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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 TERRANCE MOSS,

9 Plaintiff,

10 v.

11 CLEO AI INC.,

12 Defendant.

Case No. C25-879-MLP

ORDER

13
14 **I. INTRODUCTION**

15 Defendant Cleo AI Inc. (“Cleo”) has moved to dismiss class claims and stay individual
16 claims in favor of arbitration, or for alternative relief. (Mot. (dkt. # 26).) Plaintiff Staff Sergeant
17 Terrance Moss (“Sgt. Moss”) opposes the motion (Resp. (dkt. # 30)), and Cleo has replied
18 (Reply (dkt. # 34)). The Court heard oral argument on August 20, 2025. (Dkt. # 45.) Having
19 considered the parties’ briefing, the arguments presented at oral argument, the governing law,
20 and the balance of the record, the Court DENIES Defendant’s Motion to Dismiss. (Dkt. # 26.)
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II. FACTUAL BACKGROUND¹

Cleo, a financial technology company, offers an Earned Wage Access (“EWA”) product marketed as “Cash Advances” through its smartphone application (“Cleo App”). (Compl. (dkt. # 1-2), ¶¶ 33-35, 42, 44.) Cleo presents these Cash Advances as an alternative to traditional loans, designed to address users’ short-term financial needs, such as unexpected expenses or bridging the gap until their next payday. (*Id.*, ¶ 35.) Cleo’s website describes the service as providing “access [to] advances on [users’] anticipated income.” (*Id.*)

Cleo promotes its Cash Advances as having “no interest” and no mandatory fees, positioning them as a cheaper alternative to conventional loans. (Compl., ¶¶ 2, 57.) Cleo targets consumers with limited or poor credit, promising same-day access to funds, often up to \$250. (*Id.*, ¶¶ 42-43.) Its marketing materials emphasize speed and accessibility, featuring phrases like “get up to \$250 instantly,” “quick access to funds,” and “Most [advances] arrive within minutes,” and highlighting a “FOR POOR CREDIT” option. (*Id.*)

To access Cleo’s Cash Advance service through the Cleo App, users must meet several requirements: (1) pay a monthly Subscription Fee ranging from \$5.99 to \$14.99; (2) link their bank accounts to the Cleo App; and (3) satisfy Cleo’s underwriting criteria. (Compl., ¶¶ 44-49, 64-78.) Advance amounts are typically limited for first-time users to between \$20 and \$100, with subsequent advances potentially reaching between \$20 and \$250. (*Id.*, ¶ 53.) Cleo offers two versions of its Cash Advance: a free, non-expedited version that takes “3-4 business days” to receive, and an expedited version that delivers funds in minutes. (*Id.*, ¶ 45.) The expedited version incurs an additional “Express Fee” ranging from \$3.99 to \$9.99. (*Id.*, ¶ 44.) Users are not

¹ In ruling on a Rule 12(b)(6) motion, the Court must accept all material allegations as true and construe the complaint in the light most favorable to the non-movant. *Wyler Summit P’Ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998).

1 presented with prominent disclosures regarding these Express Fees until after they have
2 connected their bank account, subscribed to a monthly service, and initiated the cash advance
3 request process. (*Id.*)

4 When requesting a Cash Advance, the Cleo App requires users to select a repayment
5 date, generally coinciding with their next payday or shortly thereafter. (Compl., ¶¶ 79-80.) Users
6 are prompted to authorize Cleo to automatically debit their linked bank accounts for repayment,
7 with the potential for up to three partial repayment attempts. (*Id.*, ¶¶ 81-82.) Users also agree to
8 allow Cleo to access funds from other linked accounts if the primary account lacks sufficient
9 funds. (*Id.*) Cleo utilizes machine learning to optimize repayment processes, integrating directly
10 with users' card networks. (*Id.*, ¶ 83.) Failure to repay results in the suspension of the user's
11 account. (*Id.*, ¶ 84.) Until late 2023, users with outstanding advances were allegedly unable to
12 cancel their subscriptions through the app, resulting in continued subscription fees even without
13 access to further advances. (*Id.*, ¶ 85.)

