

No. 26-959

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ROBERT FEEMAN, GUSTAVO GILLY, AND MICHAEL COLLINS, individually and on
behalf of all other similarly situated,

Plaintiffs-Appellees,

v.

BRIDGE IT, INC. D/B/A Brigit,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York,

No. 1:25-cv-3806

Hon. Lewis Liman

BRIEF OF *AMICI CURIAE* CENTER FOR RESPONSIBLE LENDING AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

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Dated: August 3, 2026

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INTEREST OF AMICI CURIAE¹

Amici curiae are non-profit, public interest, and consumer advocacy organizations with extensive expertise in small-dollar credit markets and consumer lending law. They are dedicated to protecting consumers and the public from exploitative and abusive lending practices. *Amici* submit this brief to provide the Court with evidence concerning the similarities in product design, function, and consumer harms between Bridge IT, Inc.’s (“Brigit”) “Instant Cash” product, marketed as “Earned Wage Access,” and traditional payday loans. “Instant Cash” and other so-called “Earned Wage Access” products function as loans—app-based payday loans. Payday Loan Apps (“PLA”) operate as a financial technology iteration of the same high-cost, short-term lending model long associated with storefront payday lenders.

Drawing on their research and expertise, *Amici* explain how the structure and operation of Brigit’s Instant Cash product, including its associated fees, fit squarely within longstanding consumer protection principles governing “debt,” “credit,” and “finance charges.” *Amici* also document the consumer harms associated with these loans and the public interest in protecting borrowers, especially active-duty

¹ No counsel for any party authored this brief in whole or in part, and no person other than amici and their counsel has made a monetary contribution to its preparation or submission. Fed. R. App. P. 29(a)(4)(E). Both parties consented to the filing of this brief.

servicemembers and their eligible dependents, like Plaintiffs-Appellees, from high-cost, harmful cycles of debt. *Amici* offer this perspective to assist the Court in understanding how Instant Cash functions in practice and how its design replicates longstanding forms of high-cost, predatory lending that federal and state law prohibit.

The Center for Responsible Lending (“CRL”) is a non-partisan, non-profit research and policy advocacy organization dedicated to promoting financial fairness and economic opportunity for all. CRL advocates eliminating abusive practices in consumer financial services and ensuring that consumers benefit from the full range of consumer protection laws designed to prohibit unfair and deceptive practices by financial services providers. CRL is an affiliate of Center for Community Self-Help (“CCSH”), one of the nation’s largest nonprofit community development financial institutions, based in North Carolina, with retail credit union branches in states across the country.

Since its founding as a nonprofit in 1969, the National Consumer Law Center (“NCLC”) has used its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC’s expertise includes policy analysis and advocacy, consumer law, litigation, expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys,

policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

NCLC has long-standing expertise in consumer lending. NCLC publishes a 21-volume consumer law treatise series, including National Consumer Law Center, Consumer Credit Regulation (4th ed. 2025), updated at www.nclc.org/library, a 1,248-page treatise that includes sections devoted to so-called “earned wage access” loans.

INTRODUCTION

In recent years, financial technology companies have introduced short-term loans through smartphone applications marketed as “Cash Advances” or “Earned Wage Access.”² Regardless of the label, these products are loans—app-based

² Bridge IT, Inc. is one of several financial technology companies that make payday loans through smartphone applications, which have been challenged in litigation as unlawful extensions of credit under federal and state law. *See, e.g., Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927 (N.D. Cal. 2025); *Johnson v. Activehours, Inc.*, No. 1:24-cv-02283-JRR, 2025 WL 2299425 (D. Md. Aug. 8, 2025); *Golubiewski v. Activehours, Inc.*, No. 3:22-CV-02078, 2025 WL 2484192 (M.D. Pa. Aug. 28, 2025); *Vickery v. Empower Fin., Inc.*, No. 25-cv-03675-JSC, 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025); *Moss v. Cleo AI Inc.*, 799 F. Supp. 3d 1152 (W.D. Wash. 2025); *Revell v. Grant Money, LLC*, 808 F. Supp. 3d 1036 (N.D. Cal. 2025); *Russell v. Dave Inc.*, 812 F. Supp. 3d 998 (C.D. Cal. Dec. 12, 2025); *Burrison v. FloatMe, Corp.*, No. 25-cv-10885-DJC, 2026 WL 444638 (D. Mass. Feb. 17, 2026); *Moss v. Klover Holdings, Inc.*, No. 25-cv-5758, 2026 WL 622653 (N.D. Ill. Mar. 5, 2026); *Lowe v. MoneyLion Techs. Inc.*, 822 F. Supp. 3d 374 (S.D.N.Y.); *Ramirez v. Activehours, Inc.*, 828 F. Supp. 3d 1040 (N.D. Cal. 2026); *Burkhardt v. MoneyLion Tech. Inc.*, No. 1:25-cv-06761 (S.D.N.Y. filed

