

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

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**DISTRICT OF COLUMBIA**  
a municipal corporation  
441 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001,

**PLAINTIFF,**

v.

**ELEVATE CREDIT, INC.**  
1209 Orange Street  
Wilmington, Delaware 19801

**DEFENDANT.**

Case No.:  
Judge:

**JURY TRIAL DEMANDED**

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**COMPLAINT FOR VIOLATIONS OF THE  
CONSUMER PROTECTION PROCEDURES ACT**

The District of Columbia, by the Office of the Attorney General (“the District”), brings this action against Elevate Credit, Inc. (“Elevate”) to address violations of the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.* In support of its claims, the District states as follows:

**INTRODUCTION**

1. Elevate is an online lender that operates through several websites, including www.risecredit.com, www.elastic.com, and www.elevate.com, to provide predatory, high-interest, short-term loans to consumers that it describes as individuals “with little to no savings, urgent credit needs and limited options.”

2. Its loans contain interest rates of up to 149% for its Rise loans and 251% for its Elastic loans, both well in excess of the 24% and 6% caps in the District’s usury statutes.

3. On its website, Elevate stresses that it is “focused on developing solutions that can help customers end the cycle of debt and build a brighter tomorrow.”

4. In Elevate’s 2019 10-K filing with the Securities and Exchange Commission (“10-K”), it describes its business model as “provid[ing] convenient, competitively priced financial solutions to our customers, who are not well-served by either banks or legacy non-prime lenders, by using our advanced technology platform and proprietary risk analytics.”

5. Yet rather than lifting struggling consumers out of the cycle of debt, Elevate further entrenches them by deceptively offering predatory, high-cost loans. Elevate entices vulnerable consumers with the prospect of fast cash only to saddle them with loans with usurious interest rates.

6. As the District and the Nation enter a period of economic uncertainty borne by the unprecedented health crisis of Covid-19, it is more important than ever to safeguard District consumers from illegal, predatory online loans such as Elevate’s. The District institutes this proceeding to permanently enjoin Elevate from engaging in activities that violate the CPPA; to obtain restitution for District consumers and civil penalties as permitted by statute; and to recover the District’s fees and costs.

### **JURISDICTION AND PARTIES**

7. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.

8. This Court has personal jurisdiction over Defendant Elevate pursuant to D.C. Code § 13-423(a). Elevate has offered, provided, serviced, and advertised loans to District residents.

9. Plaintiff District of Columbia (“District”), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District’s consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

10. Defendant Elevate is a Delaware corporation that has offered, provided, serviced, and advertised loans to District residents in conjunction with FinWise Bank (“FinWise”), a Utah-chartered bank, for its Rise brand, and Republic Bank & Trust Company (“Republic”), a Kentucky-chartered bank, for its Elastic brand.

## FACTUAL ALLEGATIONS

### I. **Elevate Provided Illegal Loans to District Consumers.**

11. Usury is as old as biblical times. To prevent preying upon society’s most vulnerable, most states have enacted limits on the legal interest rates for lending. The District’s usury cap for most loans in which the interest rate is expressed in the contract, is 24%. D.C. Code § 28–3301(a). The District’s usury cap for loans without an express interest rate is 6%. D.C. Code § 28–3302(a).

12. Additionally, entities that offer loans in the District at any interest rate are required to obtain a money lending license. 16 DCMR § 201.1. Elevate has never possessed a money lending license in the District of Columbia.

13. Elevate offered and advertised loans through two different brands to District residents that far exceeded both the 6% and 24% District usury caps: Rise and Elastic.

14. Until April 2020, Elevate marketed Rise and Elastic loans to District consumers at interest rates up to 251%.

15. Elevate has provided at least 871 Rise loans and at least 1680 Elastic loans to District consumers.

16. District consumers have paid or been charged millions of dollars in unlawful interest on the loans provided by Elevate.

## **II. Elevate Markets and Owns the Rise and Elastic Products.**

17. Elevate provides the marketing for its Rise and Elastic products.

18. Elevate has advertised these online products through direct mail, E-mails, and via banner ads on the Internet that were either accessible to or directed at District residents.

19. In 2019, it sent more than 62 million pre-selected credit offers to consumers nationwide. That year, Elevate incurred \$51,283,000 in direct marketing costs, and \$7,381,000 in operating expenses for selling and marketing its products, which include the Rise and Elastic loans.

20. Elevate also provides the analytics, software, and underwriting models to FinWise and Republic for the provision of the Rise and Elastic loans. It holds the intellectual property rights to its proprietary analytics, predictive underwriting models, and software systems.

