



Consumers for Auto Reliability and Safety

August 22, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments to Docket No. CFPB-2016-0020
RIN 3170-AA51

Dear Bureau Members:

Consumers for Auto Reliability and Safety (CARS) and the Consumers for Auto Reliability and Safety Foundation respectfully submit the following comments for the record, in response to the Bureau's proposed rule regarding pre-dispute arbitration in financial transactions that fall within the Bureau's authority. Thank you for the opportunity to comment.

CARS is a national award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing vehicle-related fatalities, injuries and economic losses. CARS has spearheaded enactment of numerous landmark federal and state laws to improve protections for consumers, enhance vehicle safety, make our roads and highways safer, and make the automotive marketplace fairer for both new and used car buyers.

The CARS Foundation is a non-profit organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses through education, outreach, aid to victims, and related activities.

Both organizations strongly support the CFPB's proposal to prohibit forced arbitration clauses that bar wronged consumers from being able to join together to address widespread illegal activity through class actions. We also support the proposal to improve transparency involving individual cases in forced arbitration, and urge the Bureau to also ban forced individual arbitration.

Consumers deserve at least the same freedom, protection, and access to justice as car dealers, who were granted a special exemption from the Federal Arbitration Act by Congress. We agree with the points and arguments that Senator Orrin Hatch (R-UT) and Senator Charles Grassley (R-IA) made in favor of restoring Seventh Amendment rights to car dealers, which clearly should apply equally to

consumers.

As Senator Hatch stated when he introduced S. 1140, “The Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001,” the new law was needed to protect auto dealers from having mandatory arbitration clauses imposed upon them by auto manufacturers, due to their “unequal bargaining power.”¹ As Senator Grassley, speaking in support of S. 1140, stated:

“While arbitration serves an important function as an efficient alternative to court, some trade-offs must be considered by both parties, such as limited judicial review and less formal procedures regarding discovery and rules of evidence. When mandatory binding arbitration is forced upon a party, for example when it is placed in a boiler-plate agreement, it deprives the weaker party the opportunity to elect another forum. As a proponent of arbitration I believe it is critical to ensure that the selection of arbitration is voluntary and fair...Unequal bargaining power exists in contracts between automobile and truck dealers and their manufacturers. The manufacturer drafts the contract and presents it to dealers with no opportunity to negotiate... The purpose of arbitration is to reduce costly, time-consuming litigation, not to force a party to an adhesion contract to waive access to judicial or administrative forums for the pursuit of rights under State law.”²

Senator Grassley also stated that:

“This legislation will go a long way toward ensuring that parties will not be forced into binding arbitration and thereby lose important statutory rights. I am confident that given its many advantages arbitration will often be elected. But it is essential for public policy reasons and basic fairness that both parties to this type of contract have the freedom to make their own decisions based on the circumstances of the case.”³

The exact same points clearly apply regarding consumer contracts, including contracts with auto dealers and lenders. While S. 1140 did not pass, auto dealers were granted an exemption from the Federal Arbitration Act, in order to preserve their rights, through passage of H.R. 2215 in 2002. That act, now codified at 15 U.S.C. section 1226, prohibits auto manufacturers from including any type of pre-dispute arbitration clause in franchise contracts with auto dealers. Specifically, it provides that arbitration may be used to settle a controversy arising out of a motor vehicle franchise contract only if both parties consent, in writing, and only after the dispute arises.

The same rights should be restored for consumers, including in auto purchasing, leasing, and financing contracts.

It is important to note that when the National Automobile Dealers Association was seeking the special exemption from the Federal Arbitration Act, in order to secure enough votes for passage in

¹ Statements on Introduced Bills and Joint Resolutions, United States Senate, June 29, 2001. Statement by Senator Hatch of Utah.

² Statements on Introduced Bills and Joint Resolutions, United States Senate, June 29, 2001. Statement by Senator Grassley of Iowa.

