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<tr><td>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202</td><td rowspan="2">▲COURT USE ONLY▲</td></tr>
<tr><td>PHILIP J. WEISER, in his official capacity as the Attorney General for the State of Colorado; MARTHA FULFORD, in her official capacity as the Administrator of the Uniform Consumer Credit Code for the State of Colorado,

Plaintiffs,

v.

ACTIVEHOURS, INC. dba EARNIN,

Defendant.</td></tr>
<tr><td>For the Plaintiffs:
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Div.:</td></tr>
<tr><td colspan="2">COMPLAINT</td></tr>
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Plaintiffs, Philip J. Weiser, in his official capacity as the Attorney General for the State of Colorado, and Martha Fulford, in her official capacity as the Administrator of the Uniform Consumer Credit Code for the State of Colorado (collectively, the "Plaintiffs"), allege as follows:

I. Introduction

1. Activehours, Inc. dba EarnIn ("EarnIn") lends money to consumers and is paid back by consumers from their paychecks on or before their payday.

2. EarnIn does this while charging high fees and using deceptive tactics. These practices yield millions of dollars for EarnIn off of hardworking Coloradans who are often living paycheck-to-paycheck. EarnIn convinces Colorado consumers that they are simply getting "access" to their "earnings" or getting an advance of "your money" with "no interest" and "no hidden fees." EarnIn claims its product is not a "loan" but just gives consumers "access [to their] pay." The fact that EarnIn does not call its product a loan does not make it so.

3. EarnIn is charging consumers 1,000% annual percentage rate ("APR") and more, but consumers are never told this because EarnIn does not make loan disclosures. EarnIn tells consumers they are only paying a few dollars in tips and fees, but when consumers repay that amount in full only a few days later, their cost of credit is steep. Consumers also quickly get stuck in a cycle of reborrowing. The borrowing creates a hole in the consumer's income that they often fill through another high-cost EarnIn loan.

4. This high-cost predatory lending violates Colorado law. In 2018, Coloradans voted resoundingly to restrict payday lending, and EarnIn is not following those restrictions.

5. In addition, EarnIn boosted its profits using dark patterns. It claimed that consumers did not have to pay tips, but it used deceptive practices that it called "roadblocks", which made it so difficult to avoid tipping that the vast majority of consumers did so.

II. Parties

6. Philip J. Weiser is the Attorney General of the State of Colorado and is authorized under § 6-1-103, C.R.S. to enforce the CCPA.

7. Martha Fulford is the duly appointed Administrator of the Uniform Consumer Credit Code ("the UCCC"). She is authorized under § 5-6-104(1)(a), C.R.S. to enforce the UCCC.

8. Defendant Activehours, Inc. dba EarnIn ("EarnIn") is a foreign corporation organized under the laws of Delaware with its principal place of business located at 200 Portage Avenue, Palo Alto, California 94306.

III. Jurisdiction and Venue

9. This Court has personal jurisdiction over EarnIn because EarnIn (a) did business in the State of Colorado at times material to this action; (b) purposefully availed itself of the rights and privileges of the State of Colorado; and (c) engaged in the practices and conduct described in this Complaint in Colorado.

10. This Court has jurisdiction over the subject of this action. Colo. Const. art. VI, § 9; §§; 5-6-112; 5-6-114, C.R.S.

11. The violations alleged herein were committed, in part, in the City and County of Denver, Colorado. Venue is therefore proper in the County of Denver pursuant to C.R.C.P. 98 and § 6-1-103, C.R.S.[1]

IV. Factual Allegations

A. Overview

12. EarnIn is a financial technology company.

13. EarnIn offers loans to consumers through its mobile application and website. EarnIn called the loans "Cash Outs".[2]

14. None of EarnIn's Cash Outs exceed $75,000.

15. EarnIn's consumers use the Cash Outs primarily for personal, family, or household purposes.

16. EarnIn does not have and has never held a supervised lending license to operate in Colorado under the Uniform Consumer Credit Code, § 5-1-101, C.R.S., et seq. ("UCCC").

17. Industry, self-described as "Earned Wage Access" providers, colloquially refers to these loans as "Earned Wage Access" or an "Earned Wage Advance" (commonly referred to as EWAs). EarnIn advertises to consumers that these loans "[m]ak[e] any day payday." Consumers can "access your money the same day you

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[1] The parties entered into a tolling agreement and tolled the applicable statute of limitations from January 30, 2025 to July 1, 2025.

[2] In July 2023, EarnIn rebranded its product terminology and started calling its Cash Outs "Transfer Outs." For consistency, the Complaint will use the term Cash Out.

work" and EarnIn tells consumers that "[y]ou shouldn't have to pay to access your pay."

18. EarnIn caps the amount consumers can borrow at one time. Initially, consumers could only "Cash Out" up to a daily maximum of $100 ("Daily Max") but in response to pressure from consumers and other competitors, EarnIn subsequently increased that amount to $150. EarnIn also caps the amount a consumer can borrow within a pay period through multiple loans ("Pay Period Max.") EarnIn advertises that consumers can borrow up to $1,000 per pay period.

19. EarnIn advertises that its Cash Outs are "totally legit" and come with "[n]o interest or hidden fees." Indeed, in one ad, the paid actor asks "…they have got to be taking a cut or something" and the response is "[n]o interest. [n]o hidden fees."

20. EarnIn advertises to consumers that they can "access their pay before payday." Consumers can receive a loan "instantly" to "access your pay today." Consumers can get "paid the same day you work." Consumers can make "any day payday" just by using the EarnIn app. EarnIn tells consumers "[i]t's not officially payday but you can use the EarnIn app to get paid today." However, consumers can only "access their pay" "instantly" if they pay a fee.

21. EarnIn charges consumers fees for expedited transfers that it calls "Lightning Speed" fees. EarnIn states that most Lightning Speed transfers occur within minutes. The Lightning Speed fees are not "mandatory fees," but consumers must incur them to "access [their] pay today" and receive a loan "instantly." If a consumer does not agree to pay the Lightning Speed fee, the payment is delayed up to 1 to 2 business days.

22. In multiple advertisements, EarnIn tells consumers that they can "Make any day payday with EarnIn" and that there no "hidden" or "mandatory fees." For a consumer to access their pay on the same day requested, they would have to pay the Lightning Speed fee. In the fine print of the advertisement EarnIn discloses that "[f]ees apply to use Lightning Speed," a direct contradiction to the larger text of the advertisement, and a fact that would not be immediately understood by a consumer as "Lightning Speed" is not defined nor explained.

23. EarnIn is not marketing the loans to consumers who need funds in one or two days. It is marketing them to consumers who cannot pay for gas, groceries, or diapers, among other things, and need the money immediately.

B. Employment and Income Verification Requirements

24. EarnIn does income and employment verification on its consumers prior to issuing a loan. To be eligible for an account, most consumers must have a "Verified Source of Income" from a "Verified Employer."

