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Testimony submitted to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection

For the hearing entitled

"Taking Account of Fees and Tactics Impacting Americans' Wallets"

July 26, 2023

Good Morning Chairman Warnock, Ranking Member Tillis, Members of the Committee. Thank you for inviting me to testify today. My name is Michelle Henry, and I am the Attorney General of Pennsylvania. I joined the office in January 2017 as First Deputy Attorney General, and I became Attorney General in January 2023.

This committee is right to focus its attention on Junk Fees because they harm both businesses and consumers. Honest businesses lose out to competitors who charge junk fees because the competitors' prices appear (at first) to be a better deal. This problem is often compounded by Internet lead generators that steer consumers to the companies charging the junk fees. Consumers end up paying more than they expected for a product or service. Junk fees prevent consumers from effectively shopping for the best overall price. This hinders the functioning of a competitive marketplace.

While the phrase "junk fees" is a relatively new way of describing surprise charges, our work in combatting these practices goes back many decades. Today, I want to tell you about the work we have done in recent years, in three markets where junk fees have become more and more pervasive: consumer finance, landlord tenant, and hotels.

Consumer Finance

In the consumer finance space, our landmark junk fees case is a multistate lawsuit against Mariner Finance, a Wall Street private equity-owned installment lender. Our lawsuit alleges that Mariner charged consumers junk fees for hidden add-on products that consumers either did not know about or did not agree to buy. Consumers left Mariner believing they had entered into an agreement to borrow and repay, over time, a certain amount of money. In reality, because of these hidden junk fees, Mariner added hundreds to thousands of dollars to the total amount a consumer owed. Mariner compounds the problem by pushing many consumers to put down their car title as collateral, trapping them in loans that are inflated by junk fees.

The cost of the Mariner's junk fees is staggering: for a random sample of loans originated in Pennsylvania in December 2020, Mariner charged each consumer an average of $1,085 in junk fees for an average of $3,394 in cash borrowed. In the aggregate, Mariner charged Pennsylvanians more than $27 million in junk fees and interest for add-ons from 2015 to 2018.[1] Nationwide, Mariner charged consumers over $120 million in junk fees for add-on products in 2019.

We filed the Mariner lawsuit in Federal court in Philadelphia together with four other attorneys general: New Jersey, Washington, Oregon, and the District of Columbia. We are using the authority that Congress granted us to enforce the Dodd-Frank Act. We are asking the Court to order that Mariner: (1) refund of all junk fees and associated interest, (2) pay penalties, and (3) stop charging junk fees, among other relief.

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[1] https://www.attorneygeneral.gov/wp-content/uploads/2022/09/2022-09-07-Mariner-Multistate.pdf
https://www.attorneygeneral.gov/taking-action/ag-shapiro-takes-action-to-defend-pennsylvanians-from-predatory-personal-lending-company/

We announced a significant junk fee settlement in 2018 with Wells Fargo.[2] The media widely covered the first Wells Fargo scandal - where the bank opened millions of bank accounts without the customers' knowledge. But the much more harmful conduct was uncovered later: the $385 million in junk fees Wells charged its auto finance customers for so-called force-placed car insurance.

Despite evidence that many customers already had the required car insurance, Wells Fargo improperly charged premiums, interest, and fees for force-placed insurance to more than two million accounts. In addition, Wells Fargo refunded more than $100 million in mortgage junk fees because it improperly charged mortgage consumers for rate lock extension fees even when the delay was caused by Wells Fargo. To resolve the multistate action, Wells Fargo agreed to pay the states $575 million. This was in addition to the consumer refunds I mentioned, and on top of another $2.3 billion the bank paid to resolve other regulatory and class actions.

I want to address an argument that companies such as Mariner sometimes make. Predatory lenders often argue that their overpriced loans are necessary to help consumers make ends meet in a moment of dire need, such as unexpected car repairs. But we know from empirical research that far more predatory loans are taken out to meet recurring expenses than for emergencies.[3] Consumers in Pennsylvania often tell our office that they regret taking out their loan from a high-cost lender. Many times they tell us the lender pushed them to borrow more than they wanted or needed. And often they were led to the lender by an online lead generator that purports to be helping the consumer find the best deal available.

In reality, most consumers would be better off getting an auto refinance loan or an installment loan at their local credit union or community bank rather than going to an expensive installment lender that charges junk fees.

Finally, I want to note that in April 2022 we joined other attorneys general in urging the[4] CEOs of the biggest banks - JPMorgan Chase, Bank of America, U.S. Bank, and Wells Fargo - to follow the lead of Citi and Capital One and eliminate harmful junk fees such as overdraft fees and non-sufficient fund fees. Overdraft fees hit families and communities of color harder than others. They start a vicious cycle that drives them deeper and deeper into debt. Eliminating these fees helps create a system that works for everyone.