payday loans. Empirical research and borrower experiences consistently show that app-based loans replicate the fundamental characteristics of payday lending: small-dollar, short-term advances against a borrower's next paycheck, with fees that produce triple- and even quadruple-digit annual percentage rates ("APRs") and that are designed to drive repeat borrowing.³

Brigit's "Instant Cash" reflects the same design features, business model, and consumer harms observed across the broader payday loan app industry. Brigit advertises that consumers "can get a cash advance of \$25–\$250 in minutes." JA 026. In reality, borrowers receive short-term advances that are repaid automatically from their bank accounts on or around their next payday, while Brigit generates revenue through recurring subscription fees⁴ and expedited delivery charges known as "Express Fees." Brigit also relies on conventional credit-risk underwriting to

Apr. 15, 2026). Brigit itself faces similar actions raising the identical issue. *See* Complaint, *State v. Bridge IT, Inc.* (Minn. Dist. Ct. Ramsey Cnty. filed June 10, 2026),

https://www.ag.state.mn.us/Office/Communications/2026/docs/Brigit_Complaint.pdf (hereinafter Minnesota AG Complaint).

³ Nakita Q. Cuttino, *The Rise of "Fringetech": Regulatory Risks in Earned-Wage Access*, 115 Nw. U. L. Rev. 1505, 1542 et seq. (2021) (explaining that earned wage access functions as "payday loan 2.0" because they replicate key characteristics of payday loans, including high costs, limited underwriting, credit invisibility, exposing borrowers to similar substantial risks that worsen their health and financial conditions.) (hereinafter "*Fringetech*").

⁴ *See* Minnesota AG Complaint, *supra* note 2, ¶ 41 (Brigit has identified to the Attorney General only one Minnesota consumer who has ever successfully accessed the Instant Cash product without a paid subscription, out of the tens of thousands of Minnesotans who use the product).

determine eligibility and conditions access to funds on preauthorized repayment. Moreover, Brigit has been the subject of government enforcement actions challenging its deceptive business practices. Although delivered through a smartphone application rather than a storefront, “Instant Cash” functions as the same form of high-cost, short-term credit that lawmakers and regulators have long recognized as payday lending.

Federal consumer protection statutes clearly apply to PLAs. Both the Truth in Lending Act (“TILA”) and the Military Lending Act (“MLA”) regulate extensions of consumer credit and require lenders to disclose the full cost of borrowing. Congress intended these statutes to promote transparency in lending markets and to protect borrowers from harmful and abusive lending practices. Regulation Z, which implements TILA, defines credit as the right to defer payment of debt or incur debt and defer its payment. 12 C.F.R. § 1026.2(a)(14). Brigit’s “Instant Cash” operates precisely this way. To receive a loan, borrowers must authorize repayment by a later debit (on the next payday) from their bank account. JA 034. Finance charges include any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor, as an incident to or condition of the extension of credit. 12 C.F.R. § 1026.2(a). This definition encompasses fees imposed by Brigit and other PLA lenders because they are integral to accessing the loan and are incurred by the vast majority of borrowers.

The MLA reinforces TILA's protections. Congress enacted the MLA to protect military servicemembers and their families from high-cost, short-term credit, including payday loans, that impose excessive fees and trap borrowers in cycles of debt. The MLA establishes a 36% Military APR cap that incorporates all fees and charges that lenders might otherwise characterize as separate from the cost of credit.⁵ 10 U.S.C. § 987. The Department of Defense's implementing regulations, revised in 2015, expanded the definition of "consumer credit" to encompass most forms of credit subject to a finance charge, preventing lenders from evading the MLA's statutory protections. PLAs, including Brigit's "Instant Cash," fall squarely within these definitions, and the fees associated with these are therefore subject to the MLA's protections.

Examination of consumer transaction data and company data disclosed to state and federal government officials from Brigit and other PLAs demonstrates that these loans generate recurring costs, strain borrowers' ability to cover essential expenses, and produce the very harms Congress sought to prevent through the MLA and TILA. These facts confirm that Brigit's "Instant Cash" is an extension of credit

⁵ U.S. Dep't of Def., *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (2006), <https://download.militaryonesource.mil/12038/MOS/Reports/ReportonPredatoryLendingPractices.pdf>.

subject to federal law and support affirming the district court's decision denying Defendant-Appellant Brigit's Motion to Compel Arbitration.

