No. 25-7035

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN REVELL, individually, on behalf of all others similarly situated, and on behalf of the general public,

Plaintiff-Appellee,

v.

GRANT MONEY, LLC, a Delaware corporation doing business as Grant; KIKKOFF, INC., a Delaware Corporation,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 3:25-cv-5994-TLT

BRIEF OF *AMICI CURIAE* CENTER FOR RESPONSIBLE LENDING AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF PLAINTIFF-APPELLEE

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Pursuant to Fed. R. App. P. 26.1, National Consumer Law Center certifies that it does not have a parent corporation and that no publicly held corporation owns 10% or more of its stock. The Center for Responsible Lending is controlled by the Center for Community Self-Help ("CCSH"), a North Carolina nonprofit corporation. CCSH itself does not have a parent company. In neither case is there any stock interest in these nonprofit corporations.

Dated: May 6, 2026

/s/ Shennan Kavanagh
Shennan Kavanagh

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

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 Grant Money, LLC's "Cash Advance," often marketed as "Earned Wage Access," and traditional payday loans. These 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 these app-based payday loans, including associated fees, fit squarely within the definitions of credit under the Military Lending Act, based on the statute's text, its implementing regulations, and regulatory guidance. *Amici* also document the consumer harms associated with these loans and the public interest in protecting borrowers, particularly active-duty servicemembers and their eligible dependents,

[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 this brief's preparation and submission. Fed. R. App. P. 29(a)(4)(E). Both parties consented to the filing of this brief.

from high-cost, harmful cycles of debt. *Amici* offer this perspective to assist the Court in understanding how these products function in practice and how their design replicates longstanding forms of high-cost, predatory lending that federal law prohibits.

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 the market for 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 Self-Help, 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, which is a 1,248-page treatise providing in-depth explanations of the laws and regulations governing the regulation of credit at the state level. The treatise has sections devoted to so called "Earned Wage Access" loans.

INTRODUCTION

In recent years, new forms of payday lenders, like Grant Money, LLC ("Grant"), have introduced short-term loans through smartphone applications marketed as "Cash Advances" or "Earned Wage Advance."[2] Regardless of the labels,

[2] Grant Money, LLC 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. *Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927 (N.D. Cal. 2025); *Johnson v. Activehours, Inc.*, WL 2299425, 8 (D. Md. Aug. 8, 2025); *Golubiewski v. Activehours, Inc.*, 2025 WL 2484192 (M.D. Pa. Aug. 28, 2025); *Vickery v. Empower Finance, Inc.,* 2025 WL 2841686 (N.D. Cal. Oct. 7, 2025); *Moss v. Cleo AI Inc.*, 799 F. Supp. 3d 1152 (W.D. Wash. 2025); *Russell v. Dave Inc.*, WL 3691977 (C.D. Cal. Dec. 12, 2025); *Burrison v. FloatMe, Corp.*, 2026 WL 444638 (D. Mass. Feb. 17, 2026); *Moss v. Klover Holdings, Inc.*, 2026 WL 622653 (N.D. Ill Mar. 5, 2026); *Lowe v. MoneyLion Techs. Inc.*, 2026 WL 654719 (S.D.N.Y. Mar. 9, 2026); *Ramirez v. Activehours, Inc.*, 2026 WL 828299 (N.D. Cal. Mar. 25, 2026); *Feeman v. Bridge IT, Inc.*, 2026 WL 880508 (S.D.N.Y. Mar. 30, 2026); *Burkhardt v. MoneyLion Tech. Inc.*, Case No. 1:25-cv-06761 (S.D.N.Y. April 15, 2026).

these products are loans—app-based payday loans. Research and borrower experiences consistently show app-based loans replicate the fundamental characteristics of payday lending: small-dollar, short-term advances against a borrower's next paycheck with substantial fees that produce triple-digit annual percentage rates ("APRs") designed to drive repeat borrowing.[3] Thus, research and data examining the broader PLA market are directly relevant in evaluating how Grant's "Cash Advances" function as payday loans.[4]

Grant's "Cash Advances" reflect the same design features, business model, and consumer harm observed across the PLA industry. Grant customers are promised "[f]ast," "instant[]" "[c]ash at your fingertips." ER 5. Grant makes loans ranging from $25 to $250. ER 5. The average advance is $79, far below the advertised $250. ER 41, Fig. 1. To receive an advance, borrowers must allow Grant to constantly monitor their checking account transaction activity, source of income, and deposit

[3] Nakita Q. Cuttino, *The Rise of "Fringetech": Regulatory Risks in Earned-Wage Access*, 115 Nw. U. L. Rev. 1505 (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.).

