

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

MONEYLION OF VIRGINIA LLC,
a Delaware limited liability company,

Defendant.

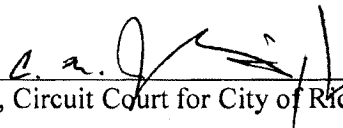
Civil Action No. CL18-586-8

ORDER ADOPTING AND APPROVING
ASSURANCE OF VOLUNTARY COMPLIANCE

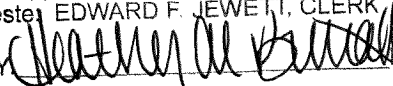
Upon review of the Complaint and the Assurance of Voluntary Compliance, and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance of Voluntary Compliance is hereby approved and adopted as an Order of this Court; and
2. The Clerk of this Court shall mail a certified copy of this Order to James E. Scott, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219, and Stephen D. Rosenthal, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point, Richmond, Virginia 23219, counsel for MoneyLion of Virginia LLC.

ENTER: 2/12/18




Judge, Circuit Court for City of Richmond

A Copy
Tested EDWARD F. JEWETT, CLERK
BY  D.C.

WE ASK FOR THIS:

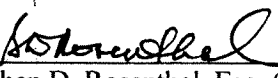
COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
James E. Scott (VSB No. 88882)
Assistant Attorney General
Office of the Attorney General
Consumer Protection Section
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 225-4778
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

SEEN AND AGREED:

MONEYLION OF VIRGINIA LLC

By: 
Stephen D. Rosenthal, Esq. (VSB No. 16167)
Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
Richmond, Virginia 23219

Counsel for MoneyLion of Virginia LLC

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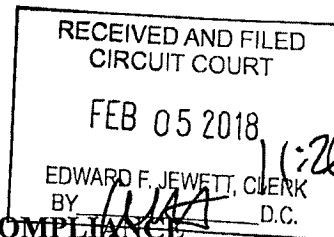
Plaintiff,

v.

MONEYLION OF VIRGINIA LLC,
a Delaware limited liability company,

Defendant.

Civil Action No. CL18-586-8



ASSURANCE OF VOLUNTARY COMPLIANCE

I. PARTIES

1.0 This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring (the “Attorney General” or the “Commonwealth”), and MoneyLion of Virginia LLC (“MoneyLion”).

1.1 MoneyLion is a Delaware limited liability company with a principal office at 30 West 21st Street, 9th Floor, New York, New York 10010.

1.2 MoneyLion does not contest that it has advertised to and served Virginia consumers. MoneyLion consents to and waives all objections to this Court’s jurisdiction for all matters relating to this Assurance’s entry, execution, monitoring, and enforcement. MoneyLion further waives all objections it may have to venue in this Court for all matters relating to this Assurance’s entry, execution, monitoring, and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in this Section II represent the position of the Attorney General.

2.1 The Commonwealth alleges that MoneyLion was at all relevant times mentioned herein a “supplier” of “goods” or “services,” and engaged in “consumer transactions,” as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, offering, and providing closed-end installment loans to individual Virginia consumers over the Internet.

2.2 The Commonwealth alleges that MoneyLion was at all relevant times mentioned herein a “covered person” within the meaning of 12 U.S.C. § 5481(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. §§ 5481 to 5603), by advertising, offering, and providing closed-end installment loans to individual Virginia consumers over the Internet.

2.3 During the period from January 19, 2017 to July 13, 2017 (“the Relevant Period”), MoneyLion offered to make and made closed-end installment loans to Virginia consumers over the Internet.

2.4 MoneyLion advertised on its website (www.moneylion.com) that it was licensed by the Bureau of Financial Institutions (“BFI”)—a bureau of the State Corporation Commission (“SCC”) tasked with the regulation of various consumer lenders.

2.5 MoneyLion also represented in each of its loan agreements with Virginia consumers that it was regulated by BFI.

2.6 Though MoneyLion advertised online and in its loan agreements with Virginia consumers that it was licensed and/or regulated by BFI, it was not.

2.7 During the Relevant Period, MoneyLion imposed, on all of its closed-end installment loan borrowers in Virginia, annual interest rates exceeding 12% APR.

2.8 During the Relevant Period, MoneyLion represented in its closed-end installment loans with Virginia borrowers that Virginia law provided for MoneyLion's collection of a \$15 processing fee for payments made by check.

2.9 During the Relevant Period, MoneyLion included a provision in its closed-end installment loans with Virginia borrowers titled, "Condition to Our Disbursing Loan Proceeds," which required Virginia borrowers to execute MoneyLion's "Automated Clearing House Credit and Debit Authorization Agreement" prior to receiving the proceeds of their loans.

2.10 During the Relevant Period, MoneyLion charged an origination fee on its closed-end installment loans with Virginia borrowers that, on average, totaled approximately 15% of the loan proceeds.

2.11 As an unlicensed consumer lender making closed-end installment loans, and without qualifying for any other exception to Virginia's general usury statute, Virginia Code § 6.2-303(A), MoneyLion could only charge 12% annual interest—not the higher annual interest rates that it charged.

2.12 Virginia law does not specifically provide for MoneyLion's collection of a \$15 check processing fee for payments on closed-end installment loans.

2.13 The Commonwealth contends that MoneyLion violated the VCPA by misrepresenting that it was a licensed consumer lender regulated by BFI in violation of Virginia Code §§ 59.1-200(A)(2), (3) and (14).

2.14 The Commonwealth contends that MoneyLion violated the VCPA by misrepresenting its legal ability to collect more than 12% annual interest on its loans with Virginia borrowers in violation of Virginia Code §§ 59.1-200(A)(5) and (14).

2.15 The Commonwealth contends that MoneyLion violated the VCPA by misrepresenting that Virginia law specifically allowed it to collect a \$15 check processing fee in violation of Virginia Code §§ 59.1-200(A)(5) and (14).

2.16 The Commonwealth contends that MoneyLion violated Dodd-Frank by misrepresenting that it was a licensed consumer lender regulated by BFI in violation of 12 U.S.C. § 5536(a)(1)(B).

2.17 The Commonwealth contends that MoneyLion violated Dodd-Frank by misrepresenting its legal ability to collect more than 12% annual interest on its loans with Virginia borrowers in violation of 12 U.S.C. § 5536(a)(1)(B).

2.18 The Commonwealth contends that MoneyLion violated Dodd-Frank by misrepresenting that Virginia law specifically allowed it to collect a \$15 check processing fee in violation of 12 U.S.C. § 5536(a)(1)(B).

2.19 The Commonwealth contends that MoneyLion violated Dodd-Frank by charging an origination fee on its closed-end installment loans with Virginia borrowers that, on average, totaled approximately 15% of the loan proceeds in violation of 12 U.S.C. § 5536(a)(1)(B).

2.20 The Commonwealth contends that MoneyLion violated Dodd-Frank by conditioning the extension of credit to Virginia borrowers on their execution of an electronic funds transfer agreement in violation of 12 U.S.C. § 5536(a)(1)(A).

2.21 After receiving a Notice of Violation letter from the Attorney General, MoneyLion edited its website (www.moneylion.com) to reflect that it is not licensed by BFI to make consumer loans in Virginia.

III. DEFENDANT'S POSITION

3.0 The statements contained in this Section III represent the position of MoneyLion.

3.1 MoneyLion does not contest the allegations in ¶¶ 2.1-2.7, 2.11 and 2.21, and denies the allegations in ¶¶ 2.8-2.10, and 2.12-2.20.

3.2 Specifically, MoneyLion:

3.2.1 Denies that it represented that Virginia law provided for collection of a \$15 processing fee for payments made by check;

3.2.2 Denies that it conditioned the extension of credit on the execution of an electronic funds transfer agreement;

3.2.3 Denies that it engaged in any acts or practices that violated any provision of the Virginia Consumer Protection Act (Virginia Code §§ 59.1-196 through 59.1-207), or any provision of Virginia law;

3.2.4 Denies that it engaged in any acts or practices that violated any provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. §§ 5481 to 5603), or any provision of Federal law.

3.3 MoneyLion asserts that it never charged a \$15 processing fee for payments made by check to any Virginia consumer.

3.4 MoneyLion asserts that it has endeavored at all times to be as fair and transparent as possible with its customers, and that it always acted in good faith during the Relevant Period.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission by MoneyLion for any purpose of any fact or of a violation of any state or federal law, rule or regulation. MoneyLion enters into this Assurance without admitting any wrongdoing or liability and affirmatively states that its execution of this Assurance is for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. MoneyLion enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between MoneyLion and the Attorney General, in the interest of resolving the Attorney General's claims.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of MoneyLion's services or practices and MoneyLion shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by MoneyLion in violation of applicable federal, state, or other laws.

4.6 MoneyLion agrees that this Assurance constitutes a legally-enforceable obligation of MoneyLion in accordance with its terms.

4.7 Except for the Complaint filed simultaneously with this Assurance, the Commonwealth shall not institute any civil proceeding or take any civil action against MoneyLion, its officers, directors, members, managers, employees or agents under the VCPA or Dodd-Frank for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if MoneyLion, or its employees, agents, members, managers, officers or directors, provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this provision shall be null and void.

4.8 This Assurance applies to MoneyLion, together with its officers, directors, members, managers, employees, assigns and agents who are engaged in any aspect of MoneyLion's lending activities.

4.9 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto.

V. ASSURANCES

5.0 MoneyLion voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 MoneyLion agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be violations of the VCPA and Dodd-Frank in ¶¶ 2.13 through 2.20 of Section II of this Assurance, and MoneyLion agrees that engaging in such acts or similar acts after the Effective Date of this Assurance may constitute, dependent upon the facts and circumstances to be later determined, a violation of the Order by which this Assurance is approved and adopted by this Court.

5.2 MoneyLion agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the VCPA, as it now exists, or as amended in the future.

5.3 MoneyLion agrees to make available and to disclose the provisions of this Assurance to its officers, directors, members, managers, employees, agents and representatives within five (5) days of the last execution date of this Assurance, or the date this Assurance is filed with the Court, whichever is later.

5.4 MoneyLion shall institute supervisory compliance procedures that are reasonably designed to ensure compliance with this Assurance, including, without limitation: (a) the training of relevant employees; and (b) revisions to and/or development of appropriate training materials and internal procedures.

5.5 MoneyLion agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.6 MoneyLion agrees that it shall not represent that the Attorney General approves of or endorses Defendant's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 "Restitution-Eligible Consumers" means all borrowers who identified as Virginia residents and who received a loan which, as of the Effective Date, is paid in full or for which total payments to MoneyLion exceed what would have been due had such loan been originated at a rate of 12% annual interest.

6.1 Each Restitution-Eligible Consumer shall be entitled to a refund equal to the excess amount MoneyLion collected beyond what would have been due had such loan been originated at a rate of 12% annual interest.

6.2 By the date it executes this Assurance, MoneyLion agrees to provide the Attorney General's Office with a verified spreadsheet containing the first and last name, home address, and phone number for all Restitution-Eligible Consumers. Such spreadsheet also shall include for each Restitution-Eligible Consumer the loan date, the initial principal amount loaned, the total amount paid, the total amount due when the loan is reformed to a 12% annual interest rate, and the dollar amount of restitution owed. The verified spreadsheet shall be accompanied by an affidavit in a form approved by the Attorney General.

6.3 MoneyLion agrees to provide refunds in the amounts required to the Restitution-Eligible Consumers. To this end, within sixty (60) days of the Effective Date, MoneyLion agrees to issue refund checks or Automatic Clearing House credits ("ACH Credit") (collectively, "Restitution") to Restitution-Eligible Consumers with a letter or email explaining this settlement (collectively, "Communication") and stating that such consumers are entitled to a refund. The

Restitution and Communication shall be sent to each consumer's last known address or email address and bank account, according to MoneyLion's own records or as updated by available resources. The form and substance of any Communication shall be approved in advance by the Attorney General. MoneyLion may not use Restitution as a means of soliciting any new business from Restitution-Eligible Consumers, and Restitution shall not be made with respect to, or connected in any manner to, any other consumer lending activity between MoneyLion or a related entity and a Restitution-Eligible Consumer.

6.4. MoneyLion is authorized to require that, by depositing the refund checks or accepting the ACH Credit referred to in ¶ 6.3, the Restitution-Eligible Consumers release MoneyLion from any and all claims relating to liability arising from this Assurance. The form and substance of any release language shall be approved in advance by the Attorney General.

6.5 MoneyLion shall manage and conduct the transmittal of Restitution to the Restitution-Eligible Consumers and track and compile the identity of those consumers: (a) who deposit or accept the Restitution; (b) who do not deposit or accept the Restitution; and (c) whose Restitution is returned to MoneyLion for incorrect or insufficient address or any other reason, or whose ACH Credit is rejected. MoneyLion agrees to cover all costs related to the mailing, tracking, and compiling described above.

6.6 Within thirty (30) days of the Effective Date, MoneyLion agrees to update the online accounts of all Restitution-Eligible Consumers to reflect that their accounts have been paid in full.

6.7 MoneyLion shall, on an ongoing basis starting within one hundred twenty (120) days of the Effective Date and at least once every one hundred twenty (120) days thereafter through sixteen (16) months, provide all information compiled pursuant to ¶ 6.5 to the Office of

the Attorney General so that the Attorney General may engage in further efforts to locate the Restitution-Eligible Consumers whose Restitution is returned for incorrect or insufficient address, or any other reason, or whose ACH Credit is rejected. MoneyLion also agrees that it will use reasonable efforts to locate such Restitution-Eligible Consumers. For any Restitution-Eligible Consumer whose refund check is returned for incorrect address or insufficient address or any other reason, or whose ACH Credit is rejected, MoneyLion also will provide the Attorney General with the consumer's date of birth, last known address, phone number, social security number, and driver's license number, if MoneyLion has that information. The Attorney General may direct MoneyLion to provide Restitution at any time up to eighteen (18) months after the Effective Date to any Restitution-Eligible Consumer for whom a more current address is found. After eighteen (18) months after the Effective Date, except for its obligations described in ¶ 6.8 below, MoneyLion shall not have any further liability with respect to any refund checks that have not been deposited or any ACH Credits that have not been accepted.

6.8 For any refund check that is not deposited, or any ACH Credit that is not accepted, through the restitution process described in ¶¶ 6.3 through 6.7 above, MoneyLion will forward the aggregate amounts due to such Restitution-Eligible Consumers, together with a list of the affected consumers' names, to the Attorney General's Office no later than twenty (20) months after the Effective Date. If the Attorney General's Office is not successful thereafter in locating such Restitution-Eligible Consumers, such amounts will be forwarded to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55-210.9 and 55-210.2 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 to 55-210.30.

6.9 MoneyLion agrees to use its current business telephone number to handle consumer inquiries relating to the settlement. MoneyLion agrees to forward all calls made to its current number from 7:30 a.m. to 4:00 p.m. EST, Monday through Friday, excluding United States federal and banking holidays, to a designated representative who will answer consumer calls for at least twenty (20) months after the Effective Date. The representative designated to receive such consumer inquiries shall be knowledgeable of the terms of the Assurance and have ready access to the spreadsheets required in ¶¶ 6.2 and 7.1, and be prepared to inform consumers of the relief they are eligible to receive pursuant to this Assurance, if any.

VII. FORBEARANCES

7.0 “Forbearance-Eligible Consumers” means all borrowers who identified as Virginia residents, who received a loan from MoneyLion, who do not qualify as Restitution-Eligible Consumers, and who either continue to make payments on their loan or who defaulted on their loan from MoneyLion.

7.1 With respect to all Forbearance-Eligible Consumers, MoneyLion agrees to cease all collection efforts once their loans, recalculated as though they were originated with no more than a rate of 12% annual interest (the “legal interest”), have been recouped. By the date it executes this Assurance, MoneyLion agrees to provide the Office of the Attorney General with a spreadsheet containing the name, address, telephone number, total amount loaned, current outstanding balance, total amount paid to date on account of principal, interest, fees, and, as appropriate, the amount of any balance that remains subject to collection [where the total loaned plus the legal interest minus the total paid to date is a positive number], and the amount of any portion of the current outstanding balance which MoneyLion is agreeing to forbear [where total paid exceeds the total loaned plus the legal interest, this will be the entire outstanding balance],

with respect to each Forbearance-Eligible Consumer. The verified spreadsheet shall be accompanied by an affidavit in a form approved by the Attorney General.

7.2 Within thirty (30) days of the Effective Date, MoneyLion agrees to update the online accounts of all Forbearance-Eligible Consumers to reflect their new balance.

7.3 In the event a Forbearance-Eligible Consumer voluntarily submits a payment to MoneyLion after the Effective Date, where such payment causes the consumer's total aggregate payments to exceed the principal amount loaned plus the legal interest, MoneyLion agrees to return the excess payment to the consumer simultaneously with a letter or email explaining the relevant terms of the Assurance within ten (10) business days of receipt of the consumer's payment. The form and substance of any letter or email used under these circumstances shall be approved in advance by the Attorney General.

7.4 With respect to all Forbearance-Eligible Consumers from whom MoneyLion has recouped at least the principal amounts loaned plus the legal interest, if any debt owed has been turned over by MoneyLion to a debt collector, MoneyLion agrees to provide notice to the debt collector requiring the debt collector to cease all further collection efforts. MoneyLion shall provide notice to debt collectors within fifteen (15) days of the Effective Date.

VIII. MISCELLANEOUS

8.0 MoneyLion agrees to maintain loan records, whether in electronic or hard copy form, relating to any Restitution-Eligible Consumer or Forbearance-Eligible Consumer for a period of one year and six months after the Effective Date.

8.1 If MoneyLion files for bankruptcy within ninety (90) days of any payment made pursuant to this Assurance, the Commonwealth may, at its option, void any provision of this Assurance, or void this Assurance in its entirety.

8.2 To the extent that MoneyLion has provided any negative information, knowingly or unknowingly, directly or indirectly, to any credit reporting agency concerning any Restitution-Eligible Consumer or Forbearance-Eligible Consumer, MoneyLion agrees to contact the credit reporting agency to request removal of the adverse information.

IX. CIVIL PENALTY, COSTS, AND ATTORNEYS' FEES

9.0 Judgment is hereby entered in favor of the Commonwealth and against the Defendant in the amount of Ten Thousand Dollars (\$10,000.00) pursuant to § 59.1-206(A) of the VCPA, as a civil penalty for alleged violations of the VCPA. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

9.1 Judgment is hereby entered in favor of the Commonwealth and against the Defendant in the amount of Twenty Thousand Dollars (\$20,000.00), pursuant to § 59.1-206(C) of the VCPA, for reimbursement of the Commonwealth's reasonable expenses, costs, and attorneys' fees in investigating and preparing this action. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

9.2 MoneyLion agrees to make payment of the amounts specified in ¶¶ 9.0 and 9.1 by delivery of a certified or cashier's check, in the amount of Thirty Thousand Dollars (\$30,000.00), made payable to "Treasurer of Virginia," and remitted to: James E. Scott, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia, 23219, within fifteen (15) business days of the entry of the Court Order approving and adopting this Assurance.

X. SIGNATURES

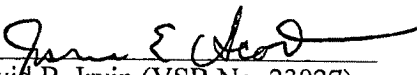
10.0 Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 2nd day of February, 2018.

FOR THE PLAINTIFF:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By:



David B. Irvin (VSB No. 23927)
Senior Assistant Attorney General
James E. Scott (VSB No. 88882)
Assistant Attorney General
Office of the Attorney General
Consumer Protection Section
Predatory Lending Unit
202 North Ninth Street
Richmond, Virginia 23219
Phone: (804) 225-4778
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR THE DEFENDANT:

MONEYLION OF VIRGINIA LLC

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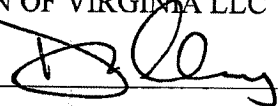

Stephen D. Rosenthal, Esq. (VSB No. 16167)

Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
Richmond, Virginia 23219

Counsel for Defendant

MONEYLION OF VIRGINIA LLC

By:

 _____

Its:

Authorized Signatory
Manager