³ Statements on Introduced Bills and Joint Resolutions, United States Senate, June 29, 2001. Statement by Senator Grassley of Iowa.

Congress, the Association wrote to members of Congress and promised not to oppose restoring the same rights to car buyers.⁴ Their letter states:

“For the record, the National Automobile Dealers Association (NADA) does not support or encourage the use of mandatory binding arbitration in any contract of adhesion, whether a motor vehicle franchise contract between a manufacturer and dealer or a consumer contract.”⁵

Unequal Bargaining Power Exists Between Consumers and Dealers and Auto Lenders

Clearly, consumers are in an even more unequal bargaining position compared to auto dealers and auto lenders than are dealers, compared to auto manufacturers. However, despite this fact, and the NADA's promise to Congress, it is now the norm for franchised auto dealers and the largest auto dealership chains to use pre-printed contracts that include mandatory pre-dispute binding arbitration. Lenders have informed auto dealers that they will not accept retail installment contracts for auto loans unless the dealers include binding mandatory arbitration clauses in the contracts that typically include class-action bans.

Consumers are in an unequal bargaining position, in relation to auto dealers, where they have little choice but to enter into a contract that deprives them of their rights, in order to obtain transportation necessary to access jobs, schools, medical care, groceries, and other necessities of modern life. This is particularly true if they cannot afford to pay cash and must be approved for a loan, since lenders now refuse to accept contracts without binding mandatory arbitration clauses.

Thanks to franchise laws in all 50 states that grant auto dealers a special monopoly, consumers who wish to purchase a new vehicle are virtually captive to franchised auto dealers to make their purchase. Unless they are purchasing a Tesla in one of the states where Tesla is permitted to sell directly to consumers, they have no choice. They have to buy the car from a franchised auto dealer, or go abroad to buy direct from the factory.

Used car buyers have more choices, including purchasing from individuals and over the internet. In the past, consumers who chose to purchase vehicles from licensed dealers had a reasonable expectation that if there was a major problem, they would be protected by various state and federal laws. Now, due to the imposition of arbitration in dealer contracts, consumers may actually get less protection than if they bought the car from an individual.

Not only are the stakes high for consumers in terms of sheer dollar amounts, but they are also high in terms of the potential impact on their entire future. Worst case scenario: if the vehicle has serious hidden, undisclosed defects, it can kill them and/or members of their family, as well as others who share the roads. A bad car deal can also cost them their job, destroy their credit, and saddle them with added debt.

⁴ National Automobile Dealers Association letter to U.S. Rep. Jerrold Nadler, July 12, 2000, posted at: http://carconsumers.org/pdf/arbitration_NADA_letter_to_Congress.pdf

⁵ National Automobile Dealers Association letter to U.S. Rep. Jerrold Nadler, July 12, 2000, posted at: http://carconsumers.org/pdf/arbitration_NADA_letter_to_Congress.pdf

Among the factors that create the vast inequality in bargaining position:

- Dealers and their attorneys prepare the contracts and present them to the consumer. They are contracts of adhesion, presented on a take-it-or-leave-it basis, and many of the terms, including the arbitration clause, are not negotiable.
- The contracts are lengthy and complex. The language is highly legalistic. Even highly-educated consumers find the contracts to be intimidating and confusing. This is particularly true of lease transactions.
- Consumers generally lack access to legal counsel specializing in auto sales transactions. Dealers typically have attorneys on retainer. They also belong to trade associations that employ full-time high-powered legal talent.
- Consumers are led to believe that when they purchase or lease a vehicle from a licensed auto dealership they have a reasonable expectation that the business practices are legitimate. To some extent, their guard is down.
- When the product is a used car, auto dealers have superior knowledge of the history and condition of the product. For example, they know whether they bought the car at a deep discount from a “salvage” auction, where frame damage and other faults are openly announced.
- For most car buyers, purchasing a vehicle is unlike any other transaction they have ever experienced. School curricula typically do not prepare students for high-stakes financial negotiations. Other purchasing experiences do not prepare car buyers for the unique challenges of buying a car, which is often a complex transaction involving a trade-in, financing options, the make and model of vehicle, how the vehicle is equipped, plus numerous add-ons and additional products.
- Most consumers purchase a vehicle only two or three times a decade. More consumers are keeping their vehicles longer, making the length of time between purchases longer. Dealers typically buy and sell vehicles on a daily basis. In addition, sales and finance and insurance (F & I) personnel receive intensive training in how to maximize profits for the dealership. They typically receive bonuses and perks based on their performance, so have strong incentives to get the most out of each transaction. Some F & I managers are paid \$300,000 or more per year, mostly in bonuses, based on how much they extract from each customer.
- Auto sales and financing scams have gone high-tech. The practices are increasingly sophisticated, and are challenging for even high-tech crime specialists to identify.
- Typically, pre-dispute binding arbitration contracts allow dealers to select the forum and decide on the terms. This loads the dice in favor of defendants, who are in a superior position to select forums that will rule in their favor.
- Some arbitration forums allow arbitrators to charge high fees, such as \$500 to \$1,000 per hour, plus administrative charges. The vast majority of consumers, who have to stretch their budgets to purchase a vehicle, are in no position to shell out another \$20,000 or more to obtain a biased decision.
- Some arbitration forums allow arbitrators to inflate their charges by requiring briefings and hearings for even minor disputes between counsel. In court, minor disputes are discouraged by code, which requires or allows judges to award sanctions.

Common auto financing scams perpetrated by auto dealers that cost American consumers billions of

dollars include the following:

- Charging excessive hidden dealer “markups” (“markups” are incentives dealers receive from lenders in return for raising the interest on auto loans above the rate the consumer qualifies for, based on their credit history). Through private class action litigation that is no longer possible to bring due to forced arbitration and class action bans, dealer markups have been shown to have a disparate impact based on race, with African American and Hispanic borrowers being charged more, even when they have the same credit as their white counterparts. While the CFPB has succeeded in winning cases that resulted in settlements awarding over \$143 million in restitution to harmed consumers, the agency’s ability to bring those cases is under attack in Congress, making private litigation all the more vital and important.
- Falsifying signed credit applications to exaggerate income
- Engaging in “yo-yo” financing to gouge purchasers (misleading or intimidating consumers into accepting worse financial terms, after the consumer has taken possession of their new purchase)
- Engaging in “loan packing” of high-profit items of little or no real value (adding costly extras while misrepresenting their actual cost and true value to the buyer, in a sophisticated shell game)
- Forging signatures on documents
- Taking vehicles in trade and failing to pay off the liens, as promised
- Selling vehicles with unpaid liens, which are often subsequently repossessed by the former owner’s lienholder, even when the new purchaser makes payments in full and on time to the assignee who purchased their retail installment contract
- Failing to disclose “negative equity” from prior transactions that is rolled over into new loans

All fifty states have enacted laws aimed at protecting car buyers from these scams, but the illegal activity still flourishes and individuals are severely harmed when consumers are denied their rights due to the imposition of pre-dispute binding arbitration agreements. Unfortunately, for many decades, public enforcement by state attorneys general and district attorneys to protect car buyers has been almost non-existent.

Arbitration Clauses with Class Action Bans Harm Consumers

Several class actions brought on behalf of car buyers whose vehicles were illegally repossessed provide hard data proving the harmful impact of forced arbitration on consumers, particularly struggling low-income consumers and military personnel and their families. The illegal activity in these cases included failing to provide the legally required notice to consumers whose vehicles had been repossessed about how much they had to pay, and to whom, in order to get their car back. These cases provide a dramatic and stark contrast between the relief consumers obtain without forced arbitration clauses and with forced arbitration.