[4] Lucia Constantine, Christelle Bamona, Sara Weiss, *Not Free: The Large Hidden Costs of Small-Dollar Loans Made Through Cash Advance Apps*, Ctr. Responsible Lending (Apr. 2024) (hereinafter "*Not Free*"); Nat'l Consumer Law Ctr., *The Tricks Cash Advance Apps Use to Coerce Borrowers to "Tip"* (Apr. 2025), https://www.nclc.org/resources/the-tricks-cash-advance-apps-use-to-coerce-borrowers-to-tip/.

amounts through Plaid, a third-party service. ER 18, 43-45. This real-time financial access is used to evaluate eligibility and determine whether, and in what amount, credit will be extended. Grant's own terms and conditions confirm this structure. The agreement governs a "loan pre-registration and application," reserves the right to "decline your application for a loan," and requires borrowers to authorize the company to obtain and use their "consumer reports, scores, and other information" from major credit bureaus—hallmarks of traditional lending. ER 102, 108.

Like other PLA lenders, Grant generates revenue through fees charged to access these loans. Borrowers must pay a monthly subscription fee of $9.99, which can only be cancelled on at least three days' notice by sending an email to a mailbox designated by Grant. ER 100-101. Borrowers also incur expedite fees ranging from $2.00 to $8.00 for "instant delivery" of funds (depending on the amount of the advance). ER 6. These advances operate as high-cost, short-term credit deliberately structured to capitalize on borrowers' immediate cash needs. Grant states that the free version takes three to five business days, while expedited transfers arrive within an hour, creating a strong incentive for borrowers who seek cash before payday—the target audience—to pay additional fees. ER 6, 40. Each additional loan triggers separate fees, multiplying the financial burden and widening gaps in the subsequent pay cycle, effectively driving borrowers to take out multiple loans in quick succession.

PLAs require the borrower to authorize repayment directly from their bank account. Fees—including expedite or subscription charges—are integral to the business model, difficult or impossible to avoid, and are necessarily connected to accessing the advertised loan.[5] Grant imposes additional repayment requirements, including that borrowers link a bank account, supply a debit card, and preauthorize debits from those accounts. ER 46-47. Grant also requires that borrowers must be approved for each advance, and eligibility for the next advance depends on a borrower's repayment of the previous advance, along with their bank account activity. ER 45, 98.

Research also shows widespread "loan stacking," where borrowers take loans from multiple PLA lenders against the same paycheck, further compounding fees and depleting take-home pay.[6] Harms extend beyond the price of borrowing. App-

[5] *See* Nat'l Consumer Law Ctr., *Picking Workers' Pockets: Unfair, Deceptive and Abusive Practices by Earned Wage Lenders* (Jan. 2026), https://www.nclc.org/wp-content/uploads/2026/01/2026.01_Report_EWA.pdf. (hereinafter "*Picking Workers' Pockets*") (summarizing data from federal and state enforcement actions demonstrating the business models of DailyPay, EarnIn, Brigit, FloatMe, Dave, and MoneyLion are designed to encourage repeated borrowing to cover shortfalls created by prior loans and that these lenders have employed numerous deceptive, unfair, and abusive practices to prevent borrowers from cancelling loans or subscriptions.); 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 (Oct. 2025) (hereinafter "*Nickel and Dimed*").

[6] Christelle Bamona, Lucia Constantine, *Escalating Debt: The Real Impact of Payday Loan Apps Sold as Earned Wage Advances (EWA)*, Ctr. for Responsible Lending (Sept. 2025) (hereinafter "*Escalating Debt*").

based payday loans inhibit borrowers' ability to pay essential bills and increase household difficulties covering rent, childcare, and utilities.[7]

Federal consumer protection statutes clearly apply to PLAs. Both the Truth in Lending Act ("TILA") and the Military Lending Act ("MLA") regulate 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). Grant's "Cash Advance" operates precisely this way. ER 98-99. To receive a loan, borrowers must authorize repayment by a later debit (on the next payday) from their bank account. 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 Grant and other PLAs because they are integral to accessing the advertised 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, by establishing a 36% APR cap that incorporates all fees

[7] Cuttino, *The Rise of "Fringetech"*, supra 3 at 1551-1552.

and charges.[8] 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 to prevent lenders from evading the MLA's statutory protections. PLAs, including Grant's "Cash Advance," meet these definitions, and the fees associated with these loans squarely fall within the MLA's protections.