21. Elevate has either registered trademarks or has pending applications in the United States for the marks Rise and Elastic.

22. Elevate has the predominant economic interest in the loans it provides to District consumers via FinWise and Republic.

**III. Elevate Deceptively Marketed and Provided Its Rise Loans to District Consumers with Illegal Interest Rates between 99-149%.**

23. Starting no later than the second half of 2018 until at least April 2020, Elevate has deceptively marketed and offered its Rise brand loans to District consumers at interest rates between 99% and 149%, well in excess of the District’s usury cap.

**A. Elevate Deceptively Marketed Rise Loans in the District.**

24. Elevate’s Rise brand is an installment loan that offers “fast approval for loans between \$500 and \$5,000.” Elevate generates all of the marketing materials for Rise loans.

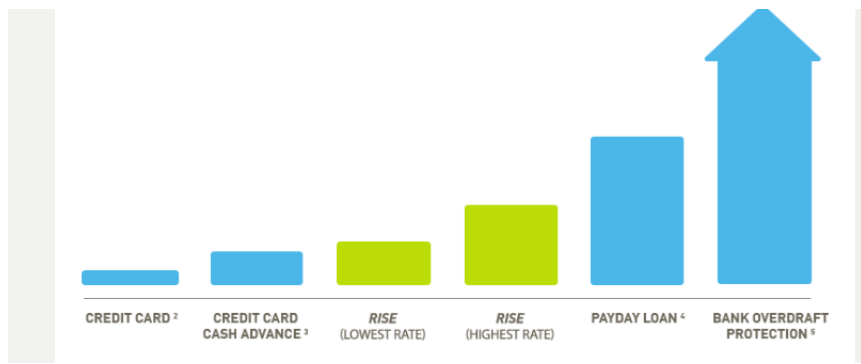
25. Elevate prepares product offerings and associated marketing materials; develops and places internet, print media, radio and television advertising; designs and develops websites; and delivers all notices and disclosures to consumers.

26. Elevate alone is responsible for all costs and expenses associated with advertising and developing promotional materials for Rise loans.

27. In a segment of its website labeled “The truth about Rise,”<sup>1</sup> Elevate advertises Rise as superior to payday loans or overdraft fees, stating “. . . RISE is often a better, more responsible alternative to more expensive options like overdraft fees, payday loans, late fees and utility reconnection fees.” Elevate’s “The truth about Rise” website also includes the below chart that purportedly shows Rise as far less expensive than other credit options.

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<sup>1</sup> <https://www.risecredit.com/why-rise/> (screenshot on 5/21/20).



“The truth about Rise”

28. In small-print footnotes, Elevate explains that it calculates the overdraft protection costs based upon a consumer borrowing \$24 for three days and paying an overdraft fee of \$34, which they calculate as a “loan” at 17,000% Annual Percentage Rate (“APR”).

29. However, in terms of actual cost to the consumer, overdraft fees pale next to the finance charges on a Rise loan. For example, Elevate states in its 10-K that the average loan balance for its products was \$1711 in 2019. An average consumer, therefore, would need to incur more than 51 overdraft fees to exceed the finance charges for an average Rise loan.

30. Similarly, Elevate’s comparison to utility reconnection fees does not withstand scrutiny. For instance, Pepco reconnection fees in the District are \$35. A consumer would have to pay more than 50 reconnection fees in 17 months to exceed the average finance charges on a Rise loan.

31. Payday loans are illegal in the District, and thus Elevate’s comparison of its products to such illegal loans is deceptive and misleading.

32. Furthermore, Elevate does not advertise the APR for its Rise brand to consumers in its direct mail offers. Instead, the direct mail offers simply promise fast access to a pre-approved amount. The mailings indicate that the APR varies depending on a borrower’s credit report, but Elevate does not provide any range for the potential APR.

33. A consumer must complete an application for a Rise loan in order to obtain this critical information.

34. Elevate's 10-K reflects that the APR for Rise loans is between 99% and 149% depending upon the borrower's "credit, employment and loan repayment history as well as a number of other factors."

35. In its advertisements to potential Rise customers in the District, Elevate does not disclose that its product's interest rate far exceeds the legal usury caps in the District.

**B. Elevate is the True Lender of its Rise Loans.**

36. Lenders typically fund a loan, reap the profits of good loans, and take the risk of bad loans. Elevate does all three for the Rise loan.

37. First, although Elevate, in essence rents FinWise to provide the loan, it is Elevate that directs and controls the funding of the loan.