Two class actions, *Aho vs. Americredit Financial Services* and *Smith Vs. Americredit Financial Services*, alleging violations of California’s Auto Sales Financing Act (also known as the Rees-Levering Act), resulted in 100% of the debt still owed being forgiven or waived – a benefit of over \$383 million for the class members.

However, the additional benefits received by class members varied solely based on the basis of whether class members had signed retail installment contracts that included arbitration clauses. Car buyers without arbitration clauses received refunds of 89% of their payments. In direct contrast, car buyers with arbitration clauses received smaller refunds of only 57% of their payments. Class counsel were awarded fees in addition to the class recovery, so the attorneys' fees did not reduce the recovery for consumers one iota.

All the car buyers in those cases had exactly the same claims against the exact same defendants regarding the exact same practices. The only difference was that some class members had arbitration clauses in their contracts, while others did not. Those who did not have arbitration clauses received significantly more.

After the California Supreme Court issued its ruling in *Sanchez v. Valencia Holding, LLC*, further restricting consumers' access to court, and allowing lawbreakers to force legitimate claims into private arbitration programs, similarly harmed consumers received significantly less, although their claims were identical.

In the class action case *Hamm vs. Consumer Portfolio Services, Inc.*⁶ the class representative did not have an arbitration clause in his contract. In an exemplary result, the class members, 2,189 car buyers, whose vehicles had been illegally repossessed, received \$18,158,243 in debt forgiveness. The fees for the class members' attorneys were awarded in addition to the amounts received by the class members.

However, in a “twin” class action case, *Trabert vs. Consumer Portfolio Services, Inc.*⁷ the class representative did have an arbitration clause in his contract. The claims were identical to the claims asserted in *Hamm*, against the same defendant, regarding the same practices, over the same period of time. The same attorneys brought the case, representing members of the class. But solely because of the arbitration clause, Mr. Trabert and members of the class in that case received no relief whatsoever. The debt remains on their credit reports, and they are still subject to having to pay the entire debt, plus penalties, and are also subject to receiving calls from debt collectors. They have also received no notification that they have been wronged and have legitimate claims that could be brought, if they were free from the arbitrary limits imposed by the arbitration clause.

Arbitration Litigation Floods Courts

Allowing the financial services industry to impose mandatory binding arbitration over-burdens state and federal courts with litigation over the terms of contracts, including burgeoning litigation in federal and state appellate courts, state Supreme Courts, and the U.S. Supreme Court.

Instead of being able to litigate over the merits of cases, consumers and small businesses too often end up having to litigate over the terms of the contract and the forum, with a flood of cases being brought in trial and appellate courts simply to determine the forums for deciding disputes.

Instead of obeying the law, unscrupulous corporations hide behind arbitration clauses and rely

⁶ Sacramento Superior Court Doc. No. 34-2010-0081248.

⁷ Sacramento Superior Court Doc. No. 37-2010-00096763.

on the arbitration process to avoid accountability. Thus, we have the worst of all possible worlds: no deterrence, rampant illegal activity, no accountability, and a flood of litigation in an attempt to resolve where disputes should be heard.

Arbitration and Forgery

Allowing dealers and auto lenders to impose forced arbitration in contracts of adhesion perversely rewards businesses that engage in unscrupulous and illegal, even criminal, practices, such as forgery. The following case is an example of how unscrupulous dealers resort to forgery to deny the rights of consumers, and evade justice, even when car buyers do not sign contracts with arbitration clauses.

Gregory Washington v. Specialty Motors, dba Auto Source. This lawsuit, filed in 2007, alleged fraud, conversion, negligence, and violations of the Maryland Consumer Debt Collection Act and Maryland Consumer Protection Act. A copy of the original complaint and of the history of the case are attached with these comments.

