

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

AUTOMONEY, INC.,	)	
	)	
Plaintiff,	)	
	)	CA No.: 2:19-cv-2217-RMG
v.	)	
	)	
DEIRDRE BOOKER PIPPINS,	)	
	)	
Defendants.	)	
	)	

Plaintiff AutoMoney, Inc. (“Plaintiff” or “AutoMoney”) brings this action against Deirdre Booker Pippins (the “Defendant”) for Declaratory Judgment based on the allegations set forth below.

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff is a South Carolina corporation with a principal place of business located at 450 Meeting Street, Charleston, South Carolina. The Plaintiff is licensed by the State of South Carolina to lend money to customers and is lawfully engaged in the title loan lending business at locations throughout the State of South Carolina.

2. Upon information and belief, Defendant is a resident of Gastonia, North Carolina.

3. This is an action for declaratory relief under 28 U.S.C. § 2201 and FED. R. CIV. P. 57 to establish whether the Loan Agreement, Promissory Note and

Security Agreement entered into between AutoMoney and the Defendant was a South Carolina lending transaction not subject to North Carolina lending statutes or, in the alternative, whether the relevant North Carolina lending statutes violate the United States Constitution, Article I, § 8, cl. 3 (the “Commerce Clause”).

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 2201 in that the Complaint asserts claims arising under the Constitution and laws of the United States, and seeks a declaration of rights and other legal relations under the Constitution and laws of the United States.

5. Alternatively, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is diversity of citizenship and the amount in controversy exceeds \$75,000.00.

6. Venue is proper in South Carolina pursuant to 28 U.S.C. § 1391(b)(2) (2018) because all acts giving rise to the contractual agreement and the claims took place in South Carolina. More specifically, this is the district where the Loan Agreement, Promissory Note and Security Agreement were entered into between the parties, and is the state whose laws govern under the choice of law provision of the Loan Agreement, Promissory Note and Security Agreement.

7. AutoMoney files this declaratory judgment action to determine its prospective liability in the face of several lawsuits being threatened by North Carolina customers who are represented by the Greensboro Law Center.

8. The Court's declaration as to the legal relationship between the parties and/or the applicability or constitutionality of certain provisions of the North Carolina Consumer Finance Act will clarify the unsettled legal issues between the Plaintiff and Defendant, and similarly situated customers.

9. There is no better or more efficient alternative to resolve the legal issues and relationships between the parties than through this declaratory judgment action.

### **FACTS**

10. Plaintiff incorporates the allegations of paragraphs 1 through 9 as if fully set forth herein.

#### ***General Historical Background.***

11. A North Carolina law firm called Brown, Faucher, Peraldo & Benson, PLLC d/b/a the Greensboro Law Center made a demand on behalf of certain customers of AutoMoney on or about October 15, 2018. The demand letters allege that AutoMoney violated North Carolina usury statutes, the North Carolina Consumer Finance Act and/or the North Carolina Unfair and Deceptive Trade Practices statutes.

12. Since the time of the initial demand, the Defendant was added as a client of the Greensboro Law Center.

13. In response, AutoMoney takes the position that its title loans with North Carolina customers - who drove to its South Carolina stores, negotiated their titles loans in South Carolina while physically present at the AutoMoney stores, and executed the Loan and Security Agreements at the South Carolina stores - are not subject to the provisions of the North Carolina Consumer Finance Act.

14. The following additional facts demonstrate that AutoMoney does not make loans within the State of North Carolina:

- a. AutoMoney does not have any store locations in North Carolina;
- b. AutoMoney maintains no employees or agents in North Carolina;
- c. All loans between customers and AutoMoney are made in person in the State of South Carolina, including the loan of the Defendant;
- d. AutoMoney does not negotiate loans or make offers to lend money over the phone, email or the internet with North Carolina customers, including the Defendant;
- e. Defendant did not accept the offer to lend money in North Carolina; rather, the offer was accepted in South Carolina;

f. Title loan documents between AutoMoney and North Carolina residents, including the Defendant's, are executed in South Carolina;

g. AutoMoney does not have North Carolina bank accounts;

h. Funds passing from AutoMoney to the Defendant were distributed only in South Carolina; and

i. Payments by the Defendant to AutoMoney were received only in South Carolina.

15. The applicable statute of the North Carolina Consumer Finance Act is N.C. GEN. STAT. § 53-190, entitled "Loan made elsewhere." Subsection (b) states: "If any lender or agent of a lender who makes loan contracts outside this State in the amount of the value of fifteen thousand dollars (\$15,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article." This statute is either inapplicable to AutoMoney as a licensed South Carolina title lender that does not enter North Carolina to solicit or conduct activities with respect to its title loans or, alternatively, the statute violates the Commerce Clause of the United States Constitution by regulating AutoMoney's lending activities within South Carolina. See U.S. CONST., Art. I, § 8, cl. 3.