25. A Verified Source of Income includes paychecks from a Verified Employer, or, in EarnIn's sole discretion, documentary proof of anticipated income from sources such as government-sponsored benefits.

26. A Verified Employer is an employer that has a fixed work location or with a timekeeping system. EarnIn also gives itself discretion to approve other employers "paying you on a regular schedule."

27. During the enrollment process, when a consumer clicks the "Learn more" link, a popup appears in the app explaining how EarnIn treats consumers who are unemployed: "Unfortunately, we are not able to support unemployed workers at this time."

28. To verify employment, EarnIn also employs technology to track consumers' location using GPS and Bluetooth to estimate the time spent at work if the employer has a fixed work location. EarnIn even tracks consumers' "Motion & Fitness" to track consumers' movement and activity.

29. EarnIn does not accept all consumers. Consumers must have (1) a "consistent direct deposit pay schedule" and (2) either a fixed work location or an employer-provided email address.

30. EarnIn then verifies that consumers are receiving regular direct deposits prior to issuing a loan. Consumers must provide EarnIn with a screenshot or a printed bank statement showing their recent direct deposit (and the last two digits of their bank account number.) Because some banks prevent users from taking screenshots on their phones as a security measure, EarnIn advises consumers to access their statements on another device and to photograph the screen with their phone. Until EarnIn confirms that consumers are receiving direct deposits, they are not eligible for a Cash Out.

31. EarnIn also sends test transactions to the consumers' bank account to verify that it is able to "debit it back successfully" from the bank account before it will send the consumer any money.

C. Repayment Structure and Authorization Requirements

32. To schedule a Cash Out, consumers must preauthorize a debit from their bank account on or about their next payday that will repay the loan, plus any tips and fees.

33. EarnIn's Cash Out User Agreement ("User Agreement") has a section on "[r]epayment of Cash Outs" stating that "Cash Outs are repayable in a single installment" on "your next regularly scheduled payday or scheduled debit date …."

34. The ACH Authorization Agreement describes the repayment amount as "[the] outstanding balance due EarnIn," and authorizes EarnIn to debit the consumer's bank account for that amount.

35. The Terms of Service require to consumers "agree to provide accurate information about your Bank Account, and promptly update it whenever the information is no longer accurate" as a condition of maintaining access to the Cash Out product.

36. The Terms of Service reserve to EarnIn the right to modify them, including terms relating to repayment, by providing notice through posting updated Terms of Service to its website. Continued use of EarnIn's services constitutes acceptance of the modified Terms of Service.

37. EarnIn requires consumers to authorize a preauthorized ACH debit as a condition of receiving a Cash Out. The authorization is obtained when the consumer taps the "Cash Out" button because by "cashing out" the consumer agrees to the ACH Authorization Agreement.

38. The ACH Authorization Agreement authorizes EarnIn to "initiate recurring electronic debits" of the consumer's bank account for "the outstanding balance due EarnIn" on "or around [the] date of [the consumer's] next paycheck". EarnIn sets the "[r]epayment" date automatically based on when the consumer's paycheck is deposited into their bank account, requiring consumers to accept this date and preventing them from selecting their own due date, as the app determines the repayment timing without consumer control. On the confirmation screen, EarnIn provides the consumer with the date of their "Repayment to EarnIn."

39. Consumers can only find information on revocation during the Cash Out process if they review the fine print and click the hyperlinked ACH Authorization Agreement at the bottom of the page. EarnIn presents this hyperlink twice to consumers during the Cash Out process—when setting the Cash Out amount and

again at the confirmation screen. EarnIn requires consumers to agree to the ACH Authorization Agreement simply by "cashing out."

40. If the consumer clicks one of the links and scrolls down to the bottom, they will see information on revoking a scheduled debit:

> You understand and agree that EarnIn's authorization to initiate debit and credit entries to your bank account will remain in full force and effect until you notify EarnIn that you wish to revoke this authorization by emailing support@earnin.com. You acknowledge that you must notify EarnIn at least three (3) business days before the scheduled debit in order to cancel this authorization.

41. EarnIn does not provide a simple, in-app mechanism for consumers to affirmatively exercise the purported option to revoke authorization, such as a cancellation button or link. Instead, consumers can only access it through a hyperlink. If consumers click the link and happen upon this language, they must send the request to a specific email address outside the app. On information and belief, consumers can also revoke by contacting customer service through the in-app chat feature, but nowhere in the normal transaction flow does EarnIn advertise this ability to consumers.

42. If consumers affirmatively exercise the purported option to revoke the authorization within three business days of the "scheduled debit", EarnIn is entitled under this agreement to proceed with the debit and will only cancel it in its "sole discretion":

> If EarnIn does not receive notice at least three business days before the scheduled debit date, EarnIn may attempt, in its sole discretion, to cancel the debit transaction. EarnIn assumes no responsibility for its failure to do so.

43. Consumers must link their debit card to access Lightning Speed. If EarnIn is unable to debit the consumer's bank account, the ACH Authorization Agreement permits EarnIn to charge the consumer's linked debit card for the same amount.

D. EarnIn's Misleading Characterizations

44. EarnIn represents to investors that a "Cash Out is NOT a loan" because (1) the Cash Out is not "[f]orward [l]ooking" because "[t]he money is transferred based on earnings to date," (2) the Cash Out is non-recourse, and (3) consumers "are not charged mandatory fees for access to capital."

45. EarnIn's User Agreement provides that:

> **You do not have an obligation to repay any of the Cash Out Services, and EarnIn will have no legal or contractual claim or remedy against you based on your failure to repay any of the Cash Out Services. However, if you do not repay a Cash Out Service or EarnIn is unable to complete a repayment to EarnIn that you authorized, you will be prevented from using the Cash Out Services until you pay any outstanding authorized payment to EarnIn**. (emphasis in original).

46. EarnIn consumers primarily access Cash Out loans through its app but it does not disclose anywhere in the normal transaction flow of the app the sentence it has bolded in its Cash Out User Agreement: "**[y]ou do not have an obligation to repay any of the Cash Out Services**". (emphasis in original). In fact, a consumer will not encounter the phrase "you do not have an obligation to repay" anywhere in the normal flow of the interface.

47. EarnIn states that it does not engage in collections activity or credit reporting with respect to consumers who do not repay "any outstanding Cash Outs", but it does prevent them from taking out another Cash Out until the consumer repays EarnIn.

48. Despite these assertions, EarnIn's advertises to consumers looking for "payday" "loans." In EarnIn's paid online marketing, approximately 30% of its key words use the term "payday" and approximately 35% of the key words use the term "loan."

E. EarnIn's Cash Outs Are Loans Under Colorado Law

49. The Colorado Supreme Court determined what is a loan under Colorado law in *Oasis Legal Fin. Group, L.L.C. v. Coffman*. 361 P.3d 400 (Colo. 2015). The court held that "debt" means "an obligation to repay." In determining whether consumers had an obligation to repay, the court looked to the "substance" of the transaction and considered "how [the transactions] are designed to work and how they actually work most of the time." In that case, the companies made advances and expected full repayment because in 85% of the cases, the companies fully recovered.