ARGUMENT

I. Brigit's "Instant Cash" Operates as a Payday Loan in Structure, Cost, and Consumer Impact.

A. The Product Design and Business Model of Brigit's Instant Cash Replicate Payday Lending.

Before the rise of PLAs, traditional payday lending operated through storefronts or online platforms and relied on a similar short-term, high-cost model. These loans provide borrowers with access to \$100 to \$500, are typically repaid on the borrower's next payday, and carry fees that result in extremely high APRs.⁶ If a borrower does not return to the store to repay with a new loan, the lender initiates repayment by cashing the borrower's postdated personal check or effecting a pre-authorized electronic debit.⁷ This structure, requiring repayment of the full principal and fees in a single lump-sum or "balloon" payment, often leaves borrowers unable to meet other expenses when the loan comes due, requiring another loan to cover the resulting cash shortfall.⁸

⁶ Lucia Constantine, Yasmin Farahi, *Down the Drain: Payday Lenders Take \$2.4 Billion in Fees from Borrowers in One Year*, Ctr. Responsible Lending (Jan. 2025) (hereinafter "*Down the Drain*").

⁷ Consumer Fin. Prot. Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data* 6 (2013),

https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

⁸ *Id.* at 43-44.

When borrowers cannot repay in full, payday loans are frequently rolled over or replaced with new loans, creating cycles of repeat borrowing and escalating fees. Market research has shown that a substantial share of payday loans are taken out within two weeks of prior loan repayment, and many borrowers remain in debt for months due to “the pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees.”⁹ Consistent with this pattern, data show that 75% of all payday loan fees are generated by borrowers who take out more than 10 loans per year.¹⁰ Payday lenders thus rely on repeat borrowing to generate profit.

Consistent with the MLA, many states have adopted measures, such as 36% interest-rate caps, to protect consumers from the harms associated with payday lending.¹¹ At the same time, the small-dollar credit market has increasingly migrated online and to smartphone applications, with lenders developing digital “storefronts” in borrowers’ pockets that replicate traditional payday loans.¹² The structural features of traditional payday loans—repayment tied to payday, high costs,

⁹ *Id.* at 4, 20-22.

¹⁰ *Down the Drain*, *supra* note 6, at 6

¹¹ Nat’l Consumer Law Ctr., *Why Cap Interest Rates at 36%?* (Aug. 21), https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf.

¹² Monica Burks, Yasmin Farahi, Andrew Kushner, Katelin Kaiser, *Nickel and Dimed: How Payday Loan Apps Drain Workers’ Pay and How to Stop Them*, Ctr. for Responsible Lending 4 (Oct. 2025) (hereinafter “*Nickel and Dimed*”).

automatic access to borrowers’ bank accounts, and repeat borrowing—have long defined the payday lending model, regardless of how the loan is delivered.

Against this backdrop, PLAs are short-term advances offered through a smartphone application and repaid in a lump-sum payment automatically withdrawn from the borrower’s bank account on the next payday. Although marketed as early access to “earned wages,” these advances are simply loans. The lender provides funds before payday and requires repayment on a future payday. Transaction-level data show average advances ranging from approximately \$40 to \$120 per transaction, with some lenders allowing higher limits for repeat users.¹³

Brigit’s “Instant Cash” makes advances of \$25 to \$250 that are repaid in a single payment, automatically withdrawn from the user’s linked account on or around the user’s next payday. JA 026, JA 148–149. According to the Federal Trade Commission (“FTC”), roughly 20% of Brigit users are denied advances altogether, and only about 1% of Plus subscribers ever receive the advertised \$250 maximum.¹⁴ Repayment is not optional in any meaningful sense: a user must pre-authorize the

¹³ Lucia Constantine, Christelle Bamona & Sara Weiss, *Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps*, Ctr. for Responsible Lending 3 (Apr. 2024) (hereinafter “*Not Free*”); Ctr. for Responsible Lending, November 2025 *EarnIn Study Shows the Harms of Payday Loan Apps* (“EWA”) (Jan. 2026) (hereinafter “*EarnIn Study*”).