Empirical evidence shows that app-based payday loans are neither "innovative" nor "consumer-friendly" products. *See* Br. of Am. Fintech Council at 1-2. Examination of consumer transaction data and company data disclosed to state Attorneys General demonstrates that these loans generate recurring costs, strain borrowers' ability to cover essential expenses, and produce harms that Congress specifically intended the MLA to prevent. These facts confirm that Grant's "Cash Advance" and similar products are extensions of credit and support affirming the district court's decision denying Defendant-Appellant Grant's Motion to Compel Arbitration.

ARGUMENT

I. Payday Loan Apps Operate as Payday Loans in Structure, Cost, and Consumer Impact.

[8] U.S. Dep't of Def., *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (2006), https://consumerfed.org/pdfs/140429_DoD_report.pdf.

A. The Product Design and Business Model of Payday Loan Apps Replicate Payday Lending.

Before the rise of PLA, 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.[9] If a borrower does not return to the store to repay the loan, the lender initiates repayment by cashing the borrower's postdated personal check or effecting a pre-authorized electronic debit.[10] 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.[11]

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

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[9] 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*").
[10] 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.
[11] *Id.*, at 43-44.

months due to "the pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees."[12] Consistent with this pattern, 75% of all payday loan fees are generated by borrowers who take out more than 10 loans per year.[13] This illustrates the extent to which payday lenders 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.[14] 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.[15] The structural features of traditional payday loans—repayment tied to payday, high costs, 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 "balloon" 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. ER 19. The

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[12] *Id.*, at 4, 20-22.
[13] *Down the Drain*, supra 13 at 6.
[14] Nat'l Consumer La Ctr., *Why Cap Interest Rates at 36%?* (Aug. 21), https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf.
[15] *Nickel and Dimed*, *supra* 8 at 4.

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.[16] Grant advertises offers of $25 to $250, but its own data show that the average advance of $79. ER 41, Fig. 1.

Repayment is not optional in practice; it is scheduled in advance as an incident to receiving the loan and automatically debited from the borrower's debit card or bank account. Grant borrowers are also prohibited from canceling a scheduled repayment. ER 6. Despite Grant's and other PLA lenders' contention that borrowers have no "legal" obligation to repay, the transaction structure and terms make repayment unavoidable.[17] As the district court correctly recognized, "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."[18] *Revell v. Grant Money, LLC*, 808 F. Supp. 3d 1036,

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[16] *Not Free*, *supra* at 3

[17] ER-47, Fig. 5 (showing that the in-app screen presents Grant borrowers with a scheduled auto repayment date, a payback amount, and, in fine print, a statement that borrowers who take a cash advance "agreed to repay" on a specific date, reinforcing the existence of a debt and the expectation of repayment.)

[18] *See* Nat'l Consumer Law Ctr., *MoneyLion's Costly "0% APR" "Earned Wage" Payday Loans* (May 2025), https://www.nclc.org/wp-content/uploads/2025/05/Issue-Brief_MoneyLionEWALoans.pdf. (hereinafter "*MoneyLion's Costly '0% APR'*) (citing data disclosed to the New York Attorney

1050 (N.D. Cal. 2025); *see also Ramirez v. Activehours, Inc.*, 2026 WL 828299, at *9 (N.D. Cal. Mar. 25, 2026).

Why APR Matters for Short-Term Credit. APR is the standardized measure Congress adopted to reflect the full cost of credit, including fees and charges incident to borrowing. APR allows comparison across products regardless of term length.[19] Congress incorporated a 36% Military APR cap in the Military Lending Act, 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 PLA loans repaid within 7 to 14 days found an average APR of approximately 383% once expedited fees, tips, and subscriptions are included.[21]

ACH authorization: Coercive Recourse. To use PLAs, borrowers must link their bank accounts and provide lenders authorization to debit their bank account on

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General showing that in most circumstances, PLA lender MoneyLion collected on its loans nearly 98% of the time).

[19] *See* Nat'l Consumer La Ctr., *Comparing APRs on Small Loan Alternatives* (Jan. 7, 2025), https://www.nclc.org/resources/comparing-aprs-on-small-loan-alternatives/.

[20] *Not Free*, *supra* 4 at 11.