50. EarnIn's User Agreement provides that "to obtain Cash Outs" consumers (1) "must have a checking account … and you must link that bank account to your EarnIn profile", and (2) consumers "must authorize debits from your [b]ank [a]ccount" to "repay Cash Out" services.

51. EarnIn User Agreement provides for repayment: "Cash Outs are repayable in a single installment on your next regularly scheduled payday or scheduled debit date as designated in the Services."

52. EarnIn's website provides for repayment stating "[a]ny earnings & optional tips are repaid when your paycheck hits."

53. If a consumer takes a Cash Out, the consumer agrees to the ACH Authorization Agreement. EarnIn requires the consumer to agree to these terms, and consumers do so simply by clicking the Cash Out button. EarnIn informs the consumer in small print at the bottom of the screen that "[b]y cashing out, you agree to the ACH Authorization Agreement." The ACH Authorization Agreement itself only displays if the consumer clicks the hyperlink but consumers do not need click the link or read the agreement to proceed. By clicking the Cash Out button, the consumer agrees to a preauthorized debit of their bank account for "the outstanding balance due EarnIn."

54. Even though consumers preauthorizes debits in the app, EarnIn does not provide any entirely in-app mechanism for the consumer to affirmatively exercise the purported option to revoke authorization. Nor does it describe anywhere in the normal flow of the app how to do so.

55. EarnIn does authorize itself to debit the consumers' funds as soon as they are available "on or around" the "date of your next paycheck", and EarnIn will "apply such debited amount towards your outstanding balance due to EarnIn."

56. EarnIn does not limit itself to a single repayment attempt. If EarnIn is "unable to debit your account on payday" then it "reschedule[s] the debits for future paydays." And because EarnIn continuously reviews consumers' bank account activity, it can also schedule a debit "before … payday" when it sees "a high enough bank balance."

57. EarnIn's authority is reflected in its Terms of Service, which demonstrate that EarnIn retains an ongoing right to debit consumers' bank accounts and to repeatedly re-initiate repayment attempts whenever EarnIn chooses. EarnIn establishes that repayment is not limited to payday and that failed or rejected debits do not end EarnIn's ability to collect. EarnIn's own language confirms that consumers remain subject to continuing debit attempts until EarnIn recovers the authorized amount.

58. Its Terms of Service provide:

> We will debit any payments authorized by you for Cash Outs ... directly from your Bank Account ... on the day of your next regularly scheduled paycheck. By requesting a Cash Out ..., you authorize us to electronically initiate debit ... entries to your Bank Account ...; or if you link a debit card to your Earnin account, you authorize us to charge your debit card, for all payments you authorize. **You agree to maintain a balance that is sufficient to fund all payments that you initiate**. We reserve the right to charge your Bank Account ... **at any time on or after** the day the paycheck associated with the earned wages you have requested is expected to deposit into your Bank Account .... Our failure to debit your Bank Account ... for amounts due to Earnin repayment within a set amount of time does not constitute a waiver of our right to charge your account for such funds. We will initiate debits to your Bank Account ... or debit card as permitted by applicable laws and NACHA rules. **Failed or rejected debits may be reinitiated at any time** up to 150 days after the first debit. (emphasis added).

59. Taken together, this language shows that EarnIn reserves the ability to debit the consumer's account not only on payday but "at any time on or after" the expected deposit date, expressly preserves the right to continue attempting repayment after any failed attempt, and authorizes re-initiation of debits "at any time up to 150 days" following the first attempt.

60. EarnIn claims that consumers "do not have an obligation to repay" but it requires them to schedule a debit to take a Cash Out, continues debiting them until it is repaid, and then severely restricts their ability to modify that debit. According to EarnIn's policy on "Rescheduled Restores" (i.e., rescheduled debits), the consumer must contact EarnIn at least three business days before the scheduled debit to cancel a debit and they may only do so ***once*** in six months. After the consumer uses up that courtesy, consumers must wait six months to cancel another debit unless they fall under a narrow exception such as (1) a frozen bank account due to fraud, or (2) new pay pattern or job change (where EarnIn is still likely to get repaid).

61. If the consumer "do[es] not repay a Cash Out" as scheduled, the consumer is "prevented from using the Cash Out Services until [he/she] pay[s] any outstanding authorized payment to EarnIn."

62. By using these tactics and enabling this access, EarnIn guarantees a high rate of repayment. In Colorado, from January 2023 through July 2025, consumers repaid EarnIn on 99.18% of the transactions. In terms of dollars, including the repayments of tips and fees, consumers repaid 99.23% of the amount owed.

63. EarnIn is well aware of its high repayment rates. It touts to investors that its unique business practices have led to a "best-in-class risk management" with only 1% risk of loss. This is the result of a "[u]nique insight into earnings" and a "[u]nique insight into payroll timing" with "[s]hort exposure duration" and "[p]re-authorized recovery."

64. Under *Oasis*, EarnIn's Cash Outs are loans under Colorado law, and EarnIn's contention that its product is not a loan based on its disclaimer of any legal repayment obligation lacks any real-world significance given how the Cash Out transactions actually operate in practice.

F. The True Cost of "Optionality"—EarnIn's Staggering Sources of Revenue

65. Prior to 2022, EarnIn's fee structure was entirely based on tips. EarnIn collected tips on over 90% of consumer transactions during this period. EarnIn started collecting Lightning Speed fees in March 2022.

66. EarnIn displayed to consumers a default tip of $11 on a $100 Cash Out. This amounts to an APR on the average loan of 410.95%. (The average loan term on an EarnIn Cash Out was 9.77 days.)

67. In Colorado, from January 2023 through July 2025,[3] EarnIn collected tips on 50.17% of transactions. Consumers left an average tip of $3.01.

68. Starting in March 2022, EarnIn began collecting Lightning Speed fees. It had a tiered-fee structure topping out at $100, the maximum amount EarnIn would lend. EarnIn offered the first Lightning Speed transfer for free. For smaller Cash Outs up to $24, it charged $1.99 for Lightning Speed. For Cash Outs between $25 and $74, it charged $2.99. And finally, for Cash Outs between $75 and $100, it charged $3.99 for Lightning Speed.

69. Recently, EarnIn increased its Lightning Speed fees twice. In January 2025, for Cash Outs $100 or less, it charged $3.99 for Lightning Speed, and $5.99 for Cash Outs greater than $100.[4] In July 2025, EarnIn increased its Lightning Speed fees again. Consumers now pay $4.99 for Cash Out up to $75 and $6.99 for Cash Out over $75.

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[3] EarnIn provided loan data to Colorado from January 1, 2023 through July 31, 2025 (a 31-month period).

[4] These are the costs for consumers without an Evolve Bank Account.