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[2] https://www.attorneygeneral.gov/taking-action/attorney-general-shapiro-announces-575-million-50-state-settlement-with-wells-fargo-bank-for-opening-unauthorized-accounts-and-charging-consumers-for-unnecessary-auto-insurance-mortgage-fees/

[3] For example, The Pew Charitable Trusts found that 69% of payday loans are taken out for recurring expenses, with only 16% for unexpected emergencies, 8% for "something special," and 2% for "other." The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, Payday Lending in America: Who Borrows, Where They Borrow, and Why at 8, 13 (2012), available at https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why.

[4] https://www.attorneygeneral.gov/taking-action/ag-shapiro-calls-for-consumer-banks-to-eliminate-overdraft-fees/ https://ag.ny.gov/sites/default/files/2022.04.04_-_overdraft_letters_combined.pdf

Landlord Tenant

We have brought several landlord tenant cases against landlords charging junk fees, particularly in areas where many tenants are first-time renters, such as in State College, where Penn State University is located. For example, last year we settled with a landlord that illegally charged a 15% Administrative Charge on top of damage charges assessed against tenants' security deposits. In addition, the company's leases gave landlords the right to apply $100 of each tenant's share of the security deposit towards repairing damage to shared common areas. The collection of these charges without proof that actual damage was caused by a specific tenant is illegal under the Pennsylvania Landlord and Tenant Act.

Another landlord against whom we are currently litigating has allegedly unlawfully charged his tenants hundreds and sometimes thousands of dollars for normal wear and tear and maintenance.[5] This allows him to unlawfully retain all or significant portions of tenants' security deposits, padding his profits at the expense of his tenants and his competition.

Hotels and Ticket Platforms

We have also worked hard to stop hotel companies and concert promoters from charging junk fees. In 2020, we announced a settlement with Event Ticket Sales LLC and its owner because they had been charging fees that consumers never agreed to pay. They also refused to honor their refund policy. As part of our settlement, the company agreed to provide full refunds for all Pennsylvania consumers who purchased tickets for events that were canceled.

In 2021, we announced a landmark junk fees settlement with Marriott International. For many years, travelers have been misled by the published rates offered by hotels for a night's stay only later to be hit with mandatory "resort fees" when they are checking in. Thanks to our settlement[6], Marriott now has a policy in place to be upfront and transparent in the disclosure of mandatory fees, including resort fees, as part of the total price of a hotel stay– allowing consumers to compare total costs for hotels and find the one that is the best fit for them. Marriott was the first hotel chain to formally commit to the upfront disclosure of resort fees as part of the initial advertised price.

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Of course, our fight against junk fees is one we cannot win on our own. We are working closely with our fellow states, as well as our Federal law enforcement partners. We have a particularly close relationship with the CFPB because we have partnered with them on major cases, including most recently the Trident Mortgage redlining settlement in the Philadelphia region. That case, which also involved the Department of Justice and the attorneys general of New Jersey and Delaware, will provide $18.4 million in loan subsidies that will spur hundreds of millions of dollars in new mortgages to majority-minority neighborhoods.

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[5] https://www.statecollege.com/articles/local-news/pennsylvania-attorney-general-files-lawsuit-against-state-college-landlord/

[6] https://www.attorneygeneral.gov/taking-action/ag-shapiros-action-requires-marriott-to-disclose-resort-fees/

We have also sent comment letters to the CFPB in support of several of its initiatives, including the junk fees request for information. In our April 2022 letter,[7] we said that we share the Bureau's broad concern about the proliferation of junk fees, and we wrote about convenience fees imposed by mortgage servicers. Fees charged to make a mortgage payment (such as by phone or through a third party) are particularly insidious because, unlike in other marketplaces, consumers have no choice of who will be their mortgage servicer, and they cannot switch servicers.

We commend the CFPB for taking supervisory action against mortgage servicers that have charged junk fees,[8] and we encourage it to consider banning or significantly restricting convenience fees in markets where consumers do not have the ability to take their business elsewhere to avoid the fees. And I look forward to continuing to work closely with the CFPB and Director Rohit Chopra on cases and policy initiatives.

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Ultimately, our work battling junk fees protects not only consumers, but also honest businesses. For example, not only does Mariner Finance harm a consumer when it charges her thousands of dollars in hidden junk fees, but it also harms the local community bank or credit union that might have otherwise earned the consumer's business. By ensuring that prices are truly transparent, we protect businesses from being undercut by "cheaper" or "faster" competitors that rip off consumers with hidden fees. This is especially true in an era where more and more consumers are shopping online, and many websites sort their products or services by the upfront price or APR.

Thank you for inviting me to testify today, and I am happy to answer any questions.

[7] https://ag.state.il.us/pressroom/2022_04/State_Attorneys_General_Multistate_Comment_Letter_to_CFPB_conveniencefees_41122.pdf

[8] https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-examinations-find-credit-reporting-failures-surprise-junk-fees/