[21] *Escalating Debt*, *supra* 9 at 6.

a specified future date, typically the next paycheck.[22] If sufficient funds are unavailable, lenders initiate repeated ACH withdrawal attempts, which expose borrowers to overdraft fees that often cost approximately $35 per occurrence.[23] The scheduled withdrawal model is intended to ensure that repayment coincides with the borrower's receipt of wages, immediately reducing take-home pay and frequently generating new cashflow gaps, resulting in escalating rates of reborrowing. Enforcement actions by the District of Columbia, New York, the City of Baltimore, and the Federal Trade Commission ("FTC") confirm that some app-based lenders have employed numerous deceptive and unfair business practices to prevent borrowers from canceling subscriptions or loan repayments. Enforcement actions brought against FloatMe, Dave, and Brigit show that the lenders misled borrowers and imposed unfair barriers that made it difficult to end ACH authorization.[24]

Likewise, borrowers cannot disconnect their linked bank accounts from the Grant app while a cash advance is outstanding, preventing them from terminating ACH authorization until prior loans are repaid. ER 47. Grant's terms do not provide a way to cancel a scheduled ACH repayment, stating that, "canceling [subscription

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[22] *Not Free, supra* 4 at 6.
[23] *Id.*
[24] *Picking Workers' Pockets*, *supra* at 22-23 (describing enforcement actions, such as *FTC v Brigit, Inc.,* alleging use of friction and dark patterns designed to thwart canceling subscriptions or stopping recurring charges).

access] does not terminate your authorization for us to debit your paycheck account." ER 101.

Advertised Advance Amounts Overstate Available Credit and Encourage Repeat Use. Although PLA lenders advertise advances of up to several hundred dollars "instantly," the amounts actually provided to consumers are often much smaller. [25] While Grant promotes advances of up to $250, its own data show that the average advance is $79—a fraction of the advertised maximum. ER 41. This gap between advertised and actual advance amounts is consequential because when loans fall short of consumers' needs, they are more likely to return for additional advances in subsequent pay periods. Although Grant borrowers may typically take only one advance per pay period, the relatively small amounts can leave continuing shortfalls. Grant "Cash Advance" loans made to Plaintiff-Appellee reflect that pattern, with advances taken across multiple, short intervals rather than a one-time use. ER 49.

Enforcement actions by the FTC have recognized that such disparities between the marketing promise of "cash now" or "instantly" and actual access as deceptive, particularly where consumers are induced to pay subscription fees for access to loans that are smaller than advertised or unavailable in practice. In its action against PLA lender Brigit, the FTC found that "In reality, few consumers who have joined Brigit and paid its $9.99 monthly membership fee have received access to

[25] *Id.*

cash advance amounts anywhere close to the $250 Brigit promises, and many have not been able to get any cash advances at all."[26] *Federal Trade Commission, v. Bridge It, Inc.*, 2023 WL 7318787 (S.D. NY Nov. 2, 2023).

Fine-print disclosures also do not cure this deception, and this problem is not unique to any one PLA lender. Across the PLA industry, key limitations on eligibility, timing, and loan size are routinely buried in fine print, obscured behind hyperlinks, or only visible after scrolling through mobile interfaces. The same misleading impression is conveyed by Grant's advertising and within the app, where material limitations on eligibility and loan size are similarly buried or obscured from consumers. ER 49-52.

"Instant Delivery" Fees are a Central Feature of PLA. Lenders advertise loans as available "in minutes," but immediate funding from Grant requires payment of an expedite fee that ranges from $2.00 to $8.00, depending on the loan size,[27] even though the cost of sending money instantly is a few cents.[28] By contrast, the no-fee option requires waiting up to three to five business days, as is Grant's standard option. ER 6. App-based loans are sometimes artificially delayed, rendering the promises of no-cost, "instant access" illusory.[29] Expedite fees are not optional add-

[26] *Picking Workers' Pockets*, *supra* 8 at 19-20.
[27] *Loan Shark*, *supra* at 8.
[28] *See Picking Workers Pockets*, *supra* at 14.
[29] *Id.*

ons; they are necessarily connected to the price borrowers must pay to obtain timely access to the loan as advertised. *See Lowe v. Moneylion Techs. Inc.*, 2026 WL 654719 at *4 (S.D.N.Y. Mar. 9, 2026) (explaining how customers are unlikely to choose 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 Some Lenders, like Grant, as a Requirement for PLA Use. Some lenders, like Grant, charge borrowers a recurring monthly subscription fee as an incident to accessing advances. These fees are imposed regardless of whether a borrower actually receives a loan during the billing period. Grant denies cash advances to a substantial portion of customers who set up an account, pay the subscription fee, and apply for an advance. ER 45. 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 transaction data, 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 after the first use.[30] In a larger dataset used by CRL, 67% of users who experienced overdrafts saw their overdrafts increase after beginning to