38. For example, Elevate funds Rise loans through its captive credit financing relationship with Victory Park Management, LLC ("VPC"). Per Elevate's 10-K, if VPC could no longer provide debt financing for Elevate, Elevate would have to secure other sources of debt financing or potentially reduce loan originations.

39. Second, Elevate reaps most of the profits from the loan.

40. In 2019, Elevate's revenue from the Rise brand totaled approximately \$390,354,000.

41. At all relevant times to this Complaint, Elevate EF SPV ("EF SPV") a Cayman Islands special purpose vehicle that operates for the financial benefit of Elevate, has purchased a 96% interest in the receivables for the loans, including the principal and interest due on the loans.

The 96% interest makes EF SPV the legal and equitable owner of the receivables for the loans. These receivables generate income for Elevate, which is the primary beneficiary of EF SPV.

42. Indeed, Elevate’s financial statements specifically include “revenue, losses and loans receivable related to the 96% of Rise installment loans originated by FinWise Bank and sold to EF SPV.”

43. Elevate controls the core economic performance of EF SPV and must absorb its losses.

44. Third, Elevate takes the risk of bad loans.

45. For example, Elevate provides credit protection to EF SPV against Rise loan losses. This credit protection places the risk of losses on Elevate.

46. Additionally, FinWise’s interests are protected in its agreement with EF SPV by a requirement that EF SPV maintain cash collateral in a FinWise account in specified amounts to secure its obligations to purchase the loans.

47. Elevate, through ones of its subsidiaries, also acts as the servicer for the Rise loans. Its duties as a servicer include reconciling the accounts, posting payments and other credits to the accounts, and providing periodic billing statements.

**IV. Elevate Deceptively Marketed and Offered Its Elastic Brand Loans to District Consumers with Illegal Interest Rates of 129% to 251%.**

48. Beginning in January 2014 and continuing until at least April 2020, Elevate deceptively marketed and offered its Elastic brand loan to District consumers at interest rates between 129% and 251%, well in excess of the District’s usury caps.



**A. Elevate Deceptively Marketed Elastic Loans in the District.**

49. Elastic is a line of credit in amounts between \$500 and \$4,500. As with Rise, Elevate has engaged in a rigorous advertising campaign to attract District residents to obtain an Elastic loan.

50. Elevate identifies potential customers via its “websites, call centers, direct mail or other marketing channels” that it alone operates.

51. Elevate generates the marketing materials for the Elastic loans.

52. It prepares product offerings and associated marketing materials; develops and places internet, print media, radio and television advertising; designs and develops websites; and delivers all notices and disclosures to consumers.

53. Elevate alone is responsible for all costs and expenses associated with advertising and developing promotional materials.

54. Its advertisements disclose that it charges Elastic borrowers an initial advance fee of \$5 or \$10 for each \$100 advanced, as well as a fixed charge of 5% or 10% of the open balance in each payment period. Elevate charges the higher rates to consumers who repay monthly instead of bi-weekly or semi-monthly. Like a payday loan, Elevate schedules repayments to coincide with the borrower’s payday. Consumers have up to twenty payments to repay their loans.

55. In its direct mail solicitations Elevate pushes Elastic as a way to “avoid expensive overdraft fees or bounced checks.”

56. Yet, in its 10-K, it explains that “if an Elastic customer makes a \$2,500 draw on the customer’s line of credit and this draw required bi-weekly minimum payments of 5%

(equivalent to 20 bi-weekly payments), and if all minimum payments are made, the draw would earn finance charges of \$1,148.”

57. Most banks charge overdraft fees of approximately \$35. For Elevate’s 10-K example of a \$2,500 loan, that consumer would need to incur more than 32 overdraft fees to exceed the finance charges of \$1,148 for such a loan.

58. Elevate does not advertise or disclose the effective APR of its Elastic brand loans to consumers.

59. On its website and in similar language in its agreement with consumers, Elevate claims that Elastic “does not have an interest rate like other traditional credit products. Rather, you pay a cash advance fee plus 5 or 10% for every cash advance you request depending on your billing cycle.”

60. Elevate deducts the cash advance fee from the amount that it lends so that a consumer borrowing \$500 with a 5% cash advance fee, would actually receive \$475.

61. Elevate also charges a 5% or 10% fee for each billing cycle in which the consumer has a balance. Elevate describes the recurring fee as a “Carried Balance Fee.”

62. Elevate sets the cash advance fees and Carried Balance Fees at 5% or 10%, based upon whether the consumer repays every two weeks, or monthly.