According to the original complaint, “This case is about a car dealership that defrauded a [disabled] veteran out of a \$13,000 down-payment, which constituted his savings, and then stole the vehicle they sold to him without cause, and sold it to somebody else...[The dealer] took both his money and his car, leaving him without his savings and without transportation to necessary family and medical appointments, aggravating a medical condition and causing Mr. Washington to lose visitation rights with his children.”

Specialty Automotive sought to have the case dismissed, citing a document that the dealer alleged had been signed by Mr. Washington, agreeing to have any dispute heard in arbitration. The signature on that document was ultimately proven in a court of law to be a forgery. However, before he could proceed, Mr. Washington first had the burden of proving in court that he did not sign away his right to a trial by judge or jury, and that the signature on the document was a forgery. That involved considerable time and expense.

Finally Mr. Washington was allowed to take his case to trial. Eventually, after years of litigation, in December, 2009, he was awarded \$126,112.59. However, before he could collect on his award, the dealership went out of business.

Another case that illustrates how arbitration adds to litigation, involving an attempt to get another consumer who had not signed a contract with an arbitration agreement to surrender her rights:

Trudy Lynn Scott vs. Fitzgerald Auto Mall, Inc. / Fitzgerald Auto Mall, Inc. v. Trudy Lynn Scott.⁸ A copy of the Appellate Court decision is attached with these comments.

According to Appellate Court records, on Sept. 10, 2005 Trudy Lynn Scott purchased a new

⁸ No. 0672 (MD Ct. Spec. App. July 30, 2009).

2006 Mazda Tribute from Fitzgerald Auto Mall, Inc. She entered into a contract that did not include an arbitration clause. “After signing the contract, Ms. Scott left the Fitzgerald with the new vehicle. A few weeks later, Ms. Scott was notified by...[the] finance manager of Fitzgerald, who advised her that there was a problem with the contract she had signed. The problem arose when Fitzgerald attempted to assign Ms. Scott's contract to Mazda American Credit (Mazda Credit). Mazda Credit refused to accept the type of contract Ms. Scott had signed. [Fitzgerald's finance manager] requested that Ms. Scott sign a new contract for the vehicle. Ms. Scott initially orally agreed to sign a new contract...but the new contract was never signed by her.”

According to the Appellate Court, “...contrary to appellant [Fitzgerald Auto Mall's] argument, the second contract was undisputedly not the same as the original contract 'in all material aspects' because it allowed Mazda American Credit, at its option, to require that all disputes be resolved by arbitration. In order to mitigate damages, the plaintiff [Ms. Scott] is not required to accept contractual provisions to which she had never agreed.”

“The new contract that Fitzgerald asked Ms. Scott to sign contained at least one provision not found in the original contract. That provision read, in relevant part:

**ARBITRATION
RIGHTS YOU AND WE AGREE TO GIVE UP**

If either you or we choose to arbitrate a claim, then you and we agree to waive the following rights:

- **RIGHT TO A TRIAL, WHETHER BY A JUDGE OR JURY**
- **RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER IN ANY CLASS CLAIM YOU MAY HAVE AGAINST US WHETHER IN COURT OR IN ARBITRATION**
- **BROAD RIGHTS TO DISCOVERY AS ARE AVAILABLE IN A LAWSUIT**
- **RIGHT TO APPEAL THE DECISION OF AN ARBITRATOR**
- **OTHER RIGHTS THAT ARE AVAILABLE IN A LAWSUIT**

Rights You and We Do Not Give Up: If a Claim is arbitrated, you and we will continue to have the following rights, without waiving the arbitration provision as to any Claim: 1) Right to file bankruptcy in court; 2) Right to enforce the security interest in the vehicle, whether by repossession or through a court of law; 3) Right to take legal action to enforce the arbitrator's decision; 4) Right to request that a court of law review whether the arbitrator exceeded its authority.”⁹

After Ms. Scott refused to sign the new contract, with the arbitration clause and other one-sided provisions, the dealership repossessed her car. She filed a lawsuit, alleging breach of contract, violation of Maryland's Credit Grantor's Closed End Credit statute, and conversion. In 2006, a jury awarded Ms. Scott \$1,304,91 in punitive damages, but no compensatory damages. A new trial was granted. The jury in that trial returned a verdict in favor of Ms. Scott in the amount of \$8,441 for breach of contract and \$47,000 for conversion. The Appellate Court eventually ruled largely in favor of Ms. Scott.