¹⁴ Complaint for Permanent Injunction, Monetary Judgment, and Other Relief at ¶ 34, *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. Nov. 2, 2023), ECF No. 1 (hereinafter “FTC Complaint”).

debit before Brigit will release funds, and Brigit will attempt the debit up to three times. JA 034. The Minnesota Attorney General’s recent complaint against Brigit describes this mechanism: Instant Cash advances “have ‘due dates’ that are set when they are taken out,” are “issued only if such repayment is preauthorized (similar to post-dating a check),” and are “recoup[ed] forcibly through a preauthorized deduction from the user’s checking or debit account when Brigit sees available funds.”¹⁵

Brigit generates revenue the same way other PLA lenders do: through fees that are difficult or impossible to avoid. First, every Instant Cash user must maintain a paid monthly subscription. Second, Brigit charges an Express Fee of \$0.99 to \$3.99 for delivery within roughly twenty minutes, even though Brigit’s actual cost of instant delivery is less than five cents. JA 027. Although Brigit offers a fee free alternative, this option takes up to three business days for the funds to be delivered. *Id.* Data analyzed by the Center for Responsible Lending show the average Instant Cash loan lasts only 10.8 days, JA 028, a borrower who needs the money before the free ACH transfer arrives—the entire reason a paycheck-to-paycheck consumer turns to Brigit in the first place—has no real alternative to paying the fee. Research confirms that 79% of surveyed PLA users report paying expedite fees most of the

¹⁵ Minnesota AG Complaint, *supra* note 2, ¶ 33.

time to receive funds quickly, and EarnIn, another PLA lender, reported that 86% of its borrowers paid for expedited delivery.¹⁶

Brigit reinforces this fee structure with continuous underwriting that mirrors traditional lending. To even apply, a user must link a checking account through Plaid, a third-party service, and show “at least three recurring deposits from the same source.” JA 022. Brigit then evaluates every advance request against a proprietary “Brigit score” combining “Bank Account Health,” “Spending Behavior,” and “Earnings Profile.” This review is repeated “each time an Advance request is made.” JA 031–032. This is risk-based underwriting in substance. The FTC found that approximately 20% of Brigit users are denied advances entirely, and only about 1% of Plus subscribers ever receive the advertised \$250 maximum. JA 032.

Finally, Brigit’s repayment mechanics make the “non-recourse” label meaningless. A user who wants to revoke the standing ACH authorization must email Brigit at least three business days before the scheduled debit and supply the name and telephone number on the account; the Brigit app itself provides no mechanism to cancel a scheduled repayment debit. JA 035, JA 145. Other PLA lenders impose the same hurdles: MoneyLion disclosed data to the New York Attorney General showing that borrowers must “navigate an unintuitive and ... complex process across multiple menus” that renders cancellation “needless[ly]

¹⁶ *Not Free*, *supra* note 13, at 4.

difficult” and, for short-term loans, “entirely impossible.”¹⁷ The predictable result of this design, confirmed by Brigit’s own former chief executive, is a default rate of roughly 2%—on par with the 97%-plus collection rates other PLA lenders have reported. JA 036.¹⁸

Other courts have similarly rejected the contention that disclaiming legal recourse removes PLAs from the MLA’s definition of credit, finding that “the MLA’s definition of credit (and associated definition of debt) as requiring a *legal* obligation to repay, and not just a functional, transactional obligation to repay, allows creditors to skirt the consumer protection functions of the statute and reads a limitation into the statute that does not exist.” *Revell v. Grant Money, LLC*, 808 F. Supp. 3d 1036, 1050 (N.D. Cal. 2025); *see also Ramirez v. Activehours, Inc.*, 828 F. Supp. 3d 1040, 1052 (N.D. Cal. 2026); *Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927, 935 (N.D. Cal. 2025).

Why APR Matters for Short-Term Credit. APR is the standardized measure Congress adopted to reflect the full cost of credit, including fees and

¹⁷ Nat’l Consumer Law Ctr., *MoneyLion’s Costly “0% APR” “Earned Wage” Payday Loans* (May 2025) (hereinafter “*MoneyLion’s Costly ‘0% APR’*”), https://www.nclc.org/wp-content/uploads/2025/05/Issue-Brief_MoneyLionEWALoans.pdf (citing data disclosed to the New York Attorney General showing that PLA lender MoneyLion collected on its loans nearly 98% of the time).