63. Its direct mail offers describe this as “easy-to-understand pricing.”

64. Although Elevate does not disclose the effective APR for Elastic to consumers, it does calculate it for itself and its investors.

65. Elevate’s 10-K states that “[f]or the year ended December 31, 2018, [Elastic’s] effective APR was 129%” . . . . and that for the year ended December 31, 2013, the effective APR for Elastic was 251%.

66. A reasonable consumer would not understand that a loan with a disclosed 5-10% fee for each cash advance and repayment, has an effective APR of 129%.

67. In its advertisement to potential Elastic customers in the District, Elevate does not disclose that the interest rate on its product far exceeds the usury cap in the District.

**B. Elevate is the True Lender of its Elastic Loans.**

68. As with the Rise loans, Elevate reaps the profits and takes the risk of Elastic loans.

69. Elevate partners with Republic to provide Elastic loans. Elevate, in essence rents Republic to originate the loans that it ultimately controls and profits from through Elevate SPV (“ESPV”).

70. For example, in its 10-K, Elevate explains that it needs a bank in order to provide access to the Automated Clearing House (“ACH”) system to deposit the loans into consumers’ accounts and to withdraw the repayments.

71. Emphasizing that this is Elevate’s product, Elevate explains when discussing regulatory concerns that “. . . if these banks cease to provide ACH processing services or are not allowed to do so, we would have to materially alter, or possibly discontinue, some or all of our business if alternative ACH processors or other payment mechanisms are not available.”

72. In 2019, Elevate’s revenue from the Elastic brand totaled approximately \$248,518,000.

73. Since 2015, ESPV, a Cayman Islands special purpose vehicle that operates for the financial benefit of Elevate, has purchased a 90% interest in the receivables for the loans, including the principal and interest due on the loans. The 90% interests that ESPV purchases

make it the legal and equitable owner of the receivables for the loans. These receivables generate income for Elevate.

74. Elevate controls the core economic performance of ESPV and must absorb its losses.

75. Indeed, Elevate's financial statements include "revenue, losses and loans receivable related to the 90% of Elastic loans originated by Republic and sold to ESPV."

76. Elevate also takes the risk of bad Elastic loans.

77. For example, Elevate provides credit protection to ESPV against Elastic loan losses. In other words, Elevate holds the risk for loan losses.

78. Additionally, Republic's interests are protected in its agreement with ESPV by a requirement that ESPV maintain cash collateral in a Republic account in specified amounts to secure its obligations to purchase the loans.

79. Elevate, through ones of its subsidiaries, acts as the servicer for the Elastic loans. Its duties as a servicer include reconciling the accounts, posting payments and other credits to the accounts, and providing periodic billing statements.

## **COUNT ONE**

### **Misrepresentations and Omissions in Violation of the Consumer Protection Procedures Act**

80. The District re-alleges and incorporates by reference paragraphs 1 through 79, as if fully set forth herein. The CPPA is a remedial statute that should be broadly construed. It establishes a right to truthful information from merchants about consumer goods and services that are or would be purchased, leased or received in the District of Columbia.

81. Consumers obtain loans from Defendant for personal, household or family purposes and, therefore, these loans are consumer goods and services.

82. Defendant, in the ordinary course of business, offers to sell or supply consumer goods and services and is therefore a merchant.

83. In addition, Defendant is a merchant because it is connected with the supply-side of a consumer transaction.

84. Merchants who violate the CPPA may be subject to restitution, damages, civil penalties, temporary or permanent injunctions, the costs of the action, and reasonable attorneys' fees. D.C. Code § 28-3909.

85. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by:

- a. "represent[ing] that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have," D.C. Code §28-3904(b);
- b. "misrepresent[ing] as to a material fact which has a tendency to mislead," D.C. Code §28-3904(e); and
- c. "fail[ing] to state a material fact if such failure tends to mislead," D.C. Code §28-3904(f); and
- d. "us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead," D.C. Code §28-3904(f-1).

86. Defendant's representations, express or implied, that it is permitted to offer loans in the District of Columbia, when, in fact, Defendant does not possess the required money lender license allowing it to lawfully make loans to District residents, are representations that Defendant

has an approval, certification or status that it does not have and are unlawful trade practices in violation of the CPPA, D.C. Code § 28-3904(b).

87. Defendant's representations, express or implied, including its representations that:
- a. its offer of loans is legal in the District of Columbia, and
  - b. its loans are less expensive than incurring overdraft fees, utility reconnection fees, or taking out a payday loan,

are misrepresentations of material facts that have the tendency to mislead consumers and are unlawful trade practices in violation of the CPPA, D.C. Code § 28-3904(e).