70. In Colorado, from January 2023 through July 2025, consumers paid a Lightning Speed fee on 85.5% of transactions and paid $4.20 per transaction for Lightning Speed on average.[5]

71. The Lightning Speed fee greatly exceeds the cost to EarnIn. EarnIn uses Real-Time Payments ("RTP") to make these transfers. This costs $0.075 per transaction. Debit card transfers, which are used when the consumer's linked bank account is not in the RTP network, cost $0.20 per transaction.

72. EarnIn makes a staggering amount of money in Colorado on this product due to its incredible volume. From January 2023 through July 2025, EarnIn made over 3,150,000 loans to Colorado consumers. This is an average of over 100,000 loans per month. In terms of dollars, EarnIn loaned in Colorado approximately $300 million, or approximately $9.68 million per month. During this period, EarnIn collected in Colorado $16,144,232.54 in tips and fees consisting of $4,782,629.07 in tips and $11,361,603.47 in Lightning Speed fees.

G. Predatory, Undisclosed Pricing

73. EarnIn does not provide loan disclosures required under Colorado law to consumers because it contends that its product is not a loan. Therefore, EarnIn does not disclose the APR to consumers that leave a tip or pay an expedite fee when they are taking a Cash Out.

74. These loans are very costly to consumers. The average loan is $94.87. The average term is approximately 9.74 days. In Colorado, from January 2023 through July 2025, 50.17% of consumers paid tips that averaged $3.01 per transaction. Eighty-five percent (85.5%) of consumers paid Lightning Speed fees that averaged $4.20 per transaction, and 92.10% of the transactions involved a tip or a Lightning Speed fee. These loans resulted in an average APR of 387.69%.

75. Many consumers get into a cycle of reborrowing. EarnIn made over 3,150,000 loans to Coloradans from January 2023 through July 2025, but only 56,778 consumers took out those loans. This means that those consumers, over a two-year period, took out an average of approximately 56 loans per consumer.

76. From January 2023 through July 2025, one consumer took out 1,151 loans with a total amount financed of $30,354. The average loan was $26.37 with an average term of 8.20 days. The consumer did not pay *any* tips but did pay Lightning

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[5] EarnIn collected the majority of these fees under the lower fee structure.

Speed fees on every transaction except one (99.91% of transactions). These fees totaled $4,038.50 with the loans averaging an APR of 1,421.06%.

77. Another consumer took out 1,033 loans over this period with a total amount financed of $42,018. The average loan was $40.68 with an average term of 9.10 days. The consumer paid tips and Lightning Speed fees on almost all of the transactions (tips on 95.35% of transactions and expedite fees on 99.52% of transactions). These costs totaled $8,561.22 with the loans averaging an APR of 1,539.55%.

78. Yet another consumer took out 768 loans from January 2023 through December 2024 with a total amount financed of $37,835.00. The average loan was $49.26 with an average term of 4.57 days. The consumer paid tips (97.14%) and Lightning Speed fees (99.48%) on almost every transaction. The loan costs totaled $5,311.86 and averaged an APR of 2,215.63%.

79. These examples are only illustrative of the hardship caused by EarnIn to Colorado consumers in violation of Colorado law. In sum, EarnIn made 3,163,906 illegal loans in Colorado between January 1, 2023 and July 23, 2025 to 56,778 different consumers. EarnIn continues to make illegal loans in Colorado.

H. Tipping Traps and Fees

1) <u>EarnIn's Tricks to Pay Tips</u>

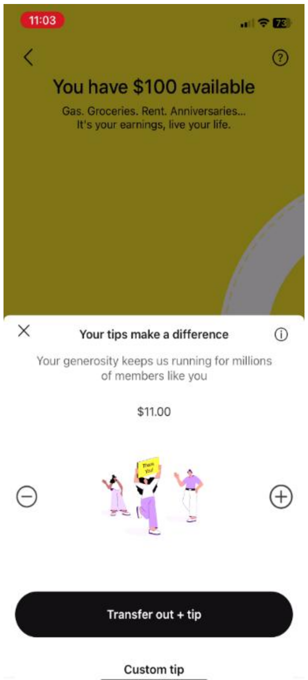
80. EarnIn collected tips from Colorado consumers until July 2025, at which time EarnIn voluntarily stopped charging tips. During that time, its User Agreement stated that "[p]ayment of a tip is completely optional."

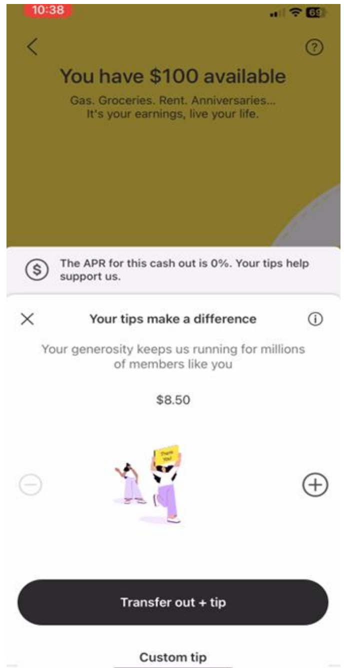
81. In practice, consumers encountered a very different experience. EarnIn made it difficult to avoid tipping by employing a series of deceptive interface tactics, or dark patterns, that EarnIn internally referred to as "roadblocks," designed to increase the likelihood that users would leave a tip.

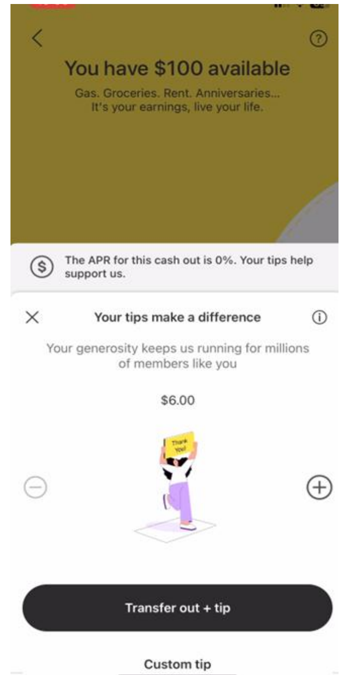
82. For example, in EarnIn's 2023 app, a consumer attempting to get a loan under the default settings had to make at least *eighteen* (18) separate taps to complete the transaction and reduce the tip to $0.

83. On the tip screen, consumers adjust the tip amount using plus ("+") and minus ("–") buttons. To reduce the default $11 tip to $0, the consumer had to tap the minus button *thirteen* (13) times from $11 to $8.50 to $6 to $5.50 to $5 to $4.50 to $4 to $3.50 to $3 to $2.50 to $2 to $1.50 to $1 to $0.50 and finally to $0. The reduction is initially steep—dropping from $11 to $6 in just two taps—but then slows

dramatically, requiring *eleven* additional taps to move from $6 to $0 reducing in only $0.50 increments. This design increases friction and discourages users from lowering the tip.