[30] *Not Free*, *supra* 4 at 6.

use app-based loans.[31] In one documented case, a borrower incurred 58 overdrafts in three months, totaling $1,740 in overdraft fees.[32]

"Non-Recourse" Does Not Eliminate the Obligation to Repay. Although Grant and other PLA lenders label loans as "non-recourse," repayment authorizations are required at the time the loan is made, and future access to advances is conditioned on repayment of outstanding balances. Borrowers must repay to avoid repeated debit attempts. In litigation involving the PLA lender EarnIn, the court rejected the "non-recourse" characterization, holding that repayment authorizations and future product access together created an obligation to repay under MLA. *Ramirez v. Activehours, Inc.,* 2026 WL 828299, at *9 (N.D. Cal. Mar. 25, 2026). Courts 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. [33] The district court here correctly recognized as much, explaining that "[r]ebranding high interest, short term loans as 'non-recourse' does not obscure the fact that EWAs essentially offer short-term payday loans for

[31] *Loan Shark*, *supra* 27 at 9.
[32] *Id.*
[33] Nat'l Consumer Law Ctr., *Courts Reject Claims That Payday Loan Apps Don't Offer Loans* (April 15, 2026), https://www.nclc.org/resources/courts-reject-claims-that-payday-loan-apps-dont-offer-loans/ (collecting thirteen cases rejecting arguments that app-based loans are not credit).

customers who cannot afford to wait." *Revell v. Grant Money, LLC.*, 808 F. Supp. 3d 1036, 1051 (N.D. Cal. 2025).

PLA lenders characterize repayment authorization as revocable, but in practice, borrowers do not know how to revoke it. In fact, Grant does not allow borrowers to cancel a scheduled repayment. ER 6, 101. Before receiving an advance, borrowers must demonstrate regular income sufficient to cover repayment, link their bank account through Plaid, supply a debit card, authorize automatic debit on or around payday, and remain current on prior advances and subscription charges. ER 43-44. Grant's terms and conditions confirm this obligation, stating that repayment will be processed on the earlier of the scheduled repayment date or "any time [Grant] becomes aware of a positive cash inflow into your linked bank account (each a "Preauthorized ACH Repayment") even if that available cash isn't enough to pay the full amount owed on the Advance..." ER 98-99. This confirms that repayment is expected and operationally enforced, notwithstanding the "non-recourse" label. Grant does not need to sue or use debt collectors to collect from its borrowers because it has already secured repayment through preauthorized access to borrowers' debit cards and bank accounts.

PLA lenders also impose procedural hurdles on revocation, often requiring notice before the scheduled withdrawal and navigation through multiple in-app steps. For example, company data disclosed to the New York Attorney General in

litigation against PLA lender MoneyLion shows that borrowers must "navigate an unintuitive and…complex process across multiple menus" that makes stopping repayment, "needless[ly] difficult," requires three business days' notice, and renders revocation "entirely impossible" for loans with short terms.[34] Alarmingly, Grant does not permit borrowers to cancel scheduled ACH withdrawals of loan funds, rendering revocation impossible. ER 100-101.

B. Payday Loan Apps Produce Cycles of Repeat Borrowing and Escalating Financial Harms.

Research examining transaction-level consumer data demonstrates that payday loan apps do not function as a "pro-consumer solution" with "minimal risks for workers." *See* Br. of Am. Fintech Council at 2, 5. 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 these app-based payday loans increases rapidly after initial use. An analysis of anonymized bank account transaction data conducted by CRL found that borrowers' use of advances doubled in the first year, rising from an average of two loans per month to four.[35] These findings indicate that

[34] *MoneyLion's Costly "0% APR" "Earned Wage" Payday Loans*, *supra* 23.
[35] *Nickel and Dimed*, *supra* 8 at 4.

the loans are not addressing "short-term liquidity" needs, but instead are creating the very cash shortfalls that drive continued borrowing.

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.[36] 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, mimicking traditional payday loan rollover cycles.[37] Plaintiff-Appellee's experience reflects this broader pattern, taking out a loan each pay period and being forced to take another loan immediately after repaying his previous advance. ER 49.

