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| DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO<br>1437 Bannock Street<br>Denver, Colorado 80202 | DATE FILED: October 13, 2015 3:06 PM<br>FILING ID: BCA0EB4946010<br>CASE NUMBER: 2015CV33628 |
| JULIE ANN MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE;<br><br>Plaintiff,<br><br>v.<br><br>MANAGEMENT SOLUTION, LLC; WILLIAM W. MCKIBBIN, III; KEVIN L. CRONIN; and MARK E. WEINER (individuals collectively d/b/a CAR LOAN, LLC; AUTOLOANS, LLC; and LOAN SERVICING SOLUTIONS, LLC);<br><br>Defendants. | ▲ COURT USE ONLY ▲ |
| CYNTHIA H. COFFMAN, Attorney General<br>DAVID B. SHAW, #40453<br>Assistant Attorney General*<br>Ralph L. Carr Colorado Judicial Center<br>1300 Broadway, 6th Floor<br>Denver, Colorado 80203<br>Telephone: 720-508-6110<br>Email: david.shaw@state.co.us<br>*Counsel of Record | Case No.:<br><br>Courtroom No.: |
| **COMPLAINT** | |

Plaintiff, Julie Ann Meade, Administrator, Uniform Consumer Credit Code (the "Administrator"), by and through the undersigned assistant attorney general, for her complaint, alleges as follows:

## INTRODUCTION

1. By this action, the Administrator seeks to enjoin, preliminarily and permanently, Management Solution, LLC ("Management Solution"); William W. McKibbin, III; Kevin L. Cronin; and Mark E. Weiner (individuals collectively d/b/a Car Loan, LLC; AutoLoans, LLC; and Loan Servicing Solutions, LLC) from making or collecting supervised loans to Colorado consumers without being licensed as Colorado supervised lenders and from otherwise violating the Colorado Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq.*, (the "UCCC"). The Administrator also seeks other appropriate relief, including consumer restitution, penalties, and

other equitable relief.

## PARTIES

2. The Administrator is the duly appointed Administrator of the Uniform Consumer Credit Code. She is authorized to enforce compliance with the Code, *see* C.R.S. §§ 5-6-101, *et seq.*; and may bring a civil action against a creditor for making or collecting charges in excess of those permitted by the Code. In such action, the Administrator may seek injunctive relief to restrain persons from violating the UCCC, obtain consumer restitution, and collect civil penalties for violations of the UCCC. *See* C.R.S. §§ 5-6-111, -113, and -114.

3. Defendant Management Solution is a foreign limited liability company organized under the laws of Delaware. It is not authorized to transact business in Colorado. Upon information and belief, it is, and at all relevant times was, regularly engaged in soliciting, making, taking assignment of, or collecting supervised loans in Colorado to and from Colorado consumers.

4. Upon information and belief, Defendants William McKibbin, III; Kevin L. Cronin; and Mark E. Weiner are, and at all relevant times (a) were owners, officers, operators, directors, shareholders, managers, and/or principals of; (b) directed, controlled, managed, sanctioned, actively participated in, supervised, were responsible for, acquiesced in, or authorized the activities of; or (c) in the course of their business, vocation, or occupation engaged in; the business activities and transactions of Management Solution, including the wrongful acts and practices described herein. Additionally and separately, McKibbin, Cronin, and Weiner have done and continue to do business as fictitious entities Car Loan, LLC; AutoLoans, LLC; and Loan Servicing Solutions, LLC. All acts and omissions perpetrated under the name of these latter entities are, in fact, the acts and omissions of McKibbin, Cronin, and Weiner.

## JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this case pursuant to and C.R.S. § 5-1-203.

6. This Court has personal jurisdiction over Defendants pursuant to C.R.S. § 13-1-124 because (a) they have conducted continuous and systematic activities that are of a general business nature in Colorado and (b) the statutory violations giving rise to this litigation arise out of loans significantly and purposefully directed by Defendants at Colorado citizens.

7. Pursuant to C.R.C.P. 98(c)(1), venue is proper in Denver County because all Defendants are nonresidents.

## GENERAL ALLEGATIONS

### A. Defendants' Business Practices

8. Upon information and belief, from approximately 2012 through April 7, 2014, an entity known as Sovereign Lending Solutions LLC d/b/a Title Loan America ("Title Loan America") offered and solicited auto title loans in Colorado via the internet and telephone to and from Colorado consumers.

