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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 Bureau of Consumer Financial Protection,
 16 Plaintiff,
 17 v.
 18 LendUp Loans, LLC,
 19 Defendant.

20 Case No. 4:20-cv-8583

21 COMPLAINT

22 The Bureau of Consumer Financial Protection (Bureau) files this Complaint against
 23 LendUp Loans, LLC (LendUp) and alleges as follows.

24 **Introduction**

25 1. The Bureau brings this action under the Military Lending Act, 10 U.S.C. § 987,
 26 and its implementing regulation, 32 C.F.R. pt. 232, (collectively, the MLA) in connection
 27 with LendUp’s extension of consumer credit.

1 **Jurisdiction**

2 2. This Court has subject-matter jurisdiction over this action because it presents a
3 federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28
4 U.S.C. § 1345.

5 **Venue**

6 3. Venue is proper in this district because LendUp is located, resides, and does
7 business in this district. 12 U.S.C. § 5564(f).

8 **Intradistrict Assignment**

9 4. Under the Local Rules of Practice in Civil Proceedings before the United States
10 District Court for the Northern District of California, this action arises in the County of
11 Alameda because a substantial part of the events or omissions giving rise to the claims
12 occurred there. *See* Civil L.R. 3-2(c). Accordingly, this action should be assigned to the San
13 Francisco or the Oakland Division of this Court. *See* Civil L.R. 3-2(d).

14 **Parties**

15 5. The Bureau is an independent agency of the United States created by the
16 Consumer Financial Protection Act (CFPA). 12 U.S.C. § 5491(a). It has independent
17 litigating authority, 12 U.S.C. § 5564(a), (b), and may initiate civil actions in federal district
18 court to secure appropriate relief for violations of the MLA. 10 U.S.C. § 987(f)(6); 15 U.S.C.
19 § 1607(a)(6); 32 C.F.R. § 232.10.

20 6. LendUp is a limited-liability company licensed by the California Department of
21 Business Oversight. Its principal place of business is in Oakland, California. LendUp is an
22 online lender that offers single-payment and installment loans to consumers. LendUp is a
23 “creditor” under the MLA because, during the relevant period, it has been engaged in the
24 business of extending consumer credit and meets the transaction standard for a “creditor”
25 under Regulation Z, 12 C.F.R. pt. 1026, with respect to extensions of consumer credit to
26 borrowers covered by the MLA. 32 C.F.R. § 232.3(i)(3).

Factual Background

7. The MLA contains protections for active-duty servicemembers and their dependents—defined collectively as “covered borrowers,” 10 U.S.C. § 987(i)(1), (2); 32 C.F.R. § 232.3(g)—in connection with extensions of consumer credit. Those protections include a maximum allowable amount of all charges that may be associated with an extension of credit; a prohibition against requiring arbitration; and mandatory loan disclosures. 10 U.S.C. § 987(b), (c), (e)(3); 32 C.F.R. §§ 232.4(b), 232.6, 232.8(c). Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with any provision of the MLA or contains one or more prohibited provisions is void from the inception of the contract. 10 U.S.C. § 987(f)(3); 32 C.F.R. 232.9(c).

8. LendUp has offered and extended single-payment and installment loans to covered borrowers since at least October 3, 2016. All of those loans constituted “consumer credit” under the MLA because LendUp offered or extended those loans to covered borrowers primarily for personal, family, or household purposes, and those loans were subject to a finance charge. 32 C.F.R. § 232.3(f)(1)(i). In addition, some of the installment loans offered to covered borrowers constituted “consumer credit” because they were payable by a written agreement in more than four installments. 32 C.F.R. 232.3(f)(1)(ii).

Count I

Violations of the MLA’s Rate Cap

9. The Bureau re-alleges and incorporates by reference paragraphs 1–8.

10. The MLA provides that the cost of consumer credit to a covered borrower may not exceed an annual percentage rate of 36%. 10 U.S.C. § 987(b). The annual percentage rate applicable to the extension of credit to covered borrowers is called the Military Annual Percentage Rate or MAPR, 32 C.F.R. § 232.3(p). For closed-end credit transactions—such as the single-payment and installment loans LendUp made to covered borrowers—the MAPR is calculated following the rules for calculating and disclosing the “Annual Percentage Rate (APR)” for credit transactions under Regulation Z, 12 C.F.R. pt. 1026, but included in such

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1 MAPR calculations are the charges, costs, and fees listed in the MLA. 32 C.F.R. § 232.4(c). A
2 creditor, such as LendUp, is prohibited from imposing an MAPR greater than 36% in
3 connection with an extension to a covered borrower of consumer credit that is closed-end
4 credit. 32 C.F.R. § 232.4(b).

5 11. Since October 3, 2016, LendUp has made over 4,000 single-payment or
6 installment loans to over 1,200 covered borrowers, which loans imposed an MAPR greater
7 than 36%.

8 12. LendUp violated the MLA each time it extended such a loan.

9 **Count II**

10 *Violations of the MLA's Prohibition Against Requiring Arbitration*

11 13. The Bureau re-alleges and incorporates by reference paragraphs 1–8.

12 14. The MLA makes it unlawful for any creditor to extend consumer credit to a
13 covered borrower with respect to which the creditor requires the borrower to submit to
14 arbitration in the case of a dispute. 10 U.S.C. § 987(e)(3); 32 C.F.R. § 232.8(c).

15 15. Since October 3, 2016, LendUp has made over 4,100 single-payment or
16 installment loans to over 1,200 covered borrowers by way of loan agreements requiring the
17 borrowers to submit to arbitration in the case of a dispute.

18 16. LendUp violated the MLA each time it extended such a loan.

19 **Count III**

20 *Violations of the MLA's Disclosure Requirement*

21 17. The Bureau re-alleges and incorporates by reference paragraphs 1–8.

22 18. The MLA requires creditors that extend consumer credit to covered borrowers
23 to make certain loan disclosures before or at the time the borrower becomes obligated on
24 the transaction or establishes an account for the consumer credit. 10 U.S.C. § 987(c); 32
25 C.F.R. § 232.6(a). The mandatory loan disclosure must include a statement of the MAPR
26 applicable to the extension of consumer credit. 10 U.S.C. § 987(c)(1)(A); 32 C.F.R.
27 § 232.6(a)(1).

1 19. Since October 3, 2016, LendUp has extended over 4,100 single-payment or
2 installment loans to over 1,200 covered borrowers without making all loan disclosures
3 required by the MLA.

4 20. LendUp violated the MLA each time it extended such a loan.

5 **Demand for Relief**

6 The Bureau requests that the Court:

- 7 a. permanently enjoin LendUp from committing future violations of the MLA;
8 b. order LendUp to correct inaccurate information furnished to consumer-
9 reporting agencies relating to amounts delinquent or currently owed with
10 respect to consumer-credit agreements that were void *ab initio*;
11 c. permanently enjoin LendUp from collecting debts arising from consumer-
12 credit agreements that were void *ab initio* or from selling or assigning such
13 debts;
14 d. grant additional injunctive relief as the Court deems just and proper;
15 e. order LendUp to pay damages, restitution, and other monetary relief to
16 consumers;
17 f. order LendUp to pay disgorgement or compensation for unjust enrichment;
18 g. rescind consumer-credit agreements that were void *ab initio*;
19 h. impose on LendUp a civil money penalty;
20 i. award costs against LendUp; and
21 j. award additional relief as the Court deems just and proper.

22
23
24 Respectfully submitted,

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