

BEFORE THE ADMINISTRATOR
UNIFORM CONSUMER CREDIT CODE
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF THE INVESTIGATION OF MONEYLION
TECHNOLOGIES INC.

Respondent.

THIS ASSURANCE OF DISCONTINUANCE (“AOD”) is made between the Administrator of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* (“UCCC”) and Respondents MoneyLion Technologies Inc. (“MoneyLion”) and MoneyLion of Colorado LLC (“MoneyLion Colorado”) (collectively, “Respondents”) arising out of the Administrator’s investigation of Respondents’ compliance with the UCCC and its rules. Pursuant to C.R.S. § 5-6-110, Respondents have agreed that they will not engage in the conduct in Colorado described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and the Respondents, as follows:

1. The Administrator is authorized to administer the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.*

2. MoneyLion Technologies Inc. is a foreign corporation with a principal office located at 30 West 21st Street, 9th Floor, New York, New York 10010.

3. MoneyLion Colorado is a wholly-owned subsidiary of MoneyLion.

4. The Administrator has jurisdiction over Respondents and the subject matter of this AOD under C.R.S. §§ 5-6-109 through 114. This AOD applies to all consumer credit transactions between Respondents and Colorado consumers subject to the UCCC. C.R.S. § 5-1-201.

5. MoneyLion operated in Colorado through MoneyLion Colorado.

6. MoneyLion Colorado obtained a supervised lender license and began lending in Colorado in 2017.

7. On or about February 4, 2019, MoneyLion Colorado surrendered its license, because it took the position that its lending in Colorado was below Colorado's 12% licensing trigger.

8. MoneyLion, through an affiliated entity, operates a membership program. MoneyLion offered Colorado consumers paid memberships for a monthly fee. Paid membership included a bundle of products and services, including a deposit account, an investment account, a loyalty program (where consumers could earn rebates on paid membership fees), and other benefits. The membership fee ranged from \$19.99 to \$29.99 per month under various iterations of the paid membership program.

9. MoneyLion also offered certain services and products for *a la carte* monthly fees as an alternative to paid membership. Paid membership provided access to the loan product, enhanced credit monitoring, and a loyalty program.

10. Additionally, MoneyLion offered a free membership. The bank account, investment account, and other benefits were available through the free membership (but certain benefits had *a la carte* monthly fees). Consumers could not access the loan product with the free membership.

11. MoneyLion advertised to Colorado consumers that they could obtain loans with rates as low as 5.99% APR as part of the paid membership program. Colorado consumers could not obtain a loan without paying for membership.

12. MoneyLion allowed Colorado consumers to cancel their paid membership at any time for any reason at no cost, unless Colorado consumers had an active, outstanding loan. If Colorado consumers had an active, outstanding loan, MoneyLion prohibited Colorado consumers from canceling their membership while the loan remained active and there was an unpaid balance.

13. The Administrator initiated an exam of MoneyLion Colorado, and issued an exam report on March 23, 2021.

14. MoneyLion responded to the exam report and disputed the findings in the report concerning its membership fees.

15. On February 17, 2022, the Administrator served a civil investigative demand on MoneyLion. MoneyLion cooperated with the investigation.

16. On September 22, 2022, the Administrator sent a letter to MoneyLion expressing concerns about the membership fees.

17. On October 13, 2022, as part of good faith discussions between the parties, MoneyLion agreed to stop enrolling new Colorado consumers in its paid membership program, and cease originating new loans to Colorado consumers.

18. Colorado has adopted the UCCC. Under the UCCC, a supervised lender: may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) The total of:

(I) Thirty-six percent per year on that part of the unpaid balances of the amount financed that is one thousand dollars or less;

(II) Twenty-one percent per year on that part of the unpaid balances of the amount financed that is more than one thousand dollars but does not exceed three thousand dollars; and

(III) Fifteen percent per year on that part of the unpaid balances of the amount financed that is more than three thousand dollars; or

(b) Twenty-one percent per year on the unpaid balances of the amount financed.

C.R.S. § 5-2-201(2)

19. In addition to the finance charge, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (3) of this section;

(c) Annual charges, payable in advance, for the privilege of using a credit card or similar arrangement;

(d) Charges for other benefits conferred on the consumer, including insurance, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type that is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

C.R.S. § 5-2-202(1).

20. The Administrator finds that MoneyLion's membership fees were not permissible additional charges, in violation of C.R.S. § 5-2-202(1).

21. Respondents deny the alleged violation of C.R.S. § 5-2-202(1), but desire to avoid the inconvenience and expense of a dispute with the Administrator and have therefore agreed to enter this AOD.