16. The case of Midwest Title Loans, Inc. v. Mills, 593 F.3d 660 (7th Cir. 2010) is directly on point. Judge Posner's opinion in Midwest Title addressed

Indiana's Uniform Consumer Credit Code and found a portion of the statute violated the Commerce Clause of the Constitution. Judge Posner reasoned that the Indiana statute at issue interfered with and improperly regulated title lending activities that occurred in Illinois, outside of Indiana's borders. Because the consumer traveled to Illinois from Indiana and entered into the title loan in Illinois, the Indiana statute, if applied as written, would violate the Commerce Clause.

17. Although the Fourth Circuit has not addressed the Commerce Clause specifically with regard to title lending activities, the Fourth Circuit has stricken state statutes as unconstitutional on the grounds that States cannot regulate commerce occurring outside of their borders under the principle of extraterritoriality. See Ass'n for Accessible Meds. v. Frosh, 887 F.3d 664 (4th Cir. 2018); Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc., 492 F.3d 484 (4th Cir. 2007).

18. If AutoMoney allegedly violates the North Carolina Consumer Finance Act statute, it may be subject to damages under the North Carolina Consumer Finance Act, the North Carolina usury statute, and/or the North Carolina Unfair and Deceptive Trade Practices statutes.

19. The subject matter of this Complaint is of the utmost importance to the licensed title lending industry as a whole in South Carolina. The Greensboro Law Center is representing hundreds, if not thousands, of individual consumers

in litigation against other South Carolina and Virginia title lenders in both federal and state courts. These lawsuits have larger and continuing effects on the title lending industry as a whole. A few of these lawsuits based on the same North Carolina statutes include:

- a. Archie, et al. v. Select Mgmt. Res., LLC, et al., CA No. 1:19-cv-575 (MDNC);
- b. Green, et al. v. Select Mgmt. Res., LLC, et al., CA No. 1:19-cv-670 (MDNC);
- c. Nicholson, et al. v. Select Mgmt. Res., LLC, et al., CA No. 1:19-cv-519 (MDNC);
- d. Phillips, et al. v. Select Mgmt. Res., LLC, et al., CA No. 1:19-cv-325 (MDNC);
- e. Strange, et al. v. Select Mgmt. Res., LLC, et al., CA No. 1:19-cv-321 (MDNC);
- f. Goins, et al. v. TitleMax of Virginia, Inc., et al., CA No. 1:19-cv-489 (MDNC);
- g. Williams, et al. v. Advance America, et al., CA No. 1:19-cv-00669 (MDNC) (removed from Williams, et al. v. Advance America, et al., Case No. 19CVS6018 (Guilford Cnty. Dist. Court));

- h. Curtin v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2596 (Guilford Cnty. Dist. Court);
- i. Williams v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2597 (Guilford Cnty. Dist. Court);
- j. Smith v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2598 (Guilford Cnty. Dist. Court);
- k. Daouda v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2599 (Guilford Cnty. Dist. Court);
- l. Ledbetter v. Daouda v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2600 (Guilford Cnty. Dist. Court);
- m. Mason v. Daouda v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD2601 (Guilford Cnty. Dist. Court);
- n. Lenoir v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD3282 (Guilford Cnty. Dist. Court);
- o. Perkins v. v. 1st Capital Fin. Co. of South Carolina, Inc., Case No. 19CVD3282 (Guilford Cnty. Dist. Court);
- p. Hairston v. Anderson Fin. Servs., LLC d/b/a TitleMax, Case No. 18CVD3921 (Guilford Cnty. Dist. Court) (removed as Hairston v. Anderson Fin. Servs., LLC d/b/a TitleMax, CA No. 1:18-cv-00304 (MDNC), then remanded);



q. Gary v. LoanSmart, LLC, Case No. 18CVD3843 (Guilford Cnty. Dist. Court) (removed as Gary v. LoanSmart, LLC, CA No. 1:18-cv-00305 (MDNC), then remanded);

r. Floyd v. Kipling Fin. Servs., LLC d/b/a MoneyMax Title Loans, Case No. 18CVD3924 (Guilford Cnty. Dist. Court) (removed as Floyd v. Kipling Fin. Servs., LLC, CA No. 1:18-cv-00306 (MDNC), then remanded);

s. Williams v. Kipling Fin. Servs., LLC, Case No. 18CVD3923 (Guilford Cnty. Dist. Court) (removed as Williams v. Kipling Fin. Servs., LLC, CA No. 1:18-cv-00307 (MDNC), then remanded);

t. Parker v. Kipling Fin. Servs., LLC, Case No. 18CVD3922 (Guilford Cnty. Dist. Court) (removed as Parker v. Kipling Fin. Servs., LLC, CA No. 1:18-cv-00308 (MDNC), then remanded);

u. Boubacar v. Kipling Fin. Servs., LLC, Case No. 18CVD3920 (Guilford Cnty. Dist. Court) (removed as Boubacar v. Kipling Fin. Servs., LLC, CA No. 1:18-cv-00309 (MDNC), then remanded).

20. In the cases of Phillips and Strange, Carolina Title Loans, Inc. and Fast Auto Loans, Inc. both moved to file an *Amici Curiae Brief* in support of the Court maintaining jurisdiction in light of an arbitration provision contained in the title lending contract. These briefs requested that the Middle District of North Carolina determine the constitutionality of the extraterritorial provision of the North

Carolina Consumer Finance Act in light of the Commerce Clause of Article I, § 8, cl. 3.

21. In its website blog, the Greensboro Law Center stated that “[a]mong the companies we already have matters against are LoanMax, TitleMax, LoanSmart, MoneyMax, Fast Auto Loans, **AutoMoney**, ACAC, Inc, North American Title, Advance America, Checks Into Cash, Carolina Title Loan, Cash to Payday, First Capital Finance, Cash to You, and Anderson Financial.” Greensboro Law Center, Blog post “Title Loans” (Oct. 29, 2018), <https://www.greensborolawcenter.com/blog/title-loans/> (last visited Aug. 6, 2019) (emphasis added).

22. The Greensboro Law Center advertises for title loan clients through its website (<https://www.greensborolawcenter.com/>) and a website called [www.nctitleloanjustice.com](http://www.nctitleloanjustice.com). Upon information and belief, the Greensboro Law Center also advertises for potential clients through other media, including – but not limited to – television, radio, and direct mailings.

23. Upon information and belief, the Greensboro Law Center or other law firms will continue to be retained by North Carolina customers who voluntarily travel to South Carolina to enter into title loans with AutoMoney, as well as other South Carolina title lenders. The current and prospective potential damages and costs of litigation to AutoMoney could have a substantial, material impact on the

finances of this South Carolina company and threaten the jobs of hundreds of AutoMoney's employees working in South Carolina.

*Specific Facts Related to Defendant.*

24. On or about April 14, 2017, Defendant traveled to AutoMoney's location in Indian Land, South Carolina for the purposes of negotiating, applying to borrow, and accepting AutoMoney's offer of a loan with a security interest in the title to Defendant's vehicle.

25. While Defendant was present at AutoMoney's location in Indian Land, South Carolina, Defendant completed a Customer Application for a title loan, and it is indicated in the Customer Application that the Defendant heard about AutoMoney from "another loan company."

26. While Defendant was in South Carolina, AutoMoney reviewed the Customer Application, appraised and photographed Defendant's vehicle, negotiated the terms of a title loan and prepared a Loan Agreement, Promissory Note and Security Agreement setting forth the terms of the loan, which the Defendant executed (the "Loan Agreement"). A true and correct copy of the Loan Agreement is attached as Exhibit 1. Defendant signed other documentation relating to the Defendant's responsibilities and guidelines, and authorized the recording of a lien against the vehicle's title.

27. The offer and acceptance of the Loan Agreement occurred in Indian Land, South Carolina, and the payment was made from an AutoMoney's bank account with a South Carolina bank branch. AutoMoney took no intentional action in North Carolina, and AutoMoney did not direct its activities to North Carolina with respect to this loan prior to formation of the Loan Agreement.

28. The Loan Agreement provides that it was formed in South Carolina and is to be governed by South Carolina law:

This Loan Agreement, Promissory Note and Security Agreement is entered into by and between Lender/Secured Party and Borrower/Debtor in the state of South Carolina as of the above date, subject to the terms and conditions set forth and any and all representations Borrower has made to Lender in connection with this Loan Agreement, Promissory Note and Security Agreement. As Lender is a regulated South Carolina consumer finance company and you, as Borrower, have entered into this Agreement in South Carolina, this Agreement shall be interpreted, construed, and governed by and under the laws of State of South Carolina, without regards to conflicts of law rules and principles (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

29. Defendant initialed the paragraph in the Loan Agreement containing the above language, indicating her understanding of, consent to, and agreement to the application and governance of South Carolina law.

30. Defendant voluntarily entered the State of South Carolina to discuss, negotiate, apply, accept, sign documents and remit payment related to this Loan Agreement.

31. AutoMoney's sole contacts with that State of North Carolina related to the Loan Agreement are the recordation of the lien with the North Carolina Department of Motor Vehicles, receipt (in South Carolina) of payments made by a North Carolina borrower, and possible telephone calls to Defendant while Defendant may have been in North Carolina. All of these actions are necessary for its administration after the Loan Agreement was executed in South Carolina, and the Defendant took the loan proceeds from AutoMoney in South Carolina.