88. Defendant's omissions, including its failure to disclose or to adequately disclose:
- a. that its Rise and Elastic loans contain an APR in excess of the District's usury limits,
  - a. the expected APRs or ranges of APRs for its Elastic brand, and
  - b. the APRs or range of APRs for its Rise brand,

are omissions of material facts that mislead consumers and are unlawful trade practices in violation of the CPPA, D.C. Code § 28-3904(f), or, alternatively, constitute ambiguities as to material facts that have the tendency to mislead consumers and are unlawful trade practices in violation of the CPPA, D.C. Code § 28-3904(f-1).

## **COUNT TWO**

### **Unfair and Unconscionable Practices in Violation of the Consumer Protection Procedures Act**

89. The District re-alleges and incorporates by reference paragraphs 1 through 88, as if fully set forth herein.

90. The CPPA prohibits any person from engaging in unfair trade practices. The CPPA also prohibits any person from engaging in "unconscionable" practices where the seller

takes advantage of the “inability of the consumer reasonably to protect his interests.” D.C. Code § 28-3904(r)(5).

91. Defendant has engaged in unfair and unconscionable practices affecting District consumers, in violation of D.C. Code § 28-3904 and § 28-3904(r), by knowingly offering, providing, servicing, and marketing predatory, high-cost loans to consumers in the District of Columbia, causing substantial harm to such consumers.

92. Defendant’s conduct, including inducing consumers with false and deceptive statements to enter into predatory, high-cost loans and failing to disclose (or adequately disclose) to consumers the true costs and interest rates associated with its loans, constitute unfair trade practices that violate D.C. Code § 28-3904, and unlawful trade practices that violate D.C. Code § 28-3904(r).

### **COUNT THREE**

#### **Violations of District Usury Laws in Violation of the Consumer Protection Procedures Act**

93. The District re-alleges and incorporates by reference paragraphs 1 through 92, as if fully set forth herein.

94. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating the District’s usury laws. D.C. Code § 28-3904(ff).

95. The District’s usury limit is 24% if the loan is provided by a licensed money lender and the interest rate is expressed in the contract, and 6% if the loan is provided by a licensed money lender and the interest rate is not expressed in the contract. D.C. Code § 28–3301(a), D.C. Code § 28-3308(a), D.C. Code § 28–3302(a).

96. Elevate has offered Rise loans in the District at APRs between 99% and 149%.

97. Elevate has offered Elastic loans in the District at APRs that have varied between 129% and 251%.

98. Elevate is subject to the District's usury laws and it has offered Rise and Elastic loans that violate the District's usury law.

99. Elevate's offer of Rise and Elastic loans in violation of the District's usury laws are unlawful trade practices that violate D.C. Code § 28-3904(ff).

#### **COUNT FOUR**

##### **Violations of the DCMR as Violations of the Consumer Protection Procedures Act**

100. The District re-alleges and incorporates by reference paragraphs 1 through 99, as if fully set forth herein.

101. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating "any provision of title 16 of the District of Columbia Municipal Regulations." D.C. Code § 28-3904(dd).

102. Elevate has engaged in the business of loaning money in the District without obtaining a license as a money lender as required under 16 DCMR § 201.1 and 16 DCMR § 200.4.

103. Elevate's violations of Title 16 of the District of Columbia Municipals Regulations are unlawful trade practices that violate D.C. Code § 28-3904(dd).

#### **PRAYER FOR RELIEF**

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendants as follows:

a) Permanently enjoin Defendant's violations of the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.*;



- b) Order Defendant to pay restitution and damages pursuant to D.C. Code §§ 28–3909(a) and (b); and § 26-905;
- c) Order that the loans marketed, offered, and sold by Defendants were unconscionable at the time they were made, or to have been induced by unconscionable conduct, and are therefore unenforceable and void, pursuant to D.C. Code §§ 28-3909 and 28-3812(g)(1).
- d) Order that the loans marketed, offered, and sold by Defendants in violation of 16 DCMR § 201.1 are unenforceable and void.
- e) Order the payment of civil penalties as permitted by statute pursuant to D.C. Code § 28–3909(b);
- f) Award the District the costs of this action and reasonable attorney’s fees pursuant to § 28–3909(b); and
- g) Grant such further relief as the Court deems just and proper.

**Jury Demand**

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: June 5, 2020

Respectfully submitted,

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Attorney General for the District of Columbia

KATHLEEN KONOPKA  
Deputy Attorney General  
Public Advocacy Division

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s/  
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Dated: June 5, 2020