22. Respondents represent to the Administrator that they will not originate new loans to Colorado consumers under MoneyLion’s former or current paid membership programs or other programs in which Colorado consumers must pay a membership/subscription fee to access loans to the extent any fees associated with the program are not permissible “additional charges” under C.R.S. § 5-2-202(1). Respondents represent that if they desire to resume new originating loans to Colorado consumers, they will do so in accordance with this AOD, and they will send written notice to the Administrator 60 days before resuming lending, describing the contemplated loan product(s), before offering the loan product(s) to Colorado consumers (“Advance Notification Requirement”). Respondents’ Advance Notification Requirement expires three (3) years after the Effective Date.

23. Respondents represent to the Administrator that they performed a self-audit of all transactions with Colorado consumers who took out a loan as part of the paid membership program during the Applicable Period.¹ Respondents represent that, to the best of their knowledge, all of this audit information is true, accurate and complete in all material respects.²

24. For each Colorado consumer identified in the self-audit, Respondents will provide to the Administrator within thirty (30) days of the Effective Date a list identifying (i) the name and address of the consumer, (ii) the amount of the refund paid to the consumer if the consumer is eligible for a refund under this AOD. Respondents will provide the list to the Administrator in a native Microsoft Excel format and represent that the list is true, accurate, and complete for the Applicable Period. The list will contain personal identifiable information and shall be maintained confidentially by the Administrator in accordance with state and federal laws.

25. To remediate the conduct described herein, Respondents agree as follows:

a. Together with their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this AOD, hereby are prohibited and permanently enjoined from, now or in the future, originating new loans to Colorado consumers under MoneyLion’s former or current paid membership programs or other programs in which Colorado consumers must pay a membership/subscription fee to access loans to the extent any fees associated with the program are not permissible “additional charges” under C.R.S. § 5-2-202(1), and lending in Colorado without complying with the Advance Notification Requirement in paragraph 22 (which expires three (3) years after

¹ The Applicable Period means November 1, 2017 to October 13, 2022.

² Respondents may update the audit information as they pay the refunds under this AOD.

the Effective Date).

b. Respondents shall attempt to refund amounts owed to eligible Colorado consumers. The refund amounts total \$271,000 to approximately 5,119 consumers. This amount is payable to the Administrator, along with any interest thereon, in trust, to be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes. The Administrator elects, in lieu of making payment directly to the Administrator in the first instance, to direct Respondents to attempt refunds directly to consumers on behalf of the Administrator. Any amount returned as undeliverable, unclaimed, uncashed, or undeposited shall revert to the Administrator as provided in paragraph 26(d).

26. Respondents shall make the refunds as follows:

a. Refunds. Respondents shall attempt to make any refunds due hereunder within one hundred and twenty (120) days after the Effective Date. All refunds shall be attempted using the last known automatic payment method linked to the relevant customer's account. If this method is unavailable or results in an undeliverable payment, Respondents must issue the refunds by check. Respondents shall exercise reasonable efforts and due diligence to attempt the refund; however, if refunds remain unpaid two hundred and ten ("210") days after the Effective Date, these unclaimed amounts shall be paid to the Administrator in accordance with paragraph 26(d) below.

b. Transmittal Letter. Concurrently with any refunds sent by Respondents, Respondents shall email or mail each eligible consumer a letter, the form, and contents of which has been pre-approved by the Administrator. The letter shall inform the consumer that Respondents agreed to provide refunds to consumers in the amount provided following an investigation by the Administrator, who works on behalf of the Colorado Attorney General. The letter shall provide consumers with a point of contact with Respondents and the Administrator to address consumers' questions and concerns. A template of the transmittal letter is attached as **Exhibit A**.

c. Proof of Refunds. Within two hundred and ten (210) days after the Effective Date, Respondents shall provide the Administrator, if requested, with documentation reasonably acceptable to the Administrator showing that Respondents timely sent refunds to consumers, such as copies of checks and/or a check log illustrating what was sent. Additionally, Respondents shall update the list referenced in paragraph 24 providing updated consumer contact information (mailing address), the date payment was issued, the check number (if applicable), the date the payments cleared, and any payments sent that

were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise.

d. Unclaimed Refunds. Two hundred and ten (210) days after the Effective Date, Respondents shall stop payment on outstanding refund checks, and pay to the Administrator within thirty (30) days the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise. Any amounts paid to the Administrator shall be used in the Administrator's sole discretion for attorneys' fees and costs, consumer restitution, if any, for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes

27. If Respondents enter into an agreement with any other state Attorneys General or state regulators that resolves similar or substantially similar claims to the claim described herein, and the agreement pays consumers restitution on a per-loan basis in excess of the restitution paid to Colorado consumers on a per-loan basis, then Respondents are required to pay additional restitution to Colorado consumers so the per-loan restitution is equal to or greater than the per-loan restitution paid to that other state's consumers. This provision, and Respondents' obligations hereunder, expires three (3) years after the Effective Date.