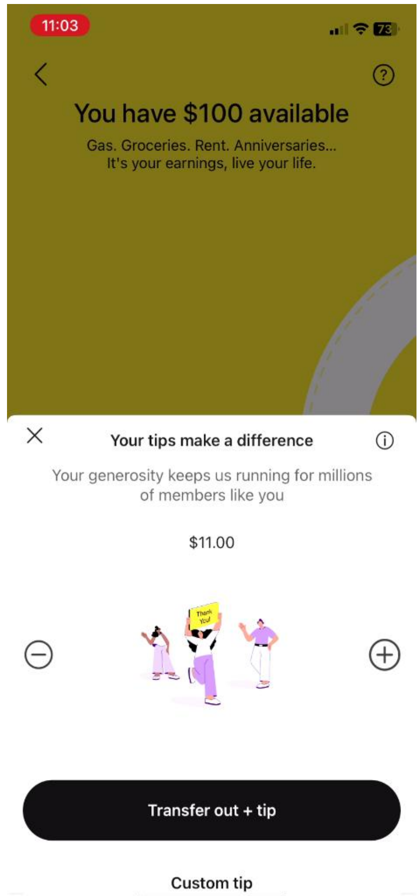




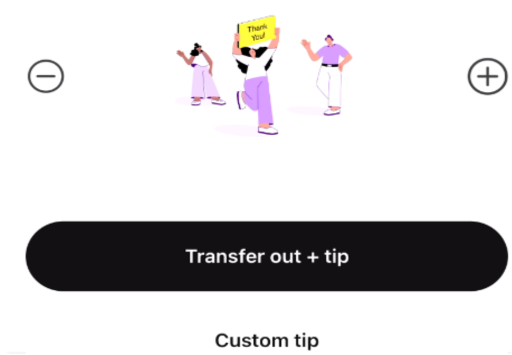


84. While there is an alternative method to leave a $0 tip—via the "Custom tip" feature—EarnIn made this option difficult to access.

85. The custom tip option is visually de-emphasized. It is placed against a white background, causing it to blend in with the rest of the screen, making it easy to overlook. It is overshadowed by the more prominent tipping features, discussed above, that are placed directly above it. The large, black "Transfer out + tip" button draws the user's attention, but this button only works if the user accepts one of the large default tip amounts that is only reduced manually to $0 through the 13-click process.

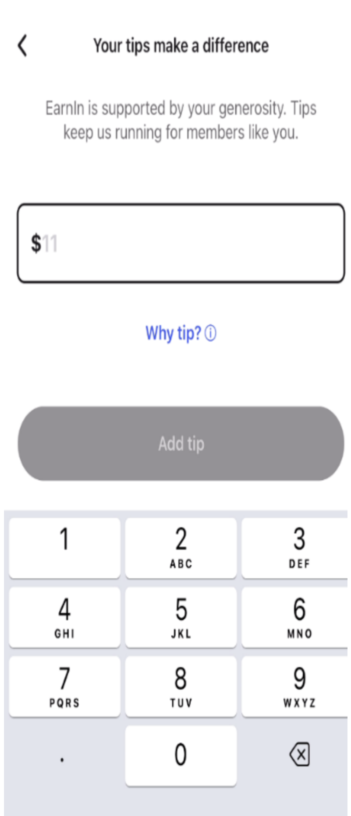


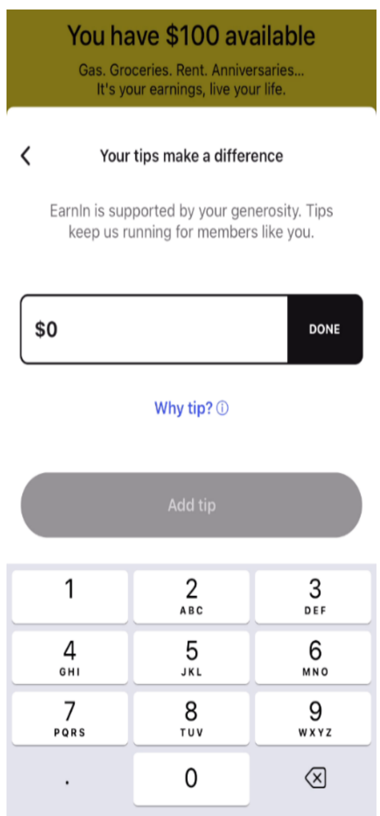
86. Compounding the problem, the custom tip button is positioned directly above the home indicator—the sensitive horizontal bar at the bottom of modern smartphones used to return to the home screen or switch apps. This area is known for accidental activation. Users attempting to tap the custom tip button may unintentionally trigger the home indicator, interrupting the transaction and discouraging further attempts.

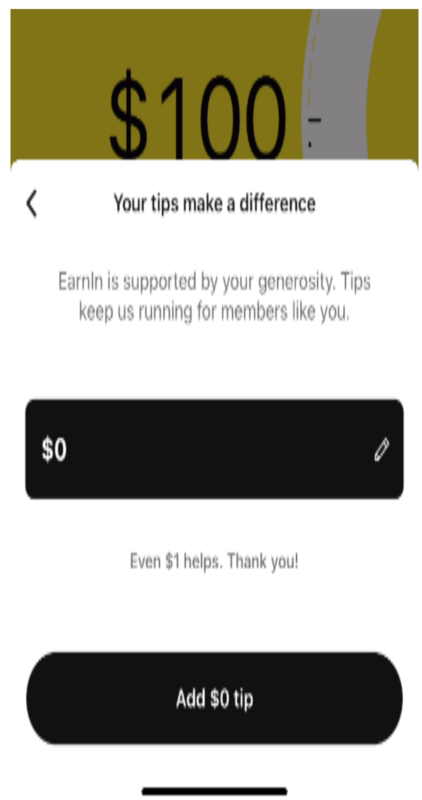


87. By making the custom tip option harder to see and physically harder to use, the design nudges consumers toward the default tipping flow, which has more friction and higher default tip amounts.

88. If a consumer does manage to access the custom tip feature, EarnIn immediately suggests a default tip of $11 on a $100 cash out. If the consumer accepts any tip amount, they can proceed by tapping a large, black “Add tip” button. But if the consumer enters $0, the “Add tip” button becomes inactive. Instead, they must tap a smaller “Done” button inside the text field, then confirm the $0 tip again on the next screen by tapping a separate “Add $0 tip” button. This inconsistent flow adds further friction to the $0 tip path.