14 Sgt. Moss characterizes Cleo's practices as deceptive, likening them to "a wolf in sheep's
15 clothing," offering loans with "triple-digit finance charges" and APRs exceeding those of
16 traditional payday loans. (Compl., ¶¶ 2, 58; *see also id.*, ¶ 95 (*e.g.*, a \$20.00 advance with a \$3.99
17 express fee and a 27-day repayment schedule yielding a 270% APR, and a \$40.00 advance with a
18 \$6.99 express fee and a 14-day repayment schedule resulting in a 456% APR).) Sgt. Moss
19 alleges that Cleo traps consumers in cycles of debt, worsens their financial circumstances, leads
20 to more overdraft fees, and results in an increasing reliance on emergency funds, despite
21 marketing its services as low cost. (*Id.*, ¶¶ 57-60.) Sgt. Moss states he "took out a loan each pay
22 period for much of the relevant period and was forced to take out another loan immediately after
23 repayment of his last loan." (*Id.*, ¶ 96.) He paid monthly Subscription Fees throughout this time.

1 (*Id.*, ¶ 97.) As a result, he alleges unknowingly paying fees corresponding to APRs from 162% to
2 456% (excluding subscription fees) during the relevant period. (*Id.*, ¶ 95.) He notes a recent
3 study of Cleo’s Cash Advances revealed an average APR of 652%. (*Id.*, ¶ 56.)

4 Based on these allegations, Sgt. Moss brings a putative class action, alleging Cleo’s Cash
5 Advances and related fees violate the Military Lending Act, 10 U.S.C. § 987, *et seq.* (“MLA”),
6 and the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (“TILA”).

7 III. LEGAL STANDARD

8 Motions to dismiss under Fed. R. Civ. P. 12(b)(6) may be based on “the lack of a
9 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
10 theory.” *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (citation
11 omitted). A complaint must plead “enough facts to state a claim to relief that is plausible on its
12 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009) (citation omitted). A claim is plausible “when
13 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the
14 defendant is liable for the misconduct alleged.” *Id.* at 678. The Court “must presume all factual
15 allegations of the complaint to be true and draw all reasonable inferences in favor of the
16 nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). “[C]ourts
17 must consider the complaint in its entirety, as well as other sources courts ordinarily examine
18 when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the
19 complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v.*
20 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

21 IV. ANALYSIS

22 Cleo seeks to compel arbitration or dismiss the case, arguing that: (1) its lending
23 agreement delegates arbitrability to an arbitrator; (2) the arbitration agreement is valid; and (3)

1 its Cash Advances are not “credit” nor subject to “finance charges” under the MLA and TILA.
2 (Mot. at 15-31.) The Court will address each argument in turn.

3 **A. The MLA Applies, Barring Arbitration**

4 The central issue is whether the MLA applies, which would preclude arbitration. The
5 MLA explicitly states that “no agreement to arbitrate any dispute involving the extension of
6 consumer credit shall be enforceable against any covered member.” 10 U.S.C. § 987(f)(4). This
7 provision reflects a clear congressional directive that overrides the Federal Arbitration Act
8 (“FAA”) and protects servicemembers’ rights to seek judicial relief. *See Epic Sys. Corp. v.*
9 *Lewis*, 584 U.S. 497, 514 (2018) (“Congress has . . . shown that it knows how to override the
10 Arbitration Act when it wishes—by explaining, for example, that . . . requiring a party to
11 arbitrate is ‘unlawful’ [], 10 U.S.C. § 987(e)(3).”). As the Eleventh Circuit persuasively found,
12 “[i]f the MLA applies to a contract involving the extension of consumer credit, the district court
13 cannot enforce any agreement in that contract to arbitrate any dispute.” *Steines v. Westgate*
14 *Palace, L.L.C.*, 113 F.4th 1335, 1344 (11th Cir. 2024).

15 Cleo contends that the parties delegated the question of the agreement’s validity and
16 enforceability to an arbitrator through an “additional, antecedent” agreement. Cleo argues that
17 because the delegation clause concerns only arbitration involving issues of arbitrability—not the
18 extension of consumer credit—the MLA cannot challenge the delegation clause as a severable
19 contract. (Mot. at 18-19; Reply at 14-15.) “Because the MLA plainly overrides the FAA,
20 [however,] the delegation clause cannot be enforced.” *Steines*, 113 F.4th at 1345.

21 **B. Cash Advances Constitute Credit**

22 The next issue is whether Cleo’s Cash Advances constitute “credit” under the MLA and
23 TILA. The MLA protects servicemembers by capping the annual percentage rate at 36% on

1 “consumer credit.” 10 U.S.C. § 987(b). The MLA incorporates TILA’s definition of “consumer
2 credit,” “except that such term does not include (A) a residential mortgage, or (B) a loan . . .
3 offered for the express purpose of financing the purchase [of a car or other personal property,]
4 and [that] is secured by the car or personal property procured.” 10 U.S.C. § 987(i)(6). The MLA
5 also incorporates TILA’s definition of “annual percentage rate,” encompassing “all fees and
6 charges” associated with a credit transaction. 10 U.S.C. § 987(i)(4). In turn, TILA defines
7 “credit” as the right “to defer payment of debt or to incur debt and defer its payment.” 15 U.S.C.
8 § 1602(f). Regulation Z, which implements TILA, clarifies that “credit” includes cash advances
9 provided in exchange for the consumer’s authorization to debit their deposit account at a later
10 date. 12 C.F.R. pt. 1026, Supp. I, Paragraph 2(a)(14) Credit, ¶ 2 (“Payday loans; deferred
11 presentment”). Cleo’s Cash Advances involve the precise type of deferred presentment scheme
12 that Regulation Z characterizes as credit.

13 Cleo requires users to select a repayment date during the Cash Advance request process,
14 prompts them to authorize access to other linked accounts for repayment if the primary bank
15 account withdrawal fails, and employs machine learning models to optimize and retry declined
16 payments in real-time. (Compl., ¶¶ 79-83.) Despite these measures, Cleo avers that “consumer
17 credit” requires a pre-existing legal obligation to repay and argues that because it “has no
18 contractual or legal claim against [a Cleo customer] based on a failure to repay an advance[,]” its
19 Cash Advance product does not constitute “consumer credit.” (Reply at 7-8.) In support, it cites
20 the dictionary definition of “obligated” as “to bind legally or morally.” (*Id.*) The relevant
21 statutory definitions of “debt,” however, do not mandate such a formalistic requirement. 15
22 U.S.C. § 1692a (defining “debt” broadly as “any obligation or alleged obligation of a consumer
23 to pay money arising out of a transaction in which the money, property, insurance, or services

1 which are the subject of the transaction are primarily for personal, family, or household
2 purposes”). Cleo’s reliance on a dictionary definition of “obligated,” while ignoring the
3 applicable statutory definition of “debt” or “credit,” undermines its argument.

4 Accepting Cleo’s narrow interpretation would improperly introduce a legal requirement
5 where Congress and regulators have not. It would also disregard Regulation Z and undermine
6 TILA’s consumer protection purpose. Courts must liberally construe TILA to protect consumers
7 and “look[] past the form of the transactions to their economic substance.” *Burnett v. Ala Moana*
8 *Pawn Shop*, 3 F.3d 1261, 1262 (9th Cir. 1993); *Clark v. Rent-It Corp.*, 685 F.2d 245, 248 (8th
9 Cir. 1982) (“Congress was aware that some creditors would attempt to characterize their
10 transactions so as to fall one step outside whatever boundary Congress attempted to establish.”).

11 Cleo relies on *Olson v. Unison Agreement Corp.*, 2023 WL 5609251, at *4 (W.D. Wash.
12 Aug. 30, 2023), arguing that the mere advance of funds and expectation of repayment is
13 insufficient to create debt. (Mot. at 23-24.) *Olson* has since been reversed by the Ninth Circuit.
14 The Ninth Circuit explicitly found that a “consumer credit obligation” does not require a legal
15 obligation for repayment, thereby precluding Cleo’s argument. *Olson v. Unison Agreement*
16 *Corp.*, 2025 WL 2254522, at *3 (9th Cir. Aug. 7, 2025).

17 Cleo attempts to analogize its Cash Advance product to a charitable campaign securing
18 authorization to withdraw monthly pledges. (Mot. at 23-24.) This comparison is unpersuasive,
19 for obvious reasons. Unlike a charitable campaign, Cleo provides a service with the clear
20 expectation of repayment, and the mandatory debit authorization is a key component of this
21 expectation. While Cleo disclaims a formal legal right to repayment, its actual practices suggest
22 otherwise. As the court recognized in *Orubo v. Activehours, Inc.*, 780 F. Supp. 3d 927 (N.D. Cal.
23 2025), a materially identical product “squarely falls within the definition of credit under TILA,”

1 despite the lender’s disavowal of a legal obligation. *Id.* at 935. The *Orubo* court emphasized the
2 economic substance of the transaction, finding “borrowers can only obtain advances after
3 [defendant] takes thorough steps to ensure repayment. In fact, the circumstances under which
4 repayment would not occur are extremely narrow[.]” *Id.* at 933. This Court reaches the same
5 conclusion.

6 In sum, Sgt. Moss plausibly alleges that Cleo’s Cash Advances constitute “consumer
7 credit” as defined by TILA and, as alleged, are offered with a clear expectation of repayment.
8 Cleo fails to present any persuasive or controlling authority to the contrary. At this stage, Sgt.
9 Moss sufficiently pleads that Cleo provides funds to users with a clear expectation—and near
10 certain reality—of recouping them from their linked bank accounts upon receipt of their
11 paychecks. *See Orubo*, 780 F. Supp. 3d at 935; *Johnson v. Activehours, Inc.*, 2025 WL 2299425,
12 at *4 (D. Md. Aug. 8, 2025) (citing *Orubo* with approval and reaching the same conclusion in a
13 case involving a similar EWA product).

14 **C. Express Fees are Finance Charges**

15 The Court now addresses whether Cleo’s Express Fees constitute “finance charges.” Cleo
16 argues they do not, because they are not imposed “incident to” or as a “condition of” the
17 extension of credit. (Mot. at 26-28; Reply at 10-13.) This argument is unpersuasive.

18 The MLA defines “finance charge” by reference to TILA, which provides that the finance
19 charge in “any consumer credit transaction shall be determined as the sum of all charges, payable
20 directly or indirectly by the person to whom the credit is extended, and imposed directly or
21 indirectly by the creditor as an incident to the extension of credit.” 15 U.S.C. § 1605(a). A charge
22 need not be mandatory to be “incident to the extension of credit” and qualify as a “finance
23 charge” under TILA. *See Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 240-41 (2004)

1 (explaining that TILA requires “some necessary connection” between a fee and the extension of
2 credit). A connection between the charge and the extension of credit is therefore sufficient.

3 Even if “incident to” meant mandatory, Sgt. Moss pleads facts showing that Cleo’s
4 Express Fees are effectively mandatory. While nominally optional, they are intertwined with the
5 Cash Advance product. Cleo advertises instant access to cash, and the app design makes
6 avoiding the Express Fee difficult. (Compl., ¶¶ 39-45.) Moreover, as the *Orubo* court recognized,
7 “the time at which funds are received is a material term of credit.” 780 F. Supp. 3d at 938. By
8 charging a fee for immediate access, Cleo imposes a finance charge “incident to” the extension
9 of credit.

10 Cleo directs the Court to *Golubiewski v. Activehours, Inc.*, 2024 WL 4204272 (M.D. Pa.
11 Sept. 16, 2024). (Reply at 8, 11-12.) After plaintiffs in that case drew the court’s attention to
12 *Orubo*, however, the court acknowledged that “a charge need not be mandatory to be ‘incident to
13 the extension of credit’ and thus constitute a ‘finance charge’ under TILA.” *Golubiewski v.*
14 *Activehours, Inc.*, 2025 WL 2484192, at *6 (M.D. Pa. Aug. 28, 2025) (citing *Pfennig*, 541 U.S.
15 at 240-41 and *Orubo*, 780 F. Supp. 3d at 937). Following a “deeper review of the law,” the court
16 agreed with *Orubo* that the key requirement is “a connection between the imposition of the
17 charge and the extension of credit.” *Id.* Since plaintiffs alleged that defendants made obtaining
18 credit without paying optional fees difficult, the court vacated its original decision and found
19 these charges were “incident to the extension of credit.” *Id.*

20 **D. Subscription Fees are Finance Charges**

21 The Court now turns to the issue of subscription fees. Cleo argues that these fees are
22 participation fees, not finance charges, because it “charges a Subscription Fee regardless of
23 whether users take Cash Advances.” (Mot. at 28-30.) Cleo also contends that Sgt. Moss waived

1 opposition to this argument. (Reply at 13.) The Court, however, finds that Sgt. Moss sufficiently
2 addressed this issue by asserting the subscription fees are a condition of obtaining cash advances.
3 (Resp. at 23 n. 16; *see also* Compl., ¶¶ 48-49.) The Court concludes that Sgt. Moss adequately
4 pleads facts establishing that Cleo’s Subscription Fees are finance charges, rather than
5 participation fees, because without the subscription Sgt. Moss could not obtain a Cash Advance.

6 **E. Severability of TILA Claim**

7 Finally, the Court addresses the severability of the TILA claim. Cleo relies on *Espin v.*
8 *Citibank, N.A.*, 126 F.4th 1010, 1016-19 (4th Cir. 2025), arguing that even if Sgt. Moss’s MLA
9 claim is insulated from arbitration, his TILA claim remains subject to it. (Mot. at 30-31; Reply at
10 16-17.) In *Espin*, the Fourth Circuit addressed claims under the Servicemember Civil Relief Act
11 (“SCRA”), the MLA, the TILA, and the Credit CARD Act. 126 F.4th at 1013-14. The court
12 reversed the denial of a motion to compel arbitration, instructing the lower court to compel
13 arbitration for the SCRA claims and all claims except those under the MLA, as plaintiffs’ only
14 basis for avoiding arbitration of the non-MLA claims was tied to the SCRA. *Id.* at 1019.

15 *Espin* is readily distinguishable from the present case. Here, Sgt. Moss’s TILA claim
16 arises from the same factual nucleus as his MLA claim. “If the MLA applies to a contract
17 involving the extension of consumer credit, the district court cannot enforce any agreement in
18 that contract to arbitrate any dispute.” *Steines*, 113 F.4th at 1344. Because Sgt. Moss’s TILA
19 claim is inextricably linked to the same set of facts as his MLA claim, it is also subject to this
20 MLA-created exception to the FAA’s mandate favoring arbitration.

21 **V. CONCLUSION**

22 For the foregoing reasons, Cleo’s Motion to Dismiss (dkt. # 26) is DENIED.
23

1 With respect to the Court's stay of discovery (dkt. # 44), the parties are directed to meet
2 and confer regarding a trial date and other pre-trial deadlines and shall submit a joint status
3 report with proposed new deadlines to the Court for its consideration by **September 29, 2025**.

4 Dated this 8th day of September, 2025.

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7 MICHELLE L. PETERSON
8 United States Magistrate Judge
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