28. Respondents shall pay to the Administrator seventy-five thousand dollars (\$75,000) for reimbursement of the Administrator's costs in investigating this matter. This amount shall be held, along with any interest thereon, in trust by the Administrator to be used in the Administrator's sole discretion for attorneys' fees and costs, restitution, for future consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, public welfare purposes. This amount shall be due within five (5) business days of the Effective Date.

29. At Respondents' expense and at the Administrator's option, Respondents shall permit the Administrator to inspect its books and records once, at any time upon 14-days' written notice within normal business hours, and to conduct a follow-up inspection upon reasonable notice to Respondents' counsel. The inspection must occur within one (1) year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of Respondents' compliance with this AOD.

30. All payments due the Administrator shall be deemed paid upon the Administrator's receipt of the payment. Respondents shall endeavor to make one payment of the unclaimed refunds due under paragraph 26(d). Respondents may pay by ACH payment or by check. The Administrator will provide ACH payment instructions upon request. Payments by check shall be made payable to the "Colorado Department of Law," and mailed to "Administrator, UCCC, Attn: Kevin Burns and Miriam Burnett, 1300 Broadway, 6th Floor, Denver, Colorado 80203." All such payments are to be held, in trust, to be used in the Administrator's sole discretion for

attorneys' fees and costs, consumer restitution, if any, and for consumer or creditor educational purposes, consumer credit or consumer protection enforcement efforts, or public welfare purposes.

31. This AOD fully resolves all the issues between the Administrator and Respondents arising out of the particular issues, allegations, or charges set forth herein, including charges concerning the membership fees under C.R.S. §§ 5-2-201(2) and 5-2-202(1), and only those issues. The Administrator releases Respondents; their directors, officers and employees; their agents; their affiliated entities; and their subsidiaries from any and all further investigation, claims, violations, allegations, fines, fees, costs, and penalties arising from the issues, allegations, claims, and charges set forth herein, including charges concerning the membership fees under C.R.S. §§ 5-2-201(2) and 5-2-202(1), which accrued or may have accrued as a result of any consumer credit transaction offered, entered into or administered by Respondents on or before the Effective Date.

32. Respondents agree that this AOD is binding upon all the officers, directors, employees, shareholders, managers, members, principals, affiliates, agents, trade names, heirs, and successors of the Respondents.

33. This AOD represents the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD or its exhibits. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

34. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as so executed shall constitute one agreement.

35. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

36. The date this AOD is executed by both of the parties shall be the Effective Date of this AOD for all purposes hereunder.

37. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

AGREED AND STIPULATED TO BY:

RESPONDENTS

By: Adam VanWagner
Adam VanWagner
MoneyLion, Chief Legal Officer

DATE: November 13, 2023

ADMINISTRATOR

By: Kevin J. Burns
KEVIN J. BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6110
E-Mail: kevin.burns@coag.gov

DATE: November 13, 2023

APPROVED AS TO FORM:

TROUTMAN PEPPER HAMILTON
SANDERS LLP

By: James Kim
James Kim
Counsel for MoneyLion
Technologies Inc.

DATE: November 13, 2023

Exhibit A

[MoneyLion Letterhead]

[Date]

[Customer Name]

[Customer Street Address]

[Customer City, State, Zip Code]

Sent via email: [Customer E-mail Address]

Re: [Loan #, if available:] Membership Fee Refund

Dear [Customer Name]:

We write regarding the above-referenced MoneyLion Plus or Credit Builder Plus Loan (“Loan”) that you obtained from MoneyLion of Colorado LLC (“MoneyLion”). MoneyLion has entered into an agreement with the Colorado Administrator, who works on behalf of the Colorado Attorney General, to issue a refund of membership fees paid by you to MoneyLion.

On [Date], we sent your refund of \$XX.XX to the method of payment associated with your Loan. It may take between X to X business days for this deposit to reflect in your account. If we were unable to locate an active payment method on file, a check will be sent by U.S. mail to your last known address on file within the next X to X days.

If you receive a check, you should cash or deposit the check within 180 days after the check was issued. Any check not cashed or deposited by this date will be paid to the Colorado Attorney General, in trust.

If you have questions, please contact us at 516-916-5466 or via e-mail at customercare@moneylion.com. You may also contact the Administrator at 720-508-6012 or UCCC@coag.gov.

Sincerely,

MoneyLion