

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING
File No. 2021-CFPB- 0003

In the Matter of:

**3rd Generation, Inc., dba California
Auto Finance**

CONSENT ORDER

The Consumer Financial Protection Bureau has reviewed the Loss Damage Waiver product related to the subprime-auto-loan-servicing activities of 3rd Generation, Inc., dba California Auto Finance (Respondent, as defined below) and has identified the following violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(c), 5536(a): engaging in unfair acts or practices by charging interest on late payments of Loss Damage Waiver fees without the knowledge or consent of the consumer. Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order.

I

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563, 5565.

II

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 14, 2021 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the Bureau’s issuance of this Consent Order under §§ 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III

Definitions

3. The following definitions apply to this Consent Order:

- a. “Affected Consumers” includes any person to whom Defendant charged interest on late LDW payments during the Relevant Period and comprises:
 - i. 2,178 consumers who have fