

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	NO.: 2:22-cv-00112
v.	)	
	)	
BAYPORT CREDIT UNION,	)	
	)	
Defendant.	)	
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**CONSENT ORDER**

**I. INTRODUCTION**

1. This Consent Order is entered into by the United States of America (the "United States"), through the Department of Justice's Civil Rights Division and U.S. Attorney's Office for the Eastern District of Virginia ("USAO"), and Defendant BayPort Credit Union ("BayPort"), through its authorized representatives.
2. The United States and BayPort are referred to herein as the "Parties" and, where context requires, each, a "Party."

**II. RECITALS**

3. This Consent Order resolves the allegations, claims, and causes of action asserted in the United States' Complaint, *United States v. BayPort Credit Union*, Civil No. 2:22-cv-00112, against BayPort alleging that BayPort violated the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043.
4. In the Complaint, the United States alleges that BayPort engaged in a pattern or practice of violating Section 3937 of the SCRA by improperly refusing or failing to lower the interest rate

on retail installment contract loans entered into by SCRA-protected servicemembers<sup>1</sup> prior to entering military service to six percent (6%) per year, despite being provided with written notice and military orders or other appropriate indicia of military service.

5. In the Complaint, the United States also alleges that BayPort engaged in violations of Section 3952 of the SCRA that raise issues of public importance by failing to obtain court orders prior to repossessing SCRA-protected servicemembers' vehicles.

6. BayPort has cooperated with the United States' investigation of this matter, producing records related to requests for SCRA interest rate benefits and vehicle repossessions.

7. Based on its review of the documents, the United States has identified twenty-one (21) alleged violations of Section 3937 since October 28, 2013, and three (3) alleged violations of Section 3952 since February 11, 2016.

8. This Consent Order covers all retail installment contract loans serviced or owned by BayPort from October 28, 2013, to the date of the Complaint.

9. This Consent Order also covers all repossessions occurring from February 11, 2016, through the date of the Complaint in connection with loans or deficiency balances originated, acquired, and/or serviced by BayPort, or any subsidiaries, predecessors, acquired companies or successor entities.

10. The Parties agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345 and 50 U.S.C. § 4041, and that venue is proper in this district.

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<sup>1</sup> For purposes of this Consent Order, the term "SCRA-protected servicemembers" includes "servicemembers" in "military service" as those terms are defined in 50 U.S.C § 3911(1) and (2).

11. The Parties agree that, to avoid costly and protracted litigation, the claims against BayPort should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and BayPort agree to the entry of this Consent Order.

12. The effective date of this Consent Order shall be the date on which it is approved and entered by the Court.

It is hereby ORDERED, ADJUDGED, and DECREED:

### **III. INJUNCTIVE RELIEF<sup>2</sup>**

13. BayPort, its subsidiaries, officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with BayPort, including attorneys, contractors, and vendors, are hereby enjoined from:

- a. Charging interest<sup>3</sup> in excess of six percent (6%) per year during a period of military service on any obligation or liability incurred prior to a borrower's period of military service<sup>4</sup> for which a servicemember borrower is still obligated and has met the requirements for interest rate benefits as set forth in Section 3937 of the SCRA, 50 U.S.C. § 3937;

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<sup>2</sup> Nothing in this Consent Order shall preclude BayPort from offering greater protections to servicemembers than those afforded by this Consent Order or the SCRA.

<sup>3</sup> For purposes of this Consent Order, "[t]he term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability." 50 U.S.C. § 3937(d)(1).

<sup>4</sup> For purposes of this Consent Order, the terms "military service" and "period of military service" shall have the definitions set forth in Section 3911 of the SCRA, 50 U.S.C. § 3911(2) and (3).

- b. Improperly reamortizing any retail installment contract loan in connection with a request for SCRA interest rate benefits, failing or refusing to credit early alert periods of military service when applying such benefits, and charging fees in violation of 50 U.S.C. § 3937; and
- c. Except under the circumstances described below, repossessing an SCRA-protected servicemember's motor vehicle without first obtaining a court order or valid SCRA waiver that complies with Paragraph 38 below.

#### **IV. COMPENSATION**

##### **A. Interest Rate Benefits (50 U.S.C. § 3937)**

14. The United States has reviewed accounts for which borrowers sought interest rate benefits pursuant to the SCRA from BayPort between June 1, 2013, and February 24, 2021. The United States has identified twenty-one (21) servicemembers whose interest rate benefits were either unlawfully rejected or incorrectly implemented by BayPort since October 28, 2013, resulting in those servicemembers paying interest in excess of 6% during protected periods. The United States has provided to BayPort a list of those servicemembers, and the amounts overpaid by those servicemembers.

15. For each account identified pursuant to Paragraph 14, BayPort shall provide the following compensation:

- a. a refund of all interest and fees charged above six percent (6%) that were paid by the servicemember; and
- b. an additional payment of \$500 or three times the amount set forth in Paragraph 15(a), whichever amount is larger.

In cases where BayPort has already taken remedial actions with respect to an alleged violation of Section 3937 of the SCRA, DOJ shall consider such remedial actions and adjust the compensation to be awarded.

16. The amount calculated pursuant to Paragraph 15(a) shall be distributed equally among all co-borrowers (including non-servicemember borrowers). The amount calculated pursuant to Paragraph 15(b) shall be paid only to the servicemember.

17. For interest rate violations identified pursuant to Paragraph 14, BayPort must deliver payment to each servicemember and co-lessee, in the amount determined by the United States pursuant to Paragraph 15, within thirty (30) days of the entry of this Consent Order. All compensation checks may include the phrase "Settlement in Full" in the memorandum section. All compensation checks shall be accompanied by a letter (the form of which is to be approved in advance by the United States) explaining that cashing or endorsing the check releases all claims related to the SCRA Section 3937 violations alleged in the complaint.

**B. Motor Vehicle Repossessions (50 U.S.C. § 3952)**

18. The United States has reviewed accounts for which BayPort conducted motor vehicle repossessions without a court order between June 1, 2013, and February 24, 2021. The United States has determined that BayPort conducted three (3) motor vehicle repossessions since February 11, 2016, that violated the SCRA. The United States has provided to BayPort a list of those repossessions.

19. For each account identified pursuant to Paragraph 18, BayPort shall provide the following compensation:

- a. An amount of \$10,000;

- b. Any lost equity in the repossessed motor vehicle, as calculated by: subtracting any outstanding principal, interest, and other amounts owing by the borrowers (excluding any fees associated with the repossession), plus any liens at the time of repossession and any disbursements made to the servicemember or a third-party other than a lien holder from the proceeds of the repossession sale (exclusive of any fees associated with the repossession) from the retail value of the motor vehicle at the time of repossession as identified in the National Automobile Dealers Association ("NADA") Guide; and
- c. Interest accrued on this lost equity, calculated from the date of the repossession sale until the date payment is issued, at the rate set forth in 28 U.S.C. § 1961.

BayPort shall provide the United States with all records used to make the payment calculations described in this Paragraph for the United States' review and approval. In cases where BayPort has already taken remedial actions with respect to a repossession that violated the SCRA, the United States shall consider such remedial actions and adjust the compensation to be awarded. In the event of a dispute regarding the compensation to be awarded, the Parties will meet and confer prior to bringing the matter to the Court.<sup>5</sup>

20. The amount described in Paragraph 19(a) shall be paid entirely to the SCRA-protected servicemember who is identified on the note securing the motor vehicle. The amounts described

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<sup>5</sup> All materials required by this Consent Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows (or as otherwise directed by the United States): United States Attorney's Office – Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314, attn.: Deirdre G. Brou. Correspondence may also be sent via electronic mail to the U.S. Department of Justice, care of the undersigned counsel for the United States.

in Paragraph 19(b) and (c) shall be distributed equally among all owners (including any non-SCRA-protected owners) on the title to the motor vehicle.

21. For non-SCRA compliant repossessions identified pursuant to Paragraph 18, BayPort shall notify each identified servicemember by letter (the form of which is to be approved in advance by the United States) within thirty (30) calendar days of the entry of this Consent Order. For repossessions where money is due to a non-servicemember co-owner pursuant to Paragraph 20, BayPort shall notify each identified non-servicemember co-owner by letter (the form of which is to be approved in advance by the United States) within fifteen (15) calendar days of receiving the Declaration and Release from the servicemember-borrower. BayPort shall provide the United States with samples of all letters, and receive the United States' approval of those letters, before mailing any letter required by this Paragraph, and all letters mailed pursuant to this Paragraph shall enclose the Declaration at Exhibit A, if required, and the Release at Exhibit B.

22. In order to receive any compensation under Paragraph 19, SCRA-protected servicemembers must complete the Declaration at Exhibit A and the Release at Exhibit B. Any other owners must sign the Release at Exhibit B.

23. BayPort must deliver payment to each servicemember and co-owner, in the amount calculated pursuant to Paragraph 19, within fifteen (15) days of receiving a signed Release and (if applicable) Declaration from that servicemember or co-owner.

24. The individuals identified pursuant to Paragraph 18 shall have three and a half (3.5) years from the date of notification to provide the Release and/or Declaration.

#### **C. General Provisions**

25. BayPort shall deposit in an interest-bearing escrow account at BayPort the sum of \$69,443.10 to fund the compensation payments required by Paragraphs 15 and 19. Title to this

account will be in the name of "BayPort FBO Civil Action 2:22-cv-00112" or a similar title. If the payments required by Paragraphs 15 and 19 total more than \$69,443.10, BayPort will deposit into the escrow account any additional funds to the extent necessary to ensure that it has sufficient funds to cover all outstanding checks. BayPort will provide written verification of the deposit to the United States within fifteen (15) calendar days of the entry of this Order. Any interest that accrues will become part of the Settlement Fund and will be used and disposed of as set forth herein. Any taxes, costs, or other fees related to the escrow account shall be paid by BayPort.

26. BayPort shall promptly skip trace and redeliver or reissue any payment or notification that is returned as undeliverable, or that is not deposited, cashed, or returned within six (6) months of the date the initial payment is sent pursuant to Paragraphs 17 and 23.

27. Servicemembers, co-borrowers, and co-owners shall have six (6) months after issuance to cash or deposit their compensation checks. During the term of this Consent Order, BayPort shall, upon the request of a servicemember, co-borrower, or co-owner entitled to compensation, reissue any checks that are not cashed or deposited prior to their expiration.

28. Every six (6) months for a period of three and a half (3.5) years following the entry of this Consent Order, BayPort shall provide the United States with an accounting of all declarations and releases received, checks issued, checks cashed or deposited (including check copies), credit entries updated, and notifications without responses or that were returned as undeliverable. BayPort shall report any uncashed checks in accordance with state unclaimed property laws.

29. BayPort shall bear all costs and expenses of distributing the compensation payments under this Order.



30. Any compensation payments required by Paragraphs 15 and 19 that have not been distributed to aggrieved persons within four years of the date of this Consent Order shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the USAO.

31. No individual may obtain review by the Parties of the identifications made, and payments disbursed (including the amounts thereof), pursuant to Paragraphs 14-30.

#### **VI. OTHER RELIEF**

32. Within thirty (30) days following the entry of this Consent Order, Defendant must request that all the credit bureaus to which it reports remove negative entries for the servicemember(s) and any co-signers(s) attributable to non-payment of any amounts that would not have been owed if Defendant had not charged interest in excess of the SCRA's 6% interest rate cap.

33. Defendant shall also request that all the credit bureaus to which it reports delete trade lines for accounts belonging to servicemember(s) and any co-borrowers) attributable specifically to the wrongful repossessions. Further, BayPort shall not pursue and represents that it will not assign the deficiency associated with these repossessions nor is any of the deficiency associated with these repossessions currently assigned. BayPort must refund any amounts that the servicemember or his or her co-borrower has paid toward any deficiency that was remaining on the loan after a repossession.

34. Within sixty (60) days after completion of its obligations in Paragraphs 32 and 33, Defendant shall provide the United States with an accounting of all credit entries repaired.

#### **VII. CIVIL PENALTY**

35. Within ten (10) calendar days of the entry of this Consent Order, BayPort shall pay Forty Thousand Dollars (\$40,000) to the United States Treasury as a civil penalty pursuant to 50

U.S.C. § 4041(b)(3)(B) and 28 C.F.R. 85.3(b)(4)(i) to vindicate the public interest. The payment shall be made in the form of an electronic funds transfer pursuant to written instructions to be provided by the USAO.

### **VIII. POLICIES AND PROCEDURES**

36. BayPort shall develop SCRA Policies and Procedures to ensure compliance with the SCRA.

37. **SCRA Interest Rate Reduction Requests.** BayPort's Policies and Procedures must ensure that it does not charge interest in excess of six percent (6%) per annum during a period of military service on obligations and liabilities incurred before military service for which a servicemember requests SCRA benefits, as required by Section 3937 of the SCRA, 50 U.S.C. § 3937. The SCRA interest rate reduction requests Policies and Procedures shall contain the following provisions:

- a. BayPort shall accept borrowers' written requests for interest rate benefits pursuant to the SCRA made via facsimile, United States Postal Service First Class Mail (postage pre-paid), private carrier such as UPS or FedEx, overnight mail, electronic mail, or via an online customer service center. If a borrower fails to provide a copy of military orders or other appropriate indicator of military service establishing that he or she is eligible for the SCRA's interest rate benefit, BayPort shall check the Department of Defense's Defense Manpower Data Center ("DMDC") website to confirm eligibility.
- b. Should BayPort continue to question an applicant's eligibility, BayPort shall request, in writing using the form letter at Exhibit C, a copy of the orders or other indicator(s) of military service. BayPort shall seek only military orders

identifying the beginning date of the applicable period of military service from the requesting borrower. BayPort shall not require that any military orders submitted bear a specific end date for the period of military service.

- c. BayPort shall designate customer service representatives who have been specifically trained on the protections of the SCRA and who are responsible for the intake and fulfillment of SCRA benefit requests across all retail installment contract loans.
- d. BayPort shall also ensure that it has a designated extension from its main number at which borrowers may reach the designated SCRA customer service representatives, who will address questions or concerns regarding requests for interest rate benefits pursuant to the SCRA, and that designated extension shall be listed on BayPort's website as the extension to use for SCRA inquiries.
- e. When BayPort receives a request from a borrower for interest rate benefits pursuant to the SCRA, within two (2) billing cycles, BayPort shall determine the borrower's eligibility for SCRA interest rate benefits on all retail installment contract loans held by that borrower. If the borrower is determined to be eligible, the reduced interest rate will be applied retroactively to the first day of eligibility, including any applicable early alert period.
- f. Within fourteen (14) days after determining that a borrower is not eligible for SCRA interest rate benefits pursuant to the SCRA, BayPort shall notify the borrower in writing of the reason(s) for the denial. BayPort shall ensure that such borrower is given an opportunity to provide additional documentation or information to establish eligibility for the reduced interest rate.

- g. BayPort shall not raise the interest rate on an eligible borrower's retail installment contract loans to an amount higher than six percent (6%) per year until after BayPort accesses the DMDC website, and the information on the DMDC website shows that the servicemember is no longer in military service.

38. **Motor Vehicle Repossessions.** BayPort's Policies and Procedures must ensure that it does not repossess the vehicles of SCRA-protected servicemembers without first obtaining a court order, as required by Section 3952 of the SCRA, 50 U.S.C. § 3952. The SCRA motor vehicle Policies and Procedures shall contain the following provisions:

- a. In addition to any other reviews BayPort may perform to assess eligibility for SCRA protections, BayPort will determine whether borrowers are SCRA-protected servicemembers by:
  - i. Reviewing any military service information, including orders, it has received from borrowers; and
  - ii. Searching the DMDC for evidence of SCRA eligibility by either last name and social security number or last name and date of birth.
- b. BayPort or its agents shall perform the reviews to assess eligibility for SCRA protections:
  - i. No more than two (2) business days before BayPort refers a motor vehicle loan for repossession;
  - ii. No more than three (3) business days after BayPort, or its agents, including contractors and vendors that conduct repossession on BayPort's behalf, obtain possession of the motor vehicle; and

- iii. No more than two (2) business days before BayPort disposes of the motor vehicle or authorizes its agents, including contractors and vendors that conduct repossessions on BayPort's behalf, to dispose of the motor vehicle.
- c. If BayPort learns, either via military service information received from a borrower or via the periodic check of the DMDC database described above, that a borrower is an SCRA-protected servicemember, BayPort shall neither refer the loan for repossession nor conduct the repossession itself without first obtaining a court order or valid written waiver, as provided in 50 U.S.C. § 3918.
- d. If Bayport discovers, after obtaining possession, but before disposing of the motor vehicle, that a borrower is an SCRA-protected servicemember, within twenty-four (24) hours of the discovery, BayPort shall attempt to verbally contact the borrower and offer to arrange return of the vehicle and shall reverse on the borrower's account all of the charges associated with the repossession. BayPort shall also correct any negative reporting related to the repossession. If BayPort cannot make contact with the borrower within twenty-four (24) hours, BayPort shall cause the vehicle to be returned to the location from which possession was taken, unless return to such location presents a significant risk that the vehicle will be impounded, return to such location presents a significant risk of damage to the vehicle, the borrower has informed BayPort that the vehicle has been abandoned, or the vehicle was recovered under circumstances that suggest the vehicle had been abandoned. If the vehicle is not returned within twenty-four (24) hours, BayPort shall make no fewer than three (3) additional attempts to reach the

borrower based upon contact information in BayPort's files, and return the vehicle within twenty-four (24) hours of a borrower's request for return, without charging any repossession-related fees. The vehicle shall not be sold or otherwise disposed of until the contact attempts referenced in this paragraph have been made, and BayPort has obtained a court order or a valid written waiver, as provided in 50 U.S.C. § 3918.

- e. If BayPort pursues a repossession action in court and the borrower does not make an appearance in the case, BayPort will file an affidavit of military service with the court, as required by Section 3931(b)(1) of the SCRA, 50 U.S.C. §3931(b)(1). Before seeking entry of default, Bayport will search the DMDC and review information in its possession or control to determine if the borrower is SCRA-protected. If BayPort learns the borrower is SCRA-protected, BayPort will, before seeking default judgment:
  - 1. File an affidavit indicating that the defendant is in military service;
  - 2. Attach the most recent military status report from the DMDC or a copy of the defendant's military orders or other documentation to the affidavit; and
  - 3. Provide counsel appointed to represent the servicemember-defendant with a copy of all documents in the defendant's account, including contact information for the defendant.
- f. BayPort will not rely on a servicemember's waiver of rights under Section 3952(a) of the SCRA unless BayPort obtains a written agreement, as provided in Section 3918 of the SCRA, 50 U.S.C. §3918. If BayPort initiates the waiver

process with the servicemember, it must do so at least ten (10) calendar days in advance of any anticipated repossession by sending a notice that prominently incorporates the language and layout of the form attached as Exhibit D and a copy of the proposed waiver to the servicemember. If the servicemember initiates the waiver process by offering to voluntarily surrender the vehicle or indicating an intent to abandon the vehicle, BayPort must provide a copy of the notice of the type described above but may conduct the repossession at any point after receiving a signed waiver. If the servicemember refuses or otherwise fails to provide a signed waiver, BayPort shall be permitted to take possession of the vehicle if the location where the vehicle was left by the servicemember presents a significant risk that the vehicle will be impounded, leaving the vehicle at such location presents a significant risk of damage to the vehicle, the borrower has informed BayPort that the vehicle has been abandoned, or the vehicle was recovered under circumstances that suggest the vehicle had been abandoned. The vehicle shall not be sold or otherwise disposed of until the contact attempts referenced in this paragraph have been made, and BayPort has obtained a court order or a valid written waiver, as provided in 50 U.S.C. § 3918.

- g. BayPort may take possession of a motor vehicle that has been impounded by a non-related third-party upon receiving notice of the impoundment even when the borrower is an SCRA-protected servicemember. BayPort, however, must provide notice to the servicemember that it has taken possession and must not dispose of the vehicle until BayPort has made reasonable efforts to contact the

servicemember and BayPort has obtained a court order or a valid written waiver,  
as provided in 50 U.S.C. § 3918.

39. No later than thirty (30) days after the date of entry of the Consent Order, BayPort shall provide a copy of the proposed SCRA Policies and Procedures required under Paragraphs 36-38 to counsel for the United States. The United States shall respond to BayPort's proposed SCRA Policies and Procedures within forty-five (45) calendar days of their receipt. If the United States objects to any part of BayPort's proposed SCRA Policies and Procedures described in Paragraphs 36-38, the Parties shall confer to resolve their differences. If the Parties cannot resolve their differences after good faith efforts to do so, either Party may bring the dispute to this Court for resolution. BayPort shall implement the SCRA Policies and Procedures within ten (10) business days of approval by the United States or the Court.

40. If at any time during the term of this Consent Order BayPort proposes to materially change its SCRA Policies and Procedures described herein, it shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver written objections to BayPort within forty-five (45) calendar days of receiving the proposed changes, the changes may be implemented. If the United States makes any objections to the proposed changes within the forty-five (45)-day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved.

## **IX. TRAINING**

41. BayPort shall provide SCRA compliance training to all management officials and other employees who: (a) provide customer service to servicemembers in connection with the servicing of their retail installment contract loans; and/or (b) have significant involvement in servicing retail installment contract loans, including setting the interest rates or fees, collections,



or repossessions ("covered employees") within forty-five (45) calendar days after BayPort's new training program is approved by the United States or the Court pursuant to Paragraph 44.

BayPort shall also follow these training procedures for all of their employees who subsequently become covered employees within thirty (30) calendar days of their hiring, promotion, or transfer. BayPort shall provide to each covered employee training on: (a) the terms of the SCRA specific to the employee's responsibilities; (b) the terms of BayPort's SCRA Policies and Procedures (both those required pursuant to Paragraphs 37-38 and all others BayPort adopts) specific to the employee's responsibilities; and (c) the terms of this Consent Order specific to the employee's responsibilities.

42. During the term of this Consent Order, BayPort shall provide annual SCRA training, with the same content as described in Paragraph 41, to covered employees with respect to their responsibilities and obligations under the SCRA, the SCRA Policies and Procedures, and the terms of this Consent Order.

43. Within forty-five (45) days of the United States' approval of the SCRA Policies and Procedures pursuant to Paragraph 39, BayPort shall provide to the United States the curriculum, instructions, and any written materials included in the training required by Paragraphs 41 and 42.

44. The United States shall have forty-five (45) days from receipt of these documents to raise any objections to BayPort's training materials, and, if it raises any, the Parties shall confer to resolve their differences.

45. The covered employees may undergo the training required by Paragraphs 41 and 42 via live training, computer-based training, web-based training, or via interactive digital media. If the training is conducted in any format other than live training, BayPort shall ensure that covered employees have the opportunity to have their questions answered by a company contact that

BayPort identifies as having SCRA expertise within two (2) business days of the training.

BayPort shall bear any expenses associated with the training program.

46. BayPort shall secure a signed statement in the form attached as Exhibit E from each covered employee at the training required by Paragraphs 41 and 42 acknowledging that he or she has received, read, and understands the SCRA Policies and Procedures specific to the employee's responsibilities, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. For the duration of this Consent Order, copies of the signed statements shall be provided to the United States upon request. BayPort shall also certify in writing to counsel for the United States that all covered employees successfully completed the training required by Paragraphs 41 and 42.

#### **X. ADDITIONAL REPORTING, RECORDS PRODUCTION, AND RECORD-KEEPING REQUIREMENTS**

47. For the duration of this Consent Order, BayPort shall retain all records relating to its obligations hereunder, including all records related to SCRA interest rate reduction requests and repossession of SCRA-protected servicemembers' vehicles, and all records relating to compliance activities as set forth herein. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Consent Order.

48. During the term of this Consent Order, BayPort shall notify counsel for the United States in writing every six (6) months of any SCRA or military-related complaints received during the preceding six (6) months. BayPort shall provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA complaint, the notification to the United States shall include the full details of the complaint, including the complainant's name, address, and telephone number. BayPort shall also promptly provide the United States all

information it may request concerning any such complaint and shall inform the United States in writing within thirty (30) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to BayPort's actions, the Parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the parties are unable to come to an agreement regarding such objections or concerns, any party may bring the dispute to this Court for resolution.

#### **X. SCOPE OF CONSENT ORDER**

49. The provisions of this Consent Order shall apply to BayPort and any subsidiaries, predecessors, acquired companies, or successor entities. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities.

50. In the event that BayPort is acquired by or merges with another entity, BayPort shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order.

51. This Consent Order releases only the claims for BayPort's alleged violations of Sections 3937 and 3952 of the SCRA addressed in this Consent Order. This Consent Order does not release any claims not addressed in the Complaint's allegations or any claims that may be held or are currently under investigation by any federal agency against BayPort.

52. Nothing in this Consent Order will excuse BayPort's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over BayPort that imposes additional obligations on it.

#### **XI. LITIGATION HOLD**

53. The Parties agree that, as of the effective date of this Consent Order, litigation is not anticipated concerning the matters described in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information ("ESI"), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Consent Order, including the recordkeeping and retention requirements contained in Paragraphs 47-48.

## **XII. MODIFICATIONS, ATTORNEYS' FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE**

54. Any term of this Order, including time limits, may be modified only with the written consent of all of the Parties.

55. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Consent Order, except as set forth in Paragraph 56.

56. The Parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by BayPort, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and/or attorneys' fees that the United States may have incurred as a result of BayPort's violation or failure to perform.

## **XIII. RETENTION OF JURISDICTION AND OTHER TERMS**

57. The Court shall retain jurisdiction and venue over all disputes between and among the Parties arising out of the Consent Order, including but not limited to interpretation and enforcement of the terms of the Consent Order.

58. This Consent Order shall be in effect for a period of four (4) years from its date of entry, after which time the Complaint shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Consent Order in the interests of justice.

IT IS HEREBY SO ORDERED, this \_\_\_\_ day OF \_\_\_\_\_, 2022

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UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of the Consent Order:

FOR THE UNITED STATES OF AMERICA:

JESSICA D. ABER  
United States Attorney

*Deirdre G. Brou*  
/s/

DEIRDRE G. BROU  
Assistant U.S. Attorney  
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(Y5B No. 42640)

**EXHIBIT A**

**DECLARATION – Vehicle Repossessions**

I, [INSERT NAME], do hereby declare and state as follows:

1. I owned a vehicle obtained through a loan with BayPort Credit Union, Loan Number [LOAN NUMBER] that was repossessed.
  2. I obtained the loan on or about [LOAN FUNDING DATE].
  3. On or about [REPOSSESSION DATE], I WAS either:
    - i. on a covered period of military service; OR
    - ii. a member of a reserve component (Reserves or National Guard) and had received orders to report for a covered period of military service.
- Please consider the following additional information in support of this Declaration:

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I confirm that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

## **APPENDIX REGARDING MILITARY SERVICE**

As used in this Declaration, a "covered period of military service" is any of the following:

- a) Full-time active duty with the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard), including National Guard members serving under orders issued under Title 10 of the United States Code;
- b) A period of active service with the National Guard:
  - i)) authorized by the President or the Secretary of Defense;
  - ii) longer than thirty (30) consecutive days;
  - iii) under orders issued under Section 502(f) of Title 32 of the United States Code; and
  - iv) for the purpose of responding to a national emergency declared by the President and supported by federal funds.
- c) Active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- d) A period of time during which I was a servicemember absent from duty on account of sickness, wounds, leave, or other lawful cause.

If you have any additional questions about whether your service constitutes a "covered period of military service" for purposes of this declaration, please contact the Department of Justice at 202-514-4713 or 703-299-3770 and reference the BayPort SCRA motor vehicle case.



**EXHIBIT B**  
**RELEASE – Vehicle Repossessions**

In consideration for the parties' agreement to the terms of the Consent Order resolving the United States' allegations in United States v. BayPort Credit Union, filed March 7, 2022 (E.D. Va.), and BayPort's payment to me of \$ \_\_\_\_\_, I, [BORROWER'S NAME], hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of Section 3952 of the Servicemembers Civil Relief Act, that I may have against BayPort and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

## EXHIBIT C

[Insert date]

[Insert Member's Name and Address]

Re: [Insert loan number]

BayPort Credit Union recently received a request from you regarding whether you qualify for an interest rate reduction to six (6%) percent based on the Servicemembers Civil Relief Act ("SCRA").

To date, BayPort Credit Union has not received (a) any military orders from you calling you to service or further extending your service or (b) any other appropriate indicator of military service, including a certified letter from your commanding officer. BayPort Credit Union also has checked the Department of Defense's Defense Manpower Data Center website and has been unable to confirm your eligibility for SCRA protection.

Please send BayPort Credit Union copies of (a) any military orders calling you to service or further extending your service or (b) any other appropriate indicator of military service, including a certified letter from your commanding officer. You can provide the documents to [Insert contact name, email address, and physical address.]

Once such documents are received, BayPort Credit Union will review the documents and respond accordingly.

[Insert BayPort signature block]

## **EXHIBIT D**

### **IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS' RIGHTS AND PROTECTIONS AFFORDED UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT**

Attached to this notice you will find a waiver of rights and protections that may be applicable to you and your dependents pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, et seq. (the "SCRA"). The SCRA provides military personnel and their dependents with a wide range of legal and financial protections. Among other benefits and protections, the SCRA:

- Prohibits the repossession of a servicemember's motor vehicle without a court order, as long as a deposit or at least one installment payment was made while the borrower was not in military service.
- Upon notice by the servicemember and submission of orders or other documentation of military service, imposes a 6% maximum rate of interest that may be charged during military service on loans incurred before the servicemember began his or her current military service.
- Postpones court actions against servicemembers under certain circumstances.
- Permits servicemembers to terminate motor vehicle and residential leases upon receipt of certain military orders requiring deployment or relocation.

If you choose to sign the attached waiver, BayPort Credit Union ("BayPort") will have the option to proceed with a repossession of your motor vehicle without the protections of the SCRA. If you do not sign this waiver, BayPort will be required to provide you the protections of the SCRA if you took out your loan and made a downpayment on the motor vehicle, or at least one payment on the loan, when you were not in military service. Additionally, if BayPort takes you to court to repossess your motor vehicle, it must inform the court of your military status so that the court can give you certain protections if you are unable to appear in the case.

This waiver applies only to your SCRA rights related to motor vehicle repossessions; you are not waiving any other SCRA protections that you may have. Before waiving these important statutory rights, you should consult an attorney regarding how best to exercise your rights or whether it is in your interest to waive these rights under the conditions offered by BayPort.

For More Information:

**CONSULT AN ATTORNEY:** To fully understand your rights under the law, and before waiving your rights, you should consult an attorney.

**JAG/LEGAL ASSISTANCE:** Servicemembers and their dependents with questions about the SCRA should contact their unit's Judge Advocate, or their

installation's Legal Assistance Office. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/content/locator.php>.

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MILITARY ONESOURCE: "Military OneSource" is the U.S. Department of Defense's information resource. Go to <http://www.militaryonesource.com>.

**EXHIBIT E**  
**EMPLOYEE ACKNOWLEDGMENT**

I acknowledge that on \_\_\_\_\_, 20\_\_\_\_, I was provided training regarding Servicemembers Civil Relief Act ("SCRA") compliance and a summary of the provisions of the Consent Order entered by the Court in *United States v. BayPort Credit Union* (E.D. Va.). I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and will comply with those responsibilities.

\_\_\_\_\_  
[PRINT NAME]

\_\_\_\_\_  
[SIGNATURE]

\_\_\_\_\_  
[JOB TITLE]