32. On or about May 13, 2019, the Greensboro Law Center indicated that Defendant had retained it, and the Greensboro Law Center resent Defendant's name as a client on or about August 2, 2019. Upon information and belief, the Greensboro Law Center's previous demands applied to the Defendant as the Greensboro Law Center continues to add AutoMoney customers as clients, and it seeks legal damages and legal fees for its clients, including the Defendant.

33. After retaining counsel and the demand in May 2019, Defendant ceased making payments in accordance with the Loan Agreement.

34. Pursuant to the prior demands, and upon information and belief, Defendant is asserting that, despite the express agreement that the Loan Agreement was governed by South Carolina law, the Loan Agreement is governed by North Carolina law, and that AutoMoney violated North Carolina usury law (N.C. GEN. STAT. §§ 24-1.1, *et seq.*), the North Carolina Consumer Finance Act (N.C.

GEN. STAT. §§ 53-163, *et seq.*), and the North Carolina Unfair and Deceptive Trade Practices Act (N.C. GEN. STAT. §§ 75-1.1, *et seq.*). Upon information and belief, Defendant will likely initiate a lawsuit for those alleged violations of North Carolina law.

35. Plaintiff paid \$21,103.62 in interest, \$5,871.38 in principal and \$7,448.62 remains in unpaid principal. Based upon the demands by Greensboro Law Center and the other pending lawsuits, the underlying matter exceeds \$75,000.00, and the calculation in order to satisfy the jurisdictional limit would be the sum of:

a. Two (2) times interest paid, plus principal paid, which equals \$48,078.62;

b. \$48,078.62 would then be trebled under the North Carolina Unfair and Deceptive Trade Practices statutes, which equals \$144,235.86; plus

c. The amount of uncollected principal by AutoMoney, which equals \$7,448.62.

36. The total underlying damages that AutoMoney could allegedly suffer under this damages model should it be subject to the North Carolina Consumer Finance Act would be approximately \$151,684.48.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment as to the Applicability of  
North Carolina Law to the Loan Agreement)**

37. Plaintiff incorporates the allegations of paragraphs 1 through 36 as if fully set forth herein.

38. Plaintiff is entitled to a declaration as to the construction of the Loan Agreement and its governing law provision that requires the application of South Carolina law.

39. Plaintiff is entitled to a declaration that North Carolina law including – but not limited to – the North Carolina Consumer Finance Act and, specifically, N.C. GEN. STAT. § 53-190, “Loans made elsewhere,” does not apply to the Loan Agreement and AutoMoney.

**SECOND CAUSE OF ACTION**  
**(Claim for Declaratory and Injunctive Relief under the Commerce Clause  
Based on Invalid Extraterritorial Application of the  
North Carolina Consumer Finance Act)**

40. Plaintiff incorporates the allegations of paragraphs 1 through 39 as if fully set forth herein.

41. The Commerce Clause prohibits the State of North Carolina from applying its laws extraterritorially to regulate commerce conducted outside the State of North Carolina. See e.g., Healy v. Beer Institute, 491 U.S. 324 (1989); Ass’n for Accessible Meds. v. Frosh, 887 F.3d 664 (4th Cir. 2018); Midwest Title Loans,

Inc. v. Mills, 593 F.3d 660 (7th Cir. 2010); Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc., 492 F.3d 484 (4th Cir. 2007).

42. Plaintiff is entitled to a declaration that the North Carolina Consumer Finance Act, including – but not limited to – N.C. GEN. STAT. § 53-190, “Loans made elsewhere,” violates the Commerce Clause if applied to the Loan Agreement because it violates the principle of extraterritoriality.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment that the Loan Agreement Is Enforceable)**

43. Plaintiff incorporates the allegations of paragraphs 1 through 42 as if fully set forth herein.

44. Defendant contends that the Loan Agreement is not an enforceable agreement.

45. Plaintiff is entitled to a declaration that the Loan Agreement with Defendant is a valid contract and is enforceable against the parties.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter declaratory judgment ordering the following relief:

A. Declaring that the application of the North Carolina Consumer Finance Act – including, specifically, N.C. GEN. STAT. § 53-190, “Loans made elsewhere” – to the Loan Agreement and AutoMoney is improper;

B. Declaring that application of the North Carolina Consumer Finance



Act, including – but not limited to – N.C. GEN. STAT. § 53-190, “Loans made elsewhere,” to the Loan Agreement violates the Commerce Clause;

C. Declaring that the Loan Agreement with Defendant is a valid South Carolina contract and is enforceable; and

D. Such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

LAW OFFICES OF L.W. COOPER JR., LLC

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Charleston, South Carolina  
Dated: August 8, 2019