¹⁸ *See MoneyLion’s Costly ‘0% APR’*, *supra* note 17 (citing data disclosed to the New York Attorney General showing that in most circumstances, PLA lender MoneyLion collected on its loans nearly 98% of the time).

charges incident to borrowing. APR allows comparison across products regardless of term length.¹⁹ Congress incorporated a 36% APR in the MLA, reflecting a policy determination that high-cost credit is harmful even when short-term. 10 U.S.C. § 987(b). For short-term loans, fixed fees account for a larger share of principal and therefore yield especially high APRs. A \$10 fee on a \$100 advance repaid in two weeks translates to an APR exceeding 260%.²⁰ APR remains essential to evaluating short-term credit. CRL’s analysis of thousands of Brigit Instant Cash transactions found an average APR of 439% once Express Fees and subscription charges are included. JA 030. Plaintiffs-Appellees’ own loans carried Military APRs ranging from 325% to 1,603%, JA 037–038—rates that dwarf the MLA’s 36% cap and confirm that Instant Cash is precisely the kind of high-cost, short-term credit Congress intended that cap to prevent. The Minnesota Attorney General’s independent investigation of Brigit reached the same conclusion, finding that APRs on Instant Cash advances regularly exceed 300%, with some exceeding 700%—rates nowhere disclosed to the consumer. Across the PLA industry, CRL’s analysis of loans repaid within 7 to 14 days found an average APR of approximately 383% once expedited fees, and subscriptions, and other charges are included.²¹ High APRs on

¹⁹ *Not Free*, *supra* note 13, at 4.

²⁰ *Not Free*, *supra* note 13, at 11.

²¹ Christelle Bamona, Lucia Constantine, *Escalating Debt: The Real Impact of Payday Loan Apps Sold as Earned Wage Advances (EWA)*, Ctr. for Responsible Lending at 6 (Sept. 2025) (hereinafter “*Escalating Debt*”) (CRL analysis of PLA

short-term credit reflect not only high costs but high rates of repeat borrowing: because a lump-sum repayment depletes the paycheck that funded it, borrowers who cannot afford to wait are almost certain to borrow again.

ACH Authorization: Coercive Recourse. To receive an Instant Cash advance, borrowers must link their bank accounts through Plaid and authorize Brigit to electronically debit their account or debit card on the next payday. JA 034, JA 148–149.²² Brigit initiates up to three ACH withdrawal attempts if there are insufficient funds in the borrower’s account on the scheduled repayment date. JA 034. Repeated failed ACH attempts can expose borrowers to overdraft fees that typically cost approximately \$35 per occurrence.²³ The scheduled withdrawal model is designed to ensure that repayment coincides with the borrower’s receipt of wages, immediately reducing take-home pay and frequently generating the cash-flow gaps that drive renewed borrowing.

Enforcement action by the FTC confirms that Brigit has employed deceptive and unfair practices to prevent borrowers from canceling subscriptions or blocking loan repayments.²⁴ The FTC’s complaint against Brigit alleged that the company

loans repaid within 7 to 14 days found an average APR of approximately 383% once expedited fees, tips, and subscriptions are included).

²²*Not Free*, *supra* note 13, at 6.

²³ *Id.*

²⁴ Nat’l Consumer Law Ctr., *Picking Workers’ Pockets: Unfair, Deceptive and Abusive Practices by Earned Wage Lenders* 22–23 (Jan. 2026) (hereinafter “*Picking Workers’ Pockets*”).

imposed unfair barriers specifically designed to prevent users with outstanding advances from canceling the monthly subscription—in effect, keeping borrowers enrolled in a fee-generating product by tying cancellation rights to repayment of the outstanding loan.²⁵ Brigit’s Terms of Service reinforce this structure: ACH authorization may be revoked only by email, with at least three business days’ advance notice, and the Brigit app itself provides no mechanism to cancel a scheduled repayment debit. JA 035, JA 145. The practical effect is that revocation is highly unlikely and entirely impossible for loans whose terms are shorter than the required notice period.

Repeat Transactions Escalate Fee Extraction. The PLA business model is structured to encourage repeat borrowing and maximize fee extraction from high-frequency users. CRL’s transaction-level analysis found that high-frequency PLA borrowers represent 38% of all borrowers but account for 86% of all advances.²⁶ This concentration of revenue among repeat borrowers demonstrates that sustained, repeated borrowing is not incidental but central to the PLA business model. Further,

²⁵ *Id.* at 19–20 (describing *FTC v. Bridge IT, Inc.*, including allegations that Brigit imposed friction and dark patterns designed to thwart cancellation of subscriptions or recurring charges).

²⁶ Candice Wang, Lucia Constantine, Monica Burks & Yasmin Farahi, *A Loan Shark In Your Pocket: The Perils of Earned Wage Advance*, Ctr. for Responsible Lending at 7 (Oct. 2024) (hereinafter “*Loan Shark*”).

72% of consumers ensnared by PLA’s, including those who receive “Instant Cash,” advances from Brigit, take out more than one loan within a two-week period.²⁷

Advertised Advance Amounts Overstate Available Credit and Encourage Repeat Use. Although PLA lenders advertise advances of up to several hundred dollars “instantly,” the amounts disbursed to consumers are frequently much smaller, effectively forcing borrowers who need meaningful sums to take successive loans—and incur successive fees.²⁸ Brigit advertises that users “can get a cash advance of \$25–\$250 in minutes.” JA 026. But the FTC alleged that in reality, few consumers who joined Brigit and paid its monthly membership fee received access to cash advance amounts anywhere close to the \$250 Brigit promises, and many have not been able to get any cash advances at all.²⁹ *Complaint, Federal Trade Commission v. Bridge IT, Inc.*, 2023 WL 7318787 (S.D.N.Y. Nov. 2, 2023). Consistent with the FTC’s findings, Brigit’s own data show that roughly 20% of Plus subscribers are denied advances entirely, and only about 1% ever receive the advertised \$250 maximum. JA 032.

Fine-print disclosures do not cure this deception. Across the PLA industry, key limitations on eligibility, timing, and loan amounts are routinely buried in fine print or obscured behind hyperlinks in mobile interfaces. The FTC has recognized

²⁷ *Escalating Debt*, *supra* note 21, at 6.

²⁸ *Id.* at 7.

²⁹ *Picking Workers’ Pockets*, *supra* note 24, at 19–20.

that the gap between the “cash now” marketing promise and the reality of smaller or unavailable loans is deceptive, particularly where consumers are induced to pay subscription fees for access to credit that does not materialize as promised.³⁰ These artificially low loan offers limit Brigit’s credit exposure and drive borrowers to repeat borrowing and borrowing simultaneously from different PLAs.

“Instant Delivery” Fees Are a Central Feature of PLAs. Brigit advertises loans as available “in minutes,” but immediate funding requires payment of an Express Fee ranging from \$0.99 to \$3.99 even though Brigit’s actual cost of providing instant delivery is only a few cents.³¹ By contrast, the no-fee option requires waiting up to three business days. *Id.* But three business days is not a realistic option for a paycheck-to-paycheck borrower who turned to Brigit precisely because a bill is due today, not in three days. An analysis of thousands of Brigit loans that the average Instant Cash loan lasts only 10.8 days, meaning the “free” option consumes nearly a third of the loan period (or more, if the 3-business day delay encompasses a weekend or holiday). JA 028. App-based advance services sometimes artificially slow down no-fee transfers, rendering the promise of no-cost

³⁰ *FTC Complaint*, *supra* note 14.

³¹ *See* The ClearingHouse, Simple, Transparent, Uniform Pricing for All Financial Institutions (Feb. 7, 2019) (showing cost of RTP instant credit transfer at \$0.045), https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/rtp_pricing_02-07-2019.pdf.

“instant access” illusory.³² Express Fees are not optional add-ons; they are necessarily connected to the price borrowers must pay to receive the loan as advertised. *See Lowe v. MoneyLion Techs. Inc.*, 822 F. Supp. 3d 374, 380 (S.D.N.Y. 2026) (explaining that customers are unlikely to use a payday advance service without an instant delivery feature, as waiting multiple days would defeat the purpose of early wage access).

Subscription Fees Are Imposed by Brigit as a Requirement for Instant Cash Use. Brigit charges borrowers a recurring monthly subscription fee as a mandatory condition of accessing Instant Cash advances. JA 028. These fees are imposed regardless of whether a borrower receives an advance during the billing period. Brigit denies Instant Cash advances to some customers who set up an account, pay the subscription fee, and apply for an advance, and the FTC found that Brigit charged subscription fees even to consumers who could not obtain any cash advances at all because Brigit deemed them insufficiently creditworthy. JA 032. The subscription-based model requires borrowers to pay recurring fees merely for the possibility of accessing credit, even when no loan is ultimately provided.

Banking Fees and Penalties Further Increase Cost Burdens. Repayment through automatic ACH withdrawal can trigger overdraft fees if funds are insufficient at the time of debit. In a review of PLA transaction data that included

³² *See Picking Workers’ Pockets*, *supra* note 24, at 14.