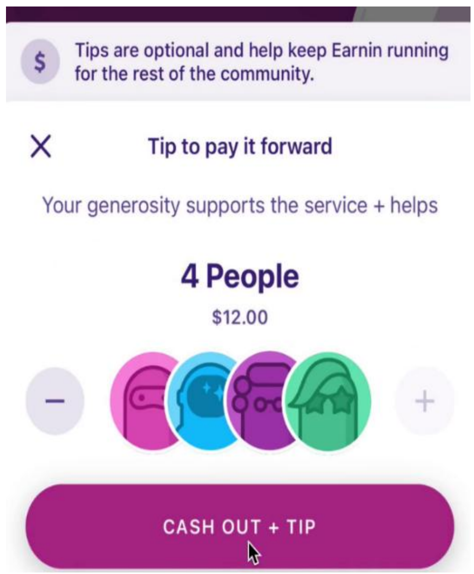




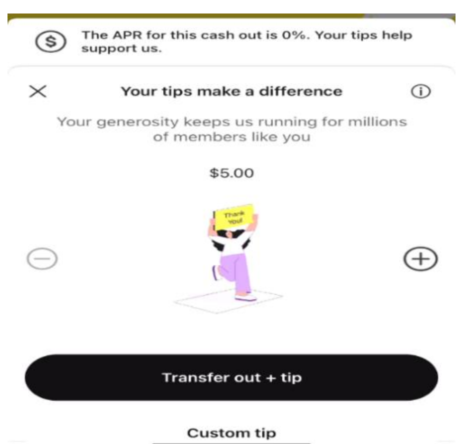


89. These are just some of the "roadblocks" EarnIn uses to discourage $0 tips. Consumers are also inundated with suggestive tip messaging throughout the app. On the home screen, users see: "Tips keep us running for millions of members like you." After selecting a cash out amount, they encounter additional tip messages such as:

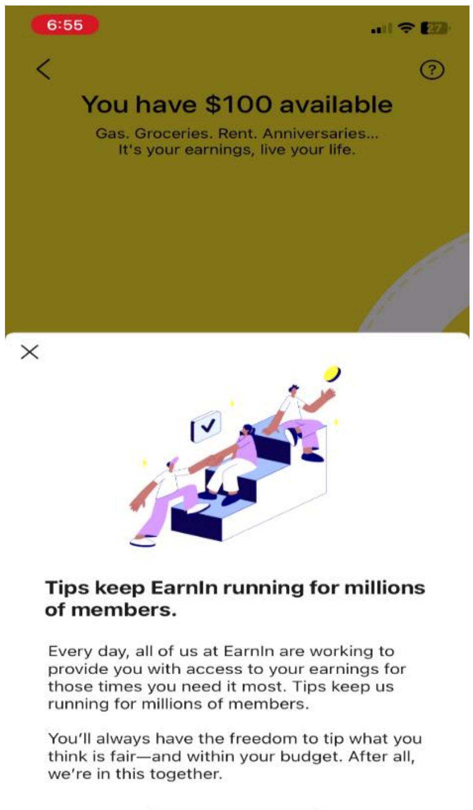
- "Tip to pay it forward"
- "Your generosity supports the service + helps"
- "Your tips make a difference"



90. On the tip screen, even though the consumer has selected a tip amount, EarnIn tells the consumer "[t]he APR for this cash out is 0%. Your tips help support us." The message stays static on the top of the screen, even if the consumer decreases the tip amount to zero.



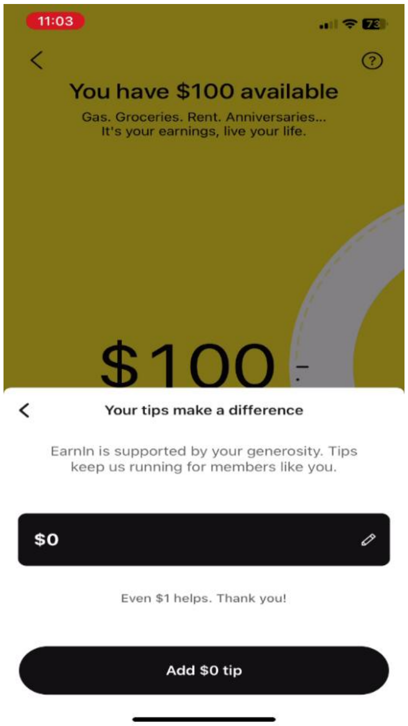
91. If the user taps the tooltip icon, a longer message appears: *"Tips keep EarnIn running for millions of members. Every day, all of us at EarnIn are working to provide you with access to your earnings for those times you need it most. Tips keep us running for millions of members like you. You'll always have the freedom to tip what you think is fair — and within your budget. After all, we're in this together."*

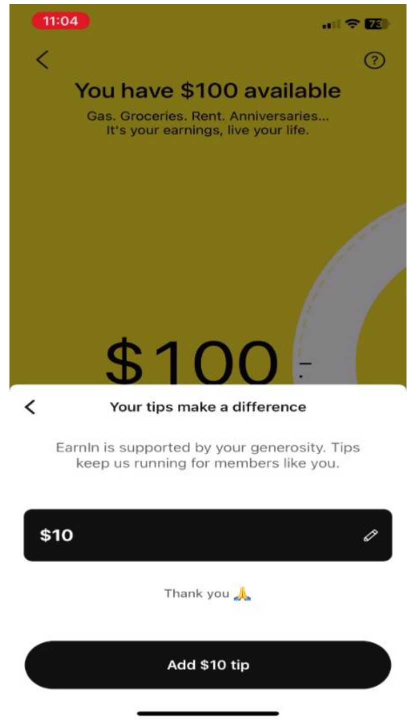


92. The "Transfer out" button also continues to read "Transfer out + tip" regardless of whether the user is actually tipping.

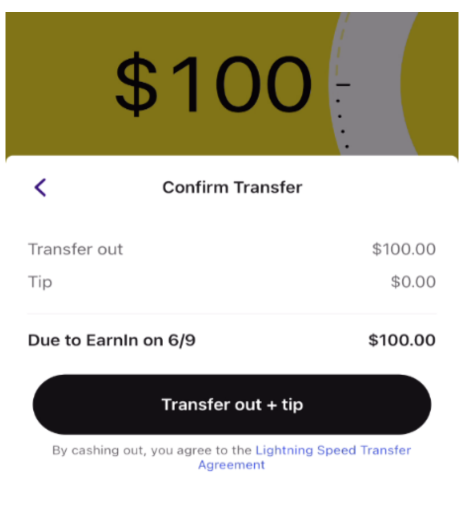
93. Similarly in the custom tip flow, users are repeatedly shown persuasive tip messaging like "[y]our tips make a difference" and "EarnIn is supported by your generosity. Tips keep us running for members like you." There is also again the tool tip asking consumers "why tip?' that leads to EarnIn's long explanation about "keep[ing] EarnIn running for millions of members."

