Re: Rent-a-Bank Online Lending in Violation of Arizona Consumer Protections," January 15, 2020 at <https://nomoreloansharksaz.org/gallery/2020-01-15%20rab%20letter%20to%20az%20ag%20and%20azdfi.pdf>

² National Consumer Law Center, "Predatory Rent-a-Bank Loan Watch List by State," Update June 1, 2020 at <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>

³ Arizona Consumer Coalition letter to Attorney General, Re: Protecting Consumers in Covid-10 Crisis, April 13, 2020 at <https://nomoreloansharksaz.org/gallery/2020-04-13%20letter%20to%20az%20ag%20re%20protecting%20consumers%20in%20covid-19%20crisis.pdf>

⁴ Arizona Consumer Coalition letter to Governor Ducey and Christina Corieri, DFI, re: Financial Protections for Consumers During Covid=19," April 5, 2020 at <https://nomoreloansharksaz.org/gallery/2020-04-03%20arizona%20covid-19%20letter%20to%20gov%20and%20azdfi.pdf>

To the best of our knowledge, no investigations have been opened into the online lenders that are currently marketing their high-cost loans to Arizona consumers in violation of Arizona law and no publicly announced supervision or enforcement actions have been taken.

Other state regulators and law enforcement officials are taking action to safeguard their citizens. Please note the recent decision from the Denver District Court in the **Colorado Attorney General's** case against Marlette Funding d/b/a Best Egg.⁵ The court ruled that Marlette must abide by Colorado's interest rate limits when it purchases loans originated by Cross River Bank that is exempt from Colorado's rate caps. The National Consumer Law Center noted that "The Colorado ruling makes clear that federal banking laws do not give banks a license to sell their bank privileges to nonbank lenders that charge rates above state limits."⁶

Also, last month, the **Attorney General for the District of Columbia** filed a lawsuit against online lender Elevate for making loans that violate the usury law in the District of Columbia.⁷ As it does in Arizona, Elevate makes loans through its Rise and Elastic brands that charge annual interest rates at rates that violate DC law. While Elevate uses FinWise Bank in Utah and Republic Bank & Trust in Kentucky to make loans, the DC Attorney General alleges that Elevate directs and controls the funding of the loans and reaps most of the profits and thus as the "true lender" is subject to DC law. **We believe the same case can and should be made in Arizona.**

Since we wrote in January, both the Office of Comptroller of the Currency (OCC)⁸ and the Federal Deposit Insurance Corporation (FDIC)⁹ finalized guidance that will encourage rent-a-bank lending, despite opposition from a bipartisan group of state Attorneys General and a large coalition of consumer organizations, including Arizona groups.¹⁰ The policies announced this summer did not speak directly to the issue of identifying the true lender when nonbank lenders use banks to evade state usury laws. Both the OCC and FDIC are reportedly planning to take that step.¹¹ We urge you to oppose any action by federal bank regulators to define the "true

⁵ District Court Denver Colorado, Order Regarding Plaintiff's Motion for Determination of Law, *Fulford v. Marlette Funding, LLC d/b/a Best Egg, et. al*, Case No. 17CV30376, June 9, 2020 at <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2020/06/2020.06.09-CO-v.-Marlette.pdf>

⁶ NCLC Press Release, "Advocates Praise Rent-a-Bank Ruling Upholding State Interest Rate Caps," June 10, 2020 at <https://www.nclc.org/media-center/advocates-praise-rent-a-bank-ruling-upholding-state-interest-rate-caps.html>

⁷ DC Attorney General, Complaint for Violations of the Consumer Protection Procedures Act, Elevate Credit, Inc. June 5, 2020 at <https://oag.dc.gov/sites/default/files/2020-06/Elevate-Complaint.pdf>

⁸ OCC Press Release, "OCC Issues Rule to Clarify Permissible Interest on Transferred Loans," May 29, 2020 <https://occ.gov/news-issuances/news-releases/2020/nr-occ-2020-71.html>

⁹ FDIC Press Release, "FDIC Issues Rule to Codify Permissible Interest on Transferred Loans," June 25, 2020 <https://www.fdic.gov/news/press-releases/2020/pr20074.html>

¹⁰ See Arizona advocacy information on rent-a-bank lending at <https://nomoreloansharksaz.org/Rent-A-Bank/>

¹¹ *Morning Consult*, "New Acting Banking Comptroller Plans Rapid Pace on Fintech Agenda," July 6, 2020 <https://morningconsult.com/2020/07/06/occ-brian-brooks-interview-true-lender-fintech/>

lender” in order to undermine your authority to enforce Arizona usury laws against high-cost lenders.

Protecting Arizona families from exorbitant interest rates for consumer credit is especially important during the economic crisis caused by the pandemic. A halt to triple-digit rate lending would especially benefit minority families who are disproportionately impacted by predatory lending. Arizonans who have lost their jobs or are struggling financially during this crisis need your action against ruses and devices used by lenders to evade Arizona consumer protection laws and licensing and supervision requirements at the Department of Financial Institutions.

Please let us know if we can provide further information.

Sincerely,

A handwritten signature in black ink that reads "Kelly S. Griffith". The signature is written in a cursive, slightly slanted style.

Kelly S. Griffith, Executive Director
Center for Economic Integrity