Brigit transactions, the average number of overdraft fees increased from 3.0 in the three months before the first advance use to 4.7 in the three months following advance use.³³ In a larger dataset analyzed by CRL, 67% of users who experienced overdrafts saw their overdraft frequency increase after beginning to use app-based loans.³⁴ In one documented case, a borrower incurred 58 overdrafts in three months, totaling \$1,740 in overdraft fees.³⁵ Rather than helping consumers “avoid overdrafts,” as Brigit advertises, JA 026, Brigit’s Instant Cash generates the very lump-sum withdrawals—on or around payday—that leave accounts depleted and vulnerable to overdraft before the next paycheck arrives.

“Non-Recourse” Does Not Eliminate the Obligation to Repay. Although Brigit labels Instant Cash as “non-recourse” and its Terms of Service disclaim “any legal or contractual claim” against a user who declines to repay, JA 149, repayment authorizations are required before any advance is disbursed, and future access to Instant Cash is conditioned on repayment of outstanding balances. JA 034, JA 145. Brigit does not need to sue or use debt collectors to collect from its borrowers because it has already secured repayment through preauthorized access to their bank accounts.

³³ *Not Free*, *supra* note 13, at 6.

³⁴ *Loan Shark*, *supra* note 26, at 8–9.

³⁵ *Id.*

Courts and regulators across multiple jurisdictions have consistently rejected the argument that the purported non-recourse nature of app-based loans precludes a finding that the product is “credit,” with NCLC documenting fourteen such rulings.³⁶ In litigation involving EarnIn, courts rejected the identical “non-recourse” argument, holding that repayment authorizations and future product access together create an obligation to repay under MLA. *Ramirez v. Activehours, Inc.*, 828 F. Supp. 3d at 1052-53 (N.D. Cal. 2026); *see also Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927, 936 n.4 (N.D. Cal. 2025) (“[I]t is entirely possible that [this] system is in fact *more* effective in guaranteeing repayment than one that depended on pursuing legal debt collection remedies.”). Further, the FTC sued Brigit for, among other things, contractually barring subscribers with an unpaid advance from canceling the monthly charge, securing an \$18 million settlement and refunds to more than 1.8 million Brigit users.³⁷ In addition, the Minnesota Attorney General sued Brigit directly, alleging that the lender “recoups the debt forcibly through a preauthorized deduction from the user’s checking or debit account.”³⁸

Brigit also imposes procedural hurdles that render revocation of ACH authorization effectively illusory for most borrowers. A user who wants to revoke

³⁶ Nat’l Consumer Law Ctr., *Courts Reject Claims That Payday Loan Apps Don’t Offer Loans* (Apr. 15, 2026) (collecting fourteen cases rejecting arguments that app-based loans are not credit).

³⁷ *See* FTC Complaint, *supra* note 14.

³⁸ *See* Minnesota AG Complaint, *supra* note 2, ¶ 33.

the standing ACH authorization must email Brigit at least three business days before the scheduled debit. The Brigit app provides no mechanism to cancel a scheduled repayment debit at all. JA 035, JA 145. Advance notice requirements, automated debit authorization, and lender-imposed procedures render revocation effectively illusory for borrowers whose loan terms are shorter than the required notice period.

B. Brigit’s Instant Cash Produces Cycles of Repeat Borrowing and Escalating Financial Harms.

Research examining transaction-level consumer data demonstrates that payday loan apps do not function as the “pro-consumer products” the industry advertises. Instead, PLAs produce patterns of repeated borrowing, escalating costs, and financial instability among borrowers—harms long associated with traditional payday lending.

Borrowers Are Caught in Cycles of Escalating Debt. Studies tracking borrowers over time show that reliance on app-based payday loans increases rapidly after initial use. CRL’s analysis of anonymized bank account transaction data found that borrowers’ use of advances doubled in the first year, rising from an average of two loans per month to four.³⁹ These findings indicate that PLAs are not addressing “short-term liquidity” needs—they are creating the very cash shortfalls that drive continued borrowing.

³⁹ *Nickel and Dimed*, *supra* note 12, at 4.

Rapid repeat borrowing is the norm, not the exception. CRL’s analysis found that nearly 75% of PLA borrowers took out at least one loan on the same day or the day after making a repayment.⁴⁰ Nearly 72% of borrowers took out more than one loan within a two-week period, and 27% of borrowers took 25 or more loans in a single year—volumes that mimic the rollover cycles long associated with storefront payday lending.⁴¹ Plaintiffs-Appellees’ own experience reflects this broader pattern. Each named Plaintiff used Instant Cash for more than a year, taking repeated advances at intervals as short as three to fifteen days and repaying one advance only to take out another almost immediately. JA 037–038.