Excessive Fees Drive Financial Strain. In practice, borrowers overwhelmingly pay fees—as many as 90% of borrowers.[38] In an online survey conducted by CRL, 79% of respondents reported paying expedited fees most of the time to receive funds quickly.[39] Similarly, PLA lender EarnIn reported in its own study that 86% of its borrowers paid an expedited transfer fee to receive funds immediately.[40] The district court here recognized this dynamic and found that Plaintiff-Appellee "paid to expedite all three of the EWAs mentioned in his

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[36] *Id.*
[37] *Loan Shark*, *supra* 27 at 7.
[38] *Picking Workers' Pockets*, *supra* 2 at 8.
[39] *Not Free*, *supra* 4 at 3.
[40] Ctr. For Responsible Lending, *November 2025 EarnIn Study Shows the Harms of Payday Loan Apps ("EWA")* (Jan. 2026).

complaint" and had only two to six days before repayment, "demonstrating the short-term nature of EWAs and the high likelihood that customers must expedite EWAs for the credit to be useful." ER 21.

Additionally, although Grant markets its "Cash Advance" as a low-cost alternative to overdrafting, research finds evidence of the opposite. ER 70. Overdrafts on consumers' checking accounts increased 67% on average after initial use of app-based loans.[41]

These patterns reflect the design of PLA, like Grant, 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. For example, some of Grant's loans made to Plaintiff-Appellee carried Military APRs over 1,000%, far exceeding the 36% Military APR cap. ER 6.

App-Based Loans Are Used to Cover Everyday Expenses. CRL survey evidence further indicates that when left with a hole in their paychecks, borrowers, including Plaintiff-Appellee, are forced to reborrow repeatedly to cover everyday expenses, including food, transportation, housing costs, and bill and utility payments; advances are rarely used for unexpected emergencies.[42] ER 48.

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[41] *Loan Shark*, *supra* 31 at 8-9.

[42] Ctr. For Responsible Lending, *Survey Summary of Earned Wage Advance and Cash Advance Apps* (Aug. 2023); *See* Cuttino, *The Rise of "Fringetech*," *supra* 3 at 1510.

These outcomes are reinforced by product design. Some PLA lenders encourage repeated use for recurring expenses by allowing funds to be delivered directly for services like ride-share credits, online retail balances, or bill payments.[43] When one loan is used to cover the shortfall created by repaying a prior loan, the borrower is not getting additional liquidity; they are merely trying to restore the hole in the paycheck while continuing to incur charges for each subsequent transaction. This pattern, again, replicates the payday lending rollover cycle.

Multiple Repayment Obligations Multiply Risks. CRL's transaction-level analysis found that more than half of users borrowed from multiple payday loan apps during their first year of use,[44] with some borrowers using as many as 8 different lenders in a single month.[45] 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.[46] Borrowing across multiple apps multiplies repayment obligations and fees, increasing the likelihood that borrowers will require additional loans to meet routine expenses. As

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[43] Marshall Lux and Cherie Chung, *Earned Wage Access: An Innovation in Financial Inclusion?*, M-RCBG Associate Working Paper Series, No. 214 at 16 (June 2023), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/214_AWP_final_2.pdf.

[44] *Escalating Debt*, *supra* 9 at 6.

[45] *Loan Shark*, *supra* 27 at 8.

[46] *Escalating Debt*, *supra* 9 at 6.

one borrower from 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."[47]

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.

II. App-Based Payday Loans Meet the Statutory Definitions of Consumer Credit and Finance Charges Under the MLA.

A. The MLA's Text and Regulatory History Confirm that Payday Loan Apps are Covered Consumer Credit.

Congress granted the Department of Defense ("DoD") the authority to define the scope of credit under the MLA. 10 U.S.C. § 987(i)(6). Congress delegated to the Secretary of Defense authority to issue definitions through implementing regulations, guidance, and interpretive rules. *Id.* An express delegation to an agency to create definitions differs from an agency's interpretation of law under *Loper Bright* and should be the controlling interpretation. 603 U.S. 369, 394 (2024) ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes expressly delegate[ ]' to an agency the

[47] *Not Free*, *supra* 4 at 9.

authority to give meaning to a particular statutory term."). The DoD enacted implementing regulations in 2007 pursuant to the MLA.[48]

Payday loans were identified as a serious problem for servicemembers and a target for the implementing regulations. The DoD considered five products in its regulations.[49] Of the five, only payday loans exhibited all four characteristics of predatory products: lending without regard to borrowers' ability to repay, excessive fees and interest, unrealistic payment schedules, and repeated rollovers and refinancings.[50]

The DoD specifically intended to address certain forms of credit that can result in a debt trap for servicemembers and their families in its regulations.[51] The factors it considered were a combination of little-to-no regard for the borrower's ability to repay the loan, an unrealistic payment schedule, high fees and interest, and the opportunity to roll over the loan rather than repay.