94. If the consumer selects $0, EarnIn tells the consumer "[e]ven $1 helps. Thank you."

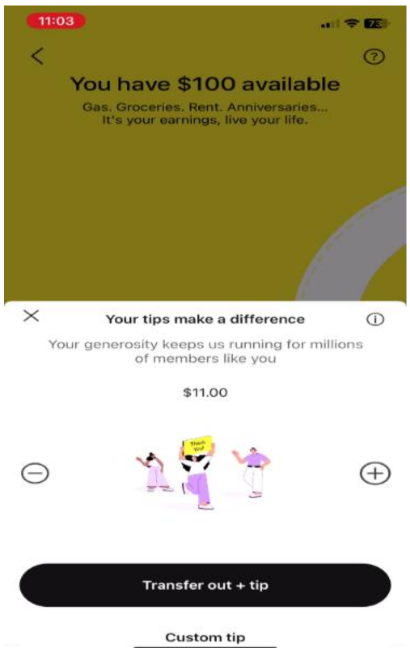


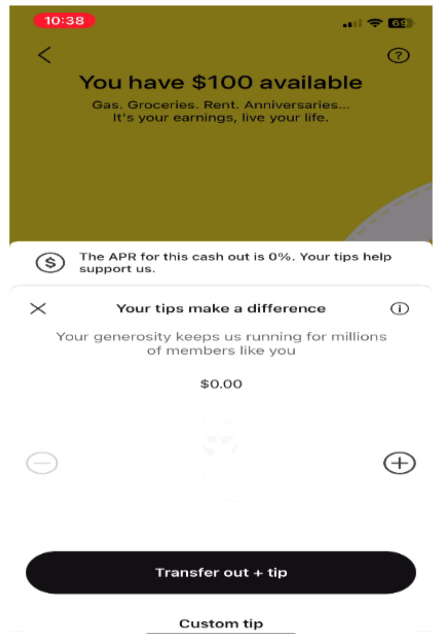


95. To proceed through the custom tip process, consumers must tap a button labeled "Add tip," even when the tip is $0. After that, they are brought to yet another screen with more tip messaging and a final "Transfer out + tip" button.



96. EarnIn also uses visual cues to influence tipping behavior. The default tip screen shows three people icons. As the user increases the tip, more people appear. As the user decreases the tip, the icons fade or disappear almost entirely—visually signaling that tipping less helps fewer people.





97. EarnIn's use of "pay it forward" language was not accidental. Internal testing showed that removing this language led to lower tip amounts. But the messaging was misleading. Tips did not go to other users—they went directly to EarnIn's bottom line. Still, the company used this language because it knew it would increase tipping.[6]

98. Indeed, EarnIn's use of "roadblocks" was by design. EarnIn extensively tested and modified its tipping procedures and used these numerous tactics to maximize its "monetization" of tips and fees.

99. In its attempt to maximize tips and fees, EarnIn failed to inform consumers at the moment they were setting a tip or deciding whether to pay a fee that they "**do not have an obligation to repay any of the Cash Out Services**" and that EarnIn has "no legal or contractual claim or remedy against you based on your failure to repay any of the Cash Out Services," as stated in its Terms of Service and User Agreement. EarnIn buried this language deep within the Cash Out process.

[6] In later versions, EarnIn no longer uses this type of language or imagery. Eventually, it shifted to "community" messaging, claiming that tips helped it serve more users.

The only way consumers could locate it was by navigating through a maze of hyperlinks and scrolling through lengthy documents.

100. During the Cash Out process, the screen displaying the Cash Out amount stated only that "[b]y cashing out you agree to the 'ACH Authorization Agreement,'" with the ACH Authorization Agreement hyperlinked. A consumer who happened to click that link would see yet another hyperlink below the ACH Authorization Agreement labeled "Terms & Conditions". If the consumer clicked that hyperlink, a separate page appeared that contained additional hyperlinks to the "General Terms of Service" and "Cash Out Terms of Service"—where this critical language about the non-recourse nature of the transaction is located.[7] However, when consumers were asked to set the tip amount or decided whether to pay a fee, they were not shown any link to the ACH Authorization Agreement, the Terms of Service, or the User Agreement.

101. EarnIn treated tips as revenue. In its slide decks to investors, it touted its "revenue run rate based on pledged tips" and described its "[t]otal value of tips pledged by users in a given month. Proxy for revenue" or most simply discussed "Tip Revenue."

102. It also conducted A-B Testing with the understanding that tip, and Lightning Speed fees, were revenue. It tested the "Monetization Rate (Tip Rate, LS Take Rate)" and tested whether "[r]emov[ing] tipping experience from the Cash Out product in tip-averse states and increase[ing] the LS fees in this state to compensate for the loss in revenue."

103. EarnIn's design subverted consumer choice and made it difficult not to tip so that many consumers were not able to avoid tipping. The costs of tips to these consumers are not outweighed by benefits to other consumers or competition.

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[7] This same hyperlink path was also available when consumers were asked to confirm the Cash Out amount plus any tips or fees.

VI. Claims For Relief

<u>FIRST CLAIM FOR RELIEF—Administrator</u>
(Excess and Unauthorized Charges)
(§ 5-2-201, C.R.S.)

104. Plaintiffs incorporate herein by reference all allegations set forth above.

105. EarnIn made Cash Out loans to consumers who are persons other than an organization.

106. These consumers incurred the debt primarily for a personal, family, or household purpose.

107. The debt had a finance charge in the forms of tips and expedite fees.

108. The principal on the debt does not exceed seventy-five thousand dollars.

109. Cash Outs amount to a "supervised loan" because they are consumer loans where the finance charge exceeds 12% per year, as determined by § 5-2-201, C.R.S.

110. Under § 5-2-201(2), C.R.S., EarnIn's Cash Outs exceeded the permissible rate for supervised loans.

111. Accordingly, EarnIn has charged, assessed, collected, or received finance charges in connection with Colorado loans that exceed the finance charges authorized and allowable under §§ 5-2-201 and 5-2-202, C.R.S.

<u>SECOND CLAIM FOR RELIEF—Administrator</u>
(Disclosure Violations)
(§ 5-3-101, C.R.S.)

112. Plaintiffs incorporate herein by reference all allegations set forth above.

113. EarnIn offered credit to Colorado consumers, primarily for personal, family, or household purposes.

114. EarnIn regularly extends credit to Colorado consumers.

115. EarnIn charged Colorado consumers finance charges incident to the extension of credit.

116. EarnIn failed to make disclosures to consumers in connection with an extension of credit as required by Colorado law.

117. By reason of the foregoing violations of Colorado law, EarnIn is liable to the Administrator for twice the finance charge but not less than $100 and not more than $1000 per violation, and reasonable attorneys' fees. §§ 5-5-202(1), 5-6-114(1)(a), C.R.S.

<u>THIRD CLAIM FOR RELIEF—Administrator</u>
(Unlicensed Activity)
(§ 5-5-201(1), C.R.S.)

118. Plaintiffs incorporate herein by reference all allegations set forth above.

119. A "supervised loan" is a consumer loan where the finance charge exceeds 12% per year, as determined by § 5-2-201, C.R.S.

120. EarnIn made supervised loans with Colorado consumers without obtaining a licensed as required by § 5-2-301, C.R.S. Accordingly, it was prohibited from collecting any finance charges from Colorado consumers and is liable for penalties up to three times the amount of the finance charge. § 5-5-201(1), C.R.S.

<u>FOURTH CLAIM FOR RELIEF—Administrator</u>
(Violation of the Deferred Deposit Loan Act)
(§ 5-3.1-101, et seq., C.R.S.)