Excessive Fees Drive Financial Strain. In practice, as many as 90% of PLA borrowers pay fees.⁴² In an online survey conducted by CRL, 79% of respondents reported paying expedited fees most of the time to receive funds quickly.⁴³ Similarly, PLA lender EarnIn reported in its own study that 86% of its borrowers paid an expedited transfer fee to receive funds immediately.⁴⁴

Plaintiffs-Appellees’ own experiences confirm this pattern. Each named Plaintiff paid both an Express Fee and a monthly subscription charge on each Instant Cash advance recounted in the Complaint. JA 037–038. The resulting effective MLA

⁴⁰ *Id.*

⁴¹ *Loan Shark*, *supra* note 26, at 7.

⁴² *Picking Workers’ Pockets*, *supra* note 24, at 8.

⁴³ *Not Free*, *supra* note 13, at 3.

⁴⁴ *See EarnIn Study*, *supra* note 13.

rates ranged from 325% to 1,603%. JA 037–038. These rates are not outliers. CRL’s broader analysis of Brigit transaction data found an average APR of 439% across thousands of Instant Cash loans. JA 030. The Minnesota Attorney General’s independent investigation of Brigit found the same: APRs that regularly exceed 300%, with some exceeding 700%, rates nowhere disclosed to the consumer.⁴⁵

Additionally, although Brigit claims Instant Cash helps users “avoid overdrafts,” research finds the opposite. JA 026. CRL found that, for borrowers already incurring overdraft fees, overdraft frequency increased 67% after initial use of app-based loans.⁴⁶ These patterns reflect the design of PLAs, like Brigit, that condition access to a cash advance on monthly subscription fees, instant delivery fees, and automatic ACH withdrawals that borrowers cannot easily avoid, resulting in exploitative, high-cost loans.

App-Based Loans Are Used to Cover Everyday Expenses. CRL survey evidence demonstrates that when left with a hole in their paychecks following loan repayment, borrowers are forced to reborrow repeatedly to cover everyday expenses like food, transportation, housing costs, and utility payments, rather than one-time emergencies.⁴⁷ These outcomes are reinforced by Brigit’s own product design.

⁴⁵ See Minnesota AG Complaint, *supra* note 2, ¶ 5.

⁴⁶ *Loan Shark*, *supra* note 26, at 8–9.

⁴⁷ Ctr. for Responsible Lending, *Survey Summary of Earned Wage Advance and Cash Advance Apps* (Aug. 2023); see also *Fringetech*, *supra* note 3, at 1510.

When one loan is used to cover the shortfall created by repaying a prior loan, the borrower is not getting additional liquidity; they are simply trying to restore the hole in the paycheck while continuing to pay fees for each successive transaction. This pattern directly replicates the payday lending rollover cycle.

Multiple Repayment Obligations Multiply Risks. CRL’s transaction-level analysis found that more than half of PLA users borrowed from multiple payday loan apps during their first year of use,⁴⁸ with one borrower using as many as eight different lenders in a single month.⁴⁹ The prevalence of “loan stacking”—borrowing from multiple PLAs against the same paycheck—increased over time, rising from 16% of borrowers in their first month of use to 42% by the end of the first year.⁵⁰ As one borrower captured in a CRL qualitative diary study wrote: “Since last week, I have only used EarnIn. But, last payday I used EarnIn, Cleo, Empower, and Brigit, all once except for EarnIn, I used them twice.”⁵¹

Loan stacking compounds fees and depletes take-home pay. Harms extend beyond the price of borrowing. App-based payday loans inhibit borrowers’ ability to pay essential bills and increase household difficulties in covering mortgage payments, rent, childcare, and utilities.

⁴⁸ *Escalating Debt*, *supra* note 21, at 6.

⁴⁹ *Loan Shark*, *supra* note 26, at 8.

⁵⁰ *Escalating Debt*, *supra* note 21, at 6.

⁵¹ *Not Free*, *supra* note 13, at 9.

Taken together, the data and borrower experience demonstrate that app-based loans replicate the same cycle of repeat borrowing, escalating high costs and fees, and financial instability long associated with the payday lending industry.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's order denying Defendant-Appellant Brigit's Motion to Compel Arbitration.

Dated: August 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 3, 2026

/s/ Olivia Bensinger
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,654 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word. The text is in 14-point Times New Roman type.

Dated: August 3, 2026

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