Forced Arbitration Causes Delays and Hardship in Obtaining Justice

⁹ Ibid.

Jon Perz vs. Mossy Toyota is an example of a case where an auto dealership exploited the arbitration system in a brazen attempt to evade justice, prolonging the case for years and refusing to pay for the arbitration process to commence.

In 2007, Mossy Toyota in San Diego sold Jon Perz an unsafe used car, claiming that it qualified to be sold as a “certified” car. However, the car had major mechanical problems, and was later determined in arbitration before JAMS to be unsafe at the time of sale. Mr. Perz repeatedly attempted to get Mossy Toyota to repair the car, but they refused. Then they refused to provide him with a refund. In order to preserve his good credit, Mr. Perz continued to make payments of approximately \$12,000, while his car sat in a parking lot, un-drivable, gathering dust and cobwebs. This was a major financial hardship, and caused him considerable stress.

Mr. Perz finally obtained legal counsel from lemon law / auto fraud attorney Michael Lindsey and filed suit. Before the case could be heard on the merits, the dealership moved to have the case removed to arbitration. The court granted that motion. Then the dealership attempted to have the case heard in arbitration under commercial rules, which would have made Mr. Perz potentially liable for Mossy Toyota's costs and attorneys fees if he did not prevail in arbitration, even though the contract indicated that the car had been purchased for personal use, and in fact it had been purchased for personal use, and the case clearly should have been heard under the consumer rules.

Subsequently, Mossy Toyota failed to pay for the arbitration to commence, even though the dealership's contract with Mr. Perz said that Mossy would pay for the arbitration, and under the American Arbitration Association's consumer rules, the defendant business is required to pay the initial fee.

On February 2, 2012, the American Arbitration Association sent Mossy Toyota a letter, stating that “As of this date we have not received the required fees from the business in this matter. Accordingly, we must decline to administer this case. Further, since Mossy Toyota has not complied with our request to adhere to our policy regarding consumer claims, we must decline to administer any other consumer disputes involving this business. We request that Mossy Toyota remove the AAA name from its arbitration clause so that there is no confusion to the public regarding our decision.” However, despite the letter, Mossy Toyota continued to include the AAA in its retail installment contracts.

It took over eight years for Jon Perz to get a hearing before a panel of arbitrators, in JAMS, where he was awarded a refund, plus additional damages, and pre-judgment interest, totaling \$26,741.21. His attorney was awarded \$324,722.25 in attorneys fees. It took a Court order, issued on March 13, 2015, for Mossy Toyota to finally pay Mr. Perz.

**CFPB should require reporting and transparency
regarding individual cases in arbitration**

CARS and the CARS Foundation strongly support the CFPB's proposal to require reporting and transparency regarding individual arbitration cases. This is clearly necessary, particularly because of

the widespread failure of arbitration firms to comply with existing law in California that requires them to provide basic data about the cases that are filed and their outcomes.

According to a report issued by the U.C. Hastings College of the Law Public Law Research Institute,¹⁰ the researchers found that:

“Among the firms that publish reports, important information is often missing. It is often difficult to understand the outcome of cases from the reports.

While reports are literally 'searchable,' only two companies report the data in a way that can be searched or sorted in a way that permits meaningful analysis....