121. Plaintiffs incorporate herein by reference all allegations set forth above.

122. In 2018, Colorado overwhelmingly with 77% approval passed Proposition 111, which sought to cap payday loan APRs at 36% and to eliminate all other fees and finance charges. The law is codified under the Deferred Deposit Loan Act, § 5-3.1-101, et seq., C.R.S. ("DDLA").

123. The people of the state of Colorado declared that:

> The people of this state find and declare that payday lenders are charging up to two hundred percent annually for payday loans and that excess charges on such loans can lead Colorado families into a debt trap of repeat borrowing. It is the intent of the people to lower the maximum authorized finance charge for payday loans to an annual percentage rate of thirty-six percent.

§ 5-3.1-105, C.R.S.

124. The DDLA does not merely restrict traditional payday loans but broadly defines payday loans as any “consumer loan” where “the lender, for a fee, finance charge, or other consideration”

a. “[a]ccepts a dated instrument from the consumer as sole security for the loan and no other collateral

b. “[a]grees to hold the instrument for a period of time prior to negotiation or deposit of the instrument”; and

c. “[p]ays to the consumer [or] credits to the consumer's account … the amount of the instrument, less finance charges permitted by section 5-3.1-105.”

125. The DDLA broadly defines “instrument” to include “an authorization to transfer or withdraw funds from an account … made payable to a person subject to this article.”

126. EarnIn accepts (1) an authorization to transfer or withdraw funds from the consumer’s account, (2) EarnIn holds that authorization for a period of time, typically until on or before the consumer’s next payday, before it deposits those funds in its own account, and (3) it pays the consumer and credits to the consumers account the amount of the authorization less finance charges such as tips and expedite fees. Accordingly, EarnIn is subject to the DDLA.

127. The DDLA has numerous requirements. Among other things, it requires the use of a written agreement that includes specific information, including the APR, and the agreement shall include all disclosures required under Colorado law by § 5-3-101(2), C.R.S.

128. Under the DDLA, a lender may not exceed 36% APR and only may collect those charges expressly authorized in the DDLA.

129. The lender shall not exceed an amount financed greater than $500 to one consumer at any time. If a lender makes multiple loans to a consumer and the total amount financed does not exceed $500, there is a minimum 30-day waiting period between loans.

130. The consumer has the right to rescind a DDLA loan on or before 5 p.m. the next business day following the loan transaction.

131. The lender must get a supervised lender license.

132. EarnIn is in violation of the DDLA and these provisions.

<u>FIFTH CLAIM FOR RELIEF—Attorney General</u>
(Unfair and Deceptive Trade Practices – Dark Patterns)
(§ 6-1-105(1)(rrr), C.R.S.)

133. Plaintiffs incorporate herein by reference all allegations set forth above.

134. The CCPA prohibits a person from knowingly or recklessly engaging in any unfair or deceptive trade practice. § 6-1-105(1)(rrr), C.R.S.

135. EarnIn has engaged in a deceptive trade practice by employing a series of dark patterns or "roadblocks" designed to increase the likelihood that consumers would pay the company a "tip" after a transaction. These "roadblocks" were put in place to manipulate consumers and subvert consumer choice; resulting in millions of dollars in revenue for the company from these consumer "tips."

136. EarnIn has engaged in unfair practices by violating public policy, engaging in immoral, unethical, oppressive and unscrupulous practices, and causing substantial consumer injury.

137. The Colorado legislature has found that payday lenders charging up to two hundred percent annually for payday loans and that excess charges on such loans can lead Colorado families into a debt trap of repeat borrowing. § 5-3.1-101.5, C.R.S.

138. As described above, the dark patterns used by EarnIn pushed consumers to pay back loans with average APRs of hundreds of percents and keeping them in the same cycle of repeat borrowing forewarned by the legislature. As a result of these dark patterns, EarnIn has violated the public policy of the state.

139. Further, EarnIn's business practices are unfair because they are immoral, unethical, oppressive and unscrupulous. EarnIn implemented a user interface designed to manipulate consumers with the substantial effect of subverting or impairing user autonomy, decision-making, or choice. The interface designs or choice architectures unfairly, fraudulently, or deceptively manipulated or coerced consumers into providing EarnIn with tips. EarnIn used emotionally manipulative language or visuals to unfairly steer consumers into providing tips. It presented choices that shame or guilt consumers into providing EarnIn with tips. EarnIn exploited cognitive biases by making a default tip and preselected this tip for consumers multiple times.

140. Consumers suffered substantial injury as a result of EarnIn's violations.

141. When EarnIn committed these unfair and deceptive acts, it did so in the course of its business, occupation, or vocation.

<u>SIXTH CLAIM FOR RELIEF—Attorney General</u>
(False or Misleading Statements Concerning Price)
(§ 6-1-105(1)(l), C.R.S.)

142. Plaintiffs incorporate herein by reference all allegations set forth above.

143. The CCPA prohibits a person from making false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions. § 6-1-105(1)(l), C.R.S.

144. EarnIn made false and misleading statements that consumers could access money on the same day it was requested without having to pay any fees or interest.

145. In order for a consumer to receive their funds on the same day they would have to pay a Lightning Speed Fee.

146. Further, EarnIn made misleading statements that its product had no interest or fees when it implemented a user interface designed to manipulate consumers into paying "tips" on transactions. By its design and implementation, consumers ended up paying EarnIn substantial fees in the forms of tips despite EarnIn advertisements that the products were without fees.

147. Defendants' false or misleading statements of fact caused significant harm to consumers.

VII. RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment, as follows:

148. An order permanently enjoining EarnIn, and its officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the UCCC and CCPA, 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 EarnIn to disgorge to Plaintiffs or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the UCCC and CCPA;

A. An order requiring EarnIn to refund excess charges as provided in §§ 5-2-201 and 5-6-114, C.R.S. to 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;

B. An order requiring EarnIn to pay the Administrator pursuant to § 5-5-202, C.R.S. for twice the finance charge but not less than $100 and not more than $1000 per violation, and reasonable attorneys' fees;

C. An order requiring EarnIn to pay the Administrator penalties up to three times the amount of the finance charge;

D. An order in an amount to be determined at trial for restitution, unjust enrichment, or other equitable relief pursuant to C.R.S § 6-1-110(1);

E. An order requiring EarnIn to pay a civil penalty determined by the Court up to ten times the amount of the finance charge for every consumer credit transaction as may be determined at trial or otherwise in which a consumer was charged an excess charge;

F. An order requiring EarnIn to pay the Administrator a civil penalty as set forth by § 5-6-114, C.R.S.;

G. An order declaring EarnIn's above-described conduct to be in violation of the Colorado Consumer Protection Act, §§ 6-1-105(l) and (rrr), C.R.S.

H. An order requiring EarnIn to pay civil penalties in an amount not to exceed $20,000 per violation pursuant to § 6-1-112, C.R.S.;

I. An order requiring EarnIn to pay the costs and expenses of this action;

J. Any such further orders as the Court may deem just and proper.

DATED: August 27, 2026

PHILIP J. WEISER
Attorney General

/s/ *Kevin J. Burns*
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