The DoD also gave consideration to properly tailoring its definitions to ensure credit was available: "Isolating detrimental credit products without impeding the

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[48] *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 72 Fed. Reg. 50,204, No. 169 (Aug. 31, 2007), https://www.federalregister.gov/documents/2007/08/31/07-4264/limitations-on-terms-of-consumer-credit-extended-to-service-members-and-dependents.

[49] These five products are payday loans, rent-to-own, vehicle title, installment loans, and refund anticipation loans. *Id.* at 50,581.

[50] *Id.*

[51] *Id.* at 50,582.

availability of favorable installment loans was of central concern in developing the regulation."[52]

With this in mind, the 2007 original implementing regulations included a detailed description of payday loans:[53]

> *Payday loans*. Closed-end credit with a term of 91 days or fewer, in which the amount financed does not exceed $2,000 and the covered borrower:
>
> (B) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account (by electronic fund transfer or remotely created check) after one or more days...

App-based payday loans fit squarely under this definition, as described in Section I of this brief. Most commonly, and in the case of Grant, a borrower receives funds, is charged a fee, and contemporaneously authorizes the lender to debit their bank account, as set forth in Section I.

The regulations implementing the MLA were amended in 2015 by the DoD to include most types of consumer credit, using a definition that closely aligned with

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[52] *Oversight of the Department of Defense's Implementation of Limitations on Terms of Consumer Credit Extend to Members of the Armed Forces and Their Dependents*, 110th Cong., at 179 (2007), https://www.govinfo.gov/content/pkg/CHRG-110shrg39440/pdf/CHRG-110shrg39440.pdf.

[53] *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 72 Fed. Reg at 50,594.

Regulation Z.[54] In other words, credit under the MLA is (in relevant part):

> offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge...

This amendment was intended not to narrow the definition of credit, but to expand the products covered because the existing rule did not adequately protect servicemembers, and to help prevent future evasion of the law.[55] Indeed, as the DoD explained:

> "The Department believes that this final rule is appropriate in order to address a wider range of credit products that currently fall outside the scope of the Department's existing regulation, which, until now, has implemented the MLA." [56]

The official commentary to Regulation Z explicitly states that payday advances are a form of credit. ER 13. Ultimately, under either the original or the expanded definition, app-based payday loans, like Grant, fit the definition of credit under the MLA.

B. Grant's Instant Delivery Fees Fit Under MLA and Regulation Z Definitions of Finance Charges.

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[54] *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 80 Fed. Reg. 43,560 (July 22, 2015), https://www.federalregister.gov/documents/2015/07/22/2015-17480/limitations-on-terms-of-consumer-credit-extended-to-service-members-and-dependents.

[55] *Id.*

[56] *Id.*

Grant's Instant Delivery Fee, as the district court recognized, is required by borrowers to access a "Cash Advance" on an instant basis as advertised. The MLA and Regulation Z definitions of finance charges are one and the same, because MLA's definition of finance charges[57] incorporates Regulation Z. Regulation Z provides as follows:

> The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit...

Much of the argument in Defendant-Appellant Grant's opening brief argues that certain charges are not "finance charges," asserting they are not imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. App. Br. at 34-40.

Grant's fees meet that standard. Grant emphasizes the instant nature of its loans, marketing that 98% of advances arrive within fifteen minutes. ER 20-21.

To obtain a loan "within minutes," the borrower must pay an "instant delivery" fee. Undoubtedly, as with other PLA lenders, the vast majority of borrowers pay those fees, including Plaintiff-Appellee. Grant imposes those fees as a necessary connection between the credit it advertises, and instant credit is a central feature of its product—advances for borrowers who do not want to wait for payday.

[57] 32 C.F.R. § 232.3(n).

In determining whether a charge is an "incident to the extension of credit," the Federal Reserve Board ("FRB"), supported by the Supreme Court, interpreted "incident to" as meaning "in connection with" and "part of the cost of credit."[58] Courts have further considered whether the credit would have been granted if the borrower had not agreed to pay it.[59] In this instance, the answer is no. Plaintiffs-Appellee would not be able to access the instant funds without paying Grant's Instant Delivery Fee.

The regulatory history is instructive here. The FRB has opined on whether a voluntary fee should be excluded from finance charges, and it declined to do so:[60]

> The Board has generally taken a case-by-case approach in determining whether particular fees are ''finance charges,'' and does not interpret Regulation Z to automatically exclude all ''voluntary'' charges from the finance charge.