Conclusions:

- More disclosures and more data are available than in 2004, but there is widespread noncompliance.
- The data can't be analyzed without significant expense.
- Reporting needs to be standardized
- Data should be published in open source or sortable formats”¹¹
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In an attempt to improve compliance and make the reports more readily searchable and useful, in 2014 the California Legislature enacted AB 802, authored by Assemblymember Bob Wieckowski, to strengthen and tighten the reporting requirements. However, according to an in-depth report regarding arbitration, broadcast in 2016, the news organization Al Jazeera conducted its own research, and found that out of twenty firms offering arbitration services in California, only four were complying with the state's disclosure law.¹²

Class Action Bans Needed to Protect Military Servicemembers and Their Families

In a gross miscarriage of justice, because of overreaching and misinterpretation of the U.S. Constitution and the Federal Arbitration Act by the majority on a divided U.S. Supreme Court, it is too often no longer possible to bring class action cases involving unfair, false, deceptive, and predatory lending activities on behalf of military Servicemembers. As military groups point out, it is vitally important for our nation's security that military Servicemembers be allowed to join together in class actions to obtain justice. Those who sacrifice so much to defend our freedoms deserve no less than to have their freedoms and access to justice preserved at home.

The following case is an example of how Servicemembers have benefited from class actions over illegal lending activities:

Brack v. Omni Loan Company, Ltd.¹³ Plaintiff and appellant Joshua W. Brack was serving

¹⁰ “Reporting Consumer Arbitration Data in California: An Analysis of Compliance with California Code of Civil Procedure §1281.96.” U.C. Hastings College of the Law Public Law Research Institute, David J. Jung, Professor of Law and Director, and Jamie Horowitz, Graduate Research Fellow,

<http://voiceofsandiego.org/wp-content/uploads/2013/05/arbitration2-052313-1.pdf>

¹¹ Ibid.

¹² “Buried in the Fine Print,” Al Jazeera, broadcast March 9, 2016.

¹³ Cal. App. 4th Div. 1, No. D049198, 2008.

our nation on active duty as a U.S. Marine, stationed at Camp Pendleton. According to the Appellate Court, Mr. Brack “initially applied electronically for a loan from Omni but was directed to complete his loan application at Omni's Oceanside office. [Mr.] Brack was not advised until he was presented with the loan agreement the interest rate would be 34.89 percent per annum. The loan was secured by [Mr.] Brack's personal property and included a \$104.63 charge for property insurance and a prepaid finance charge. Mr. Brack repaid his loan in October 2002.”¹⁴

Omni lured military borrowers to use its services by widely advertising the claim that they could improve their credit. That promise of being able to improve his credit score was a major reason Mr. Brack decided to take out a loan from Omni. However, after he had paid the loan in full, Mr. Brack discovered that Omni failed to report payments to the credit reporting bureaus when the payments were made on time. Instead, the lender reported only late payments or defaults to the credit reporting bureaus, harming borrower's credit.

Furthermore, Omni required borrowers to provide direct access to their military allotments in order to receive a loan. Omni also failed to provide updates about the amounts owed. If the borrower did not end the allotment at the precise time the total amount due was paid, and Omni received more than the amount owed, Omni penalized the borrower by assessing an additional fee. This was essentially a trap for military Servicemembers, who tend to be extremely busy doing their work defending our nation, including in remote war zones around the world, where communications are difficult and they do not have time micro-manage their financial affairs on a day-to-day basis.

After he won a battle over whether California law or Nevada law would apply, Mr. Brack and members of the class received an exemplary settlement. Over 3000 Marines received refunds or forgiveness of all the finance charges on their loans, plus their attorneys' fees.

Because military servicemembers may lose their security clearance and be unable to serve in the capacity for which they have been trained, and for which they have received clearance, when they face financial readiness issues, the stakes are extremely high – not only for the Servicemembers and their families, but also for our entire nation, which cannot afford to lose the full benefit of their services and expertise, at a time when we face numerous threats at home and abroad.

Thank you again for the opportunity to comment. Should the Bureau have any questions or wish to receive further details, please do not hesitate to contact me directly.

Respectfully submitted,



Rosemary Shahan
President

¹⁴ Ibid.