9. Title Loan America maintained, at all relevant times, a website, www.titleloanamerica, in which it offered and solicited its title loans to Colorado consumers. Consumers applied for loans directly through Title Loan America's website by completing the Title Loan America Application. McKibbin was the administrator and technical contact for the website.

10. After Title Loan America received the application, it forwarded to the consumer a Pawn Ticket and Agreement (the "Agreement"), Power of Attorney, and Security Agreement for the consumer to sign. The Agreement's terms constituted numerous statutory violations including, among other things, usurious annual percentage rates exceeding the allowable maximum rates by factors of ten or more, as explained further below.

11. Title Loan America required the consumer to send it the original title to the consumer's vehicle and any original lien release letter, if applicable.

12. Title Loan America instructed consumers to notify it as soon as the consumer had returned the Power of Attorney, Security Agreement, and vehicle title.

13. Title Loan America then sent the consumer a GPS Vehicle Tracking Device that the consumer had to install on his or her vehicle.

14. Once the documents were received and a GPS Vehicle Tracking Device had been installed, Title Loan America disbursed the loan's proceeds electronically into the consumer's checking or other bank account.

15. Title Loan America represented itself to be "an economic development arm, instrumentality, tribal enterprise, and limited liability company, of the Lac Vieu Desert Band of Lake Superior Chippewa Tribe." However, upon information and belief, it was at all relevant times owned and/or controlled by McKibbin, Cronin, and Weiner as owners, officers, operators, directors, shareholders, managers, and/or principals. And, in those roles, McKibbin, Cronin, and Weiner directed, controlled, managed, sanctioned, actively participated in, supervised, were responsible for, acquiesced in, or authorized the activities of Title Loan America.

16. Once funded, the loans were serviced by RS Financial Management, LLC, a subsidiary of RS Financial Services, LLC (collectively "RS Financial"). RS Financial was also at all relevant times owned and/or controlled by McKibbin, Cronin, and Weiner as owners, officers, operators, directors, shareholders, managers, and/or principals.

17. In approximately April 2014, Title Loan America ceased doing business, assigned its loan portfolio to Management Solution, and voluntarily relinquished its consumer financial services license to the Lac Vieux Desert Tribal Financial Services Regulatory Authority.

18. At around this same time, RS Financial withdrew its registration with Florida and Delaware and ceased operations under the RS Financial name.

19. Upon information and belief, at around this same time in Spring 2014, Management Solution ostensibly assigned the loan portfolio it acquired from Title Loan America to a supposed third entity, Car Loan, LLC ("Car Loan"). Although Car Loan, LLC claims to be incorporated in the Cook Islands, it appears, based upon information and belief, that it is a fictitious entity/alias, under which McKibbin, Cronin, and Weiner have been illegally servicing the still existing Title Loan America loans and making additional usurious loans to Colorado consumers.

20. Upon further information and belief, McKibbin, Cronin, and Weiner have also been using the fictitious entities/aliases AutoLoans, LLC and Loan Servicing Solutions, LLC, both of which claim to be Cook Islands corporations, to service the Title Loan America loans and/or originate new illegal, usurious loans to Colorado Consumers.

21. As of July 2015, Defendants have taken assignment of, made, and/or serviced at least 688 loans involving Colorado consumers.

22. None of the loans that Defendants have taken assignment of, made, and/or serviced exceed $75,000.

23. The Colorado consumers used these loans primarily for personal, family, or household purposes.

24. Defendants are not, and at no relevant time were, licensed as supervised lenders in Colorado authorized to make supervised loans pursuant to the UCCC.

B. **The Administrator's Investigation**

25. In August 2012, through a complaint regarding a collection agency, the Administrator became aware that Title Loan America and RS Financial were making illegal loans to Colorado consumers.

26. The Administrator thereupon began investigating Title Loan America's and RS Financial's activities.

27. As part of this investigation, the Administrator reviewed Title Loan America's website. She also reviewed loan documents and related documentation provided by Colorado consumers in connection with complaints.

28. Based on the information the Administrator obtained, she determined that Title Loan America and RS Financial were committing a number of statutory violations, including the following:

(a) Failing to obtain a supervised lender license pursuant to C.R.S. § 5-2-301 before making, servicing, collecting, or enforcing supervised loans;
(b) Contracting for finance charges in excess of those permitted under C.R.S. § 5-2-201(2);
(c) Contracting for return check or dishonor of check charges exceeding the $25.00 maximum allowed by C.R.S. § 5-2-202(1)(e)(II);
(d) Contracting for late fees before ten days after a scheduled due date on accounts with weekly and bi-weekly or semi-monthly due dates in violation of C.R.S. § 5-2-203(1);
(e) Contracting for vehicle repossession in the event of default without notice or demand in violation of C.R.S. § 5-5-110 and -111, which provision requires 20 days' notice of a right to cure;
(f) Contracting for vehicle repossession in the event of default whereby the lender retained any surplus above the outstanding loan amount in violation of C.R.S. § 5-5-103(1); and
(g) Contracting for governing laws of the Lac Vieu Desert Band of Lake Superior Chippewa in violation of C.R.S. § 5-1-201(8)(a), which prohibits contracts providing that "[t]he law of another state shall apply" and/or that "[t]he consumer consents to the jurisdiction of another state."

29. Accordingly, in early 2014, the Administrator made demand upon Title Loan America and RS Financial to cease and desist from making and/or servicing any further loans. She also requested that they provide her with a list of all loans made to Colorado consumers. Last, she demanded that they make refunds to consumers of all improper and excess finance and other charges they may have charged, assessed, collected, or received in connection with the Title Loan America

loans.

30. Title Loan America responded by stating that it ceased doing business on April 7, 2014, and assigned its entire business portfolio to Management Solution. RS Financial responded by falsely stating that it never made loans to Colorado residents. To date, RS Financial has not complied with the Administrator's demands.

31. When the Administrator learned of the loans' assignment to Management Solution, she made demand upon that entity to cease and desist from making and/or servicing any further loans. She also requested that it provide her with a list of all loans made to Colorado consumers. Last, she demanded that it make refunds to consumers of all improper and excess finance and other charges they may have charged, assessed, collected, or received in connection with the Title Loan America loans. To date, Management Solution has never responded to the Administrator's communications or complied with her demands.

32. At around the same time that Management Solution took assignment of the Title Loan America Loans, the Administrator learned through various consumer complaints that McKibbin, Cronin, and Weiner were also continuing to service and collect upon the former Title Loan America loans under the fictitious names Car Loan, LLC and AutoLoans, LLC.

33. Through those same consumer complaints, the Administrator also learned that McKibbin, Cronin, and Weiner were making new separate loans under the fictitious Car Loan and AutoLoans names. These new loans perpetrated the same statutory violations as the Title Loan America loans and committed several additional ones, including the following:

(a) Failing to obtain a supervised lender license pursuant to C.R.S. § 5-2-301 before making, servicing, collecting or enforcing supervised loans;
(b) Contracting for finance charges in excess of those permitted under C.R.S. § 5-2-201(2);
(c) Inaccurately representing the annual percentage rate to Colorado consumers in violation of C.R.S. § 5-3-101(2);
(d) Contracting for a return check or dishonor of check charges exceeding the $25.00 maximum allowed by C.R.S. § 5-2-202(1)(e)(II);
(e) Contracting for late fees before ten days after a scheduled due date on accounts with weekly and bi-weekly or semi-monthly due dates in violation of C.R.S. § 5-2-203(1);
(f) Contracting for late fees equal to 5% of the payment amount in violation of C.R.S. § 5-2-203(1)(a), which provision allows a maximum $15.00 late fee for a transaction not secured by an interest in land;
(g) Contracting for a prepayment penalty on certain loans in violation of

C.R.S. § 5-2-210, which provision prohibits any prepayment penalties;

(h) Contracting for vehicle repossession in the event of default without notice or demand in violation of C.R.S. § 5-5-110 and -111, which provisions require 20 days of notice of a right to cure;

(i) Contracting for vehicle repossession in the event of default whereby Defendants retained any surplus above the outstanding loan amount in violation of C.R.S. § 5-5-103(1);

(j) Contracting for Defendants to have the "option" not to notify the consumer and permit redemption of repossessed vehicle in violation of C.R.S. § 4-9-624, which provision allows a debtor to waive the right to notification of disposition only by an agreement to that effect entered into and authenticated after default;

(k) Contracting for a "redemption fee" equal to the greater of ten percent of the principal loan amount or $500.00 in violation of C.R.S. § 5-2-202, which does not allow such fees as a permissible additional charge;

(l) Contracting for interest on all costs incurred in connection with a default in violation of C.R.S. § 5-3-303, which allows reasonable expenses only and no other charges in connection with a default;

(m) Contracting for governing laws of the Cook Islands in violation of C.R.S. § 5-1-201(8)(a), which statutory provision prohibits contracts providing that "[t]he law of another state shall apply" and/or that "[t]he consumer consents to the jurisdiction of another state."

34. In June 2014, despite the strong suspicion that Car Loan and AutoLoans were fictitious entities, the Administrator made demand upon those entities to cease and desist from making and/or servicing any further loans. She also requested that they provide her with a list of all loans made to Colorado consumers. Last, she demanded that they make refunds to consumers of all improper and excess finance and other charges they may have charged, assessed, collected, or received in connection with the Title Loan America loans. To date, neither Car Loan/AutoLoans nor McKibbin, Cronin, and Weiner (d/b/a Car Loan and/or AutoLoans) have ever responded to the Administrator's communications or complied with her demands.

35. Accordingly, the Administrator filed this suit.

### C. Defendants' Intent, and Joint and/or Alter Ego Liability

36. Upon information and belief, Defendants acted repeatedly and willfully in committing the aforementioned statutory violations, in deliberate and/or reckless disregard of the UCCC.

37. Upon information and belief, Defendants, and their respective independent contractors, consciously and deliberately pursued a concerted and

common plan, design, and course of conduct and action, expressly or impliedly, the execution of which common plan or design resulted in statutory violations, as described elsewhere in this Complaint. As a result, Defendants are jointly and severally liable with each other and with each of their independent contractors for one another's wrongful acts and omissions.

38. Upon information and belief, Defendants acted as each other's alter egos at all relevant times in committing the statutory violations described elsewhere in this Complaint. In order to do so, Defendants disregarded the corporate structure in order to perpetrate wrongful conduct and defeat otherwise valid claims. Specifically, Defendants, among other things, did not treat the corporations as distinct business entities; they comingled assets and funds, they failed to maintain adequate corporate records; they used the corporations as mere shells; they disregarded legal formalities; and they used corporate funds/assets for non-corporate purposes. As a result, Defendants are jointly and severally liable each other's wrongful acts or omissions.

## FIRST CLAIM FOR RELIEF
**(Injunctive Relief)**

39. The Administrator repeats and realleges paragraphs 1 through 38 above, inclusive, as if alleged herein.

40. Defendants have violated, and continue to violate, numerous UCCC provisions, as enumerated in paragraph 33.

41. By reason of the foregoing, and pursuant to C.R.S. §§ 5-6-111 and 5-6-113, the Administrator is entitled to injunctive relief preliminarily and permanently restraining Defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from engaging in supervised lending or otherwise acting as a supervised lender without a license or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the UCCC, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the UCCC.

## SECOND CLAIM FOR RELIEF
**(Unlicensed Lending)**

42. The Administrator repeats and realleges paragraphs 1 through 41 above, inclusive, as if alleged herein.

43. Defendants' transactions' finance charges exceed the finance charges allowable under C.R.S. § 5-2-201.

44. By reason of the foregoing, the corporate defendants made and collected, and continue to make and collect, supervised loans without being licensed or otherwise authorized to make or collect such loans, in violation of C.R.S. § 5-2-301.

## THIRD CLAIM FOR RELIEF
**(Excess Charges)**

45. The Administrator repeats and realleges paragraphs 1 through 44 above, inclusive, as if alleged herein.

46. Defendants' transactions' finance charges exceed the finance charges allowable under C.R.S. § 5-2-201. Such excess charges are not allowed by the UCCC and must be refunded.

## FOURTH CLAIM FOR RELIEF
**(Misrepresentation of Finance Charges)**

47. The Administrator repeats and realleges paragraphs 1 through 46 above, inclusive, as if alleged herein.

48. Defendants misrepresented the annual percentage rate charged to consumers by more than .125%, in violation of C.R.S. 5-3-101(2).

## FIFTH CLAIM FOR RELIEF
**(Excess Return/Dishonor Check Charge)**

49. The State repeats and realleges paragraphs 1 through 48 above, inclusive, as if alleged herein.

50. Defendants charged excess return/dishonor check fees greater than the $25.00 authorized and allowable under C.R.S. § 5-2-202(1)(e)(II).

## SIXTH CLAIM FOR RELIEF
**(Premature Late Fee Charge)**

51. The Administrator repeats and realleges paragraphs 1 through 50 above, inclusive, as if alleged herein.

52. Defendants charged late fees before ten days after a schedule due date on accounts with weekly and bi-weekly or semi-monthly due dates, in violation of C.R.S. § 5-2-203(1).