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[58] Nat'l Consumer Law Ctr., *Truth in Lending* §3.6.4.3 (11th ed. 2023), updated at https://library.nclc.org ("Condition of the Extension of Credit"); *see also Truth in Lending*, 61 Fed. Reg. 49,237, 49,239 (Sept. 19, 1996); *see also Household Credit Servs., Inc. v. Pfenning*, 541 U.S. 232, 241 (2004).

[59] *Id.; First Acadiana Bank v. Fed. Deposit Ins. Corp.*, 833 F.2d 548, 550 (5th Cir. 1987); *Salvate v. Automotive Restyling Concepts, Inc.*, 2014 WL 6901788, at *2-3 (D. Minn. Dec. 5, 2014) ("incident to" or "condition of" means credit would not have been extended unless the charge was paid; ruling service contract fee not required because the written transaction-related documents say that service contract was voluntary when reading them together despite alleged oral statements to the contrary); *McAnaney v. Astoria Fin. Corp.*, 357 F. Supp. 2d 578, 584 (E.D.N.Y. 2005) ("The critical inquiry [when determining whether a fee is a finance charge] is whether the creditor only would have provided the loan with a guarantee that the mortgagor would pay the fee.").

[60] *Truth in Lending*, 61 Fed. Reg. 49,237, 49,239 (Sept. 19, 1996).

Further, instant delivery is a material term of a specific loan, even when other non-instant loans are available. Therefore, instant access fees constitute a finance charge for Grant's instant loans:[61]

> ….even though a lender may not require a particular loan feature, the feature may become a term of the credit if it is included. For example, borrowers obtaining variable rate loans may have an option to convert the loan to a fixed interest rate at a subsequent date. Even though the lender does not require that particular feature, when it is included for an additional charge (either paid separately at closing or paid in the form of a higher interest rate or points), that amount properly represents part of the finance charge for that particular loan, even though less costly loans may be available without that feature.

Finally, the instant delivery fee does not fall into any of the explicitly listed exclusions for finance charges listed in the official interpretations of Regulation Z, and those exclusions should be narrowly construed.[62] This is because MLA and TILA are remedial statutes intended to level the playing field for consumers and must be "liberally construed in favor of borrowers."[63] Likewise, exclusions should

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[61] Nat'l Consumer Law Ctr., *Truth in Lending* §3.6.4.34 (11th ed. 2023), updated at https://library.nclc.org ("Condition of the Extension of Credit").
[62] 12 C.F.R. pt. 1026, Supp. I, cmt. 4(c) (2026).
[63] 12 C.F.R § 1026.4 (2026); *See, e.g.*, *Curtis v. Propel Property Tax Funding, L.L.C.*, 915 F.3d 234, 243 (4th Cir. 2019); *Cappuccio v. Prime Capital Funding L.L.C.*, 649 F.3d 180 (3d Cir. 2011); *Rubio v. Capital One Bank*, 613 F.3d 1195, 1202 (9th Cir. 2010); *See also Johnson v. Riddle*, 305 F.3d 1107, 1117 (10th Cir. 2002) ("Because the FDCPA, like the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., is a remedial statute, it should be construed liberally in favor of the consumer"); *Edwards v. Your Credit, Inc.*, 148 F.3d 427 (5th Cir. 1998) (construing TILA in light of its remedial purposes); *Murphy v. Household Fin. Corp.*, 560 F.2d 206 (6th Cir. 1977) (holding that TILA is remedial, not penal).

be interpreted narrowly to ensure the statutes fulfill their remedial purpose. *See Cobb v. Contract Transport, Inc.*, 452 F.3d 543, 559 (6th Cir. 2006) ("Following traditional canons of statutory interpretation, remedial statutes should be construed broadly to extend coverage and their exclusions or exceptions should be construed narrowly."); *State of Idaho v. Hanna Mining Co.*, 882 F.2d 392, 396 (9th Cir. 1989) (holding exclusions of liability in remedial statutes should "be narrowly construed").

Beyond the regulatory history, other federal courts have reached the same conclusions. Courts have consistently treated PLA as credit products covered by TILA and MLA, and have recognized that fees often characterized as "voluntary" or "not interest" can be difficult to avoid and are appropriately classified as finance charges when they are integral to accessing funds.[64]

[64] *See supra* 2 (collecting eleven cases finding PLAs constitute credit under MLA and TILA).

CONCLUSION

The Court should affirm the district court's order denying Defendant-Appellant Grant's Motion to Compel Arbitration.

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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 Ninth 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: May 6, 2026

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 9th Cir. R. 32-1 because it contains 6,976 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: May 6, 2026

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