## SEVENTH CLAIM FOR RELIEF
**(Excess Late Fee Charge)**

53. The Administrator repeats and realleges paragraphs 1 through 52 above, inclusive, as if alleged herein.

54. Defendants charged late fees in excess of the $15.00 maximum authorized and allowable under C.R.S. § 5-2-203(1)(a).

## EIGHTH CLAIM FOR RELIEF
**(Improper Prepayment Penalty)**

55. The Administrator repeats and realleges paragraphs 1 through 54 above, inclusive, as if alleged herein.

56. Defendants charged prepayment penalties in violation of C.R.S. § 5-2-210, which prohibits any prepayment penalties of any kind.

## NINTH CLAIM FOR RELIEF
**(Failure to Provide Notice to Cure)**

57. The Administrator repeats and realleges paragraphs 1 through 56 above, inclusive, as if alleged herein.

58. Defendants failed to provide notice and an opportunity to cure default 20 days before acceleration of the account, in violation of C.R.S. §§ 5-5-110 & -111.

## TENTH CLAIM FOR RELIEF
**(Failure to Return Surplus from Repossessed Goods)**

59. The Administrator repeats and realleges paragraphs 1 through 58 above, inclusive, as if alleged herein.

60. Defendants retained surplus amounts from sales of vehicles repossessed after default in violation of C.R.S. §§ 5-5-103(1) and 4-9-608(4), which require that a lender on a secured transaction account for and pay to the debtor any

surplus after disposing of the goods and collecting reasonable costs for reconditioning the goods.

## ELEVENTH CLAIM FOR RELIEF
**(Impermissible Redemption Fee)**

61. The Administrator repeats and realleges paragraphs 1 through 60 above, inclusive, as if alleged herein.

62. Defendants charged a "redemption fee" of 10% of the principal loan amount or $500.00 in violation of C.R.S. § 5-2-202, which does not allow this fee as a permissible additional charge.

## TWELFTH CLAIM FOR RELIEF
**(Impermissible Additional Charge on Default)**

63. The Administrator repeats and realleges paragraphs 1 through 62 above, inclusive, as if alleged herein.

64. Defendants charged an interest rate equivalent to 240.9% on all collection fees and costs incurred in connection with repossession of secured collateral vehicles in violation of C.R.S. § 5-3-303, which prohibits charges on defaults other than reasonable expenses in realizing on a security interest.

## THIRTEENTH CLAIM FOR RELIEF
**(Unlawful Choice of Law Provisions)**

65. The Administrator repeats and realleges paragraphs 1 through 64 above, inclusive, as if alleged herein.

66. Defendants have included, and continue to include, terms in consumer credit agreements with Colorado consumers that purport to provide that the law of a foreign jurisdiction other than Colorado applies, purport to require the consumer to consent to the jurisdiction of a state other than Colorado, and purport to fix venue, and have sought to enforce such terms, all in violation of C.R.S. § 5-1-201(8).

## PRAYERS FOR RELIEF

WHEREFORE, the Administrator demands judgment, as follows:

1. Preliminarily and permanently restraining Defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the UCCC, together with all such other relief as may be required to completely compensate or restore to their

original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring Defendants to disgorge to the Administrator or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the UCCC;

2. For every consumer credit transaction where Defendants made and collected supervised loans without being licensed or otherwise authorized to make or collect such loans in violation of C.R.S. § 5-2-301, ordering Defendants to refund the loan finance charge plus a penalty in an amount to be determined by the Court, but not in excess of three times the amount of the loan finance charge;

3. For every consumer credit transaction as may be determined at trial or otherwise in which a consumer was charged an excess charge in violation of the UCCC, ordering Defendants to refund to each such consumer the excess charge;

4. For every consumer credit transaction as may be determined at trial or otherwise in which a consumer was charged an excess charge and Defendants acted deliberately or in reckless disregard of the UCCC, ordering Defendants to pay each such consumer a civil penalty determined by the Court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge;

5. Ordering Defendants to pay to the Administrator a civil penalty for repeated and willful violations, as determined by the Court and within the limits set forth by statute;

6. Awarding pre- and post-judgment interest to the Administrator, as may be allowed by contract, law, or otherwise; and

7. Awarding the Administrator the costs and disbursements of this action, including attorney's fees, together with all such further relief as the Court deems just.

Dated: Denver, Colorado
October 13, 2015

JULIE M. MEADE
Administrator, Uniform Credit Code

s/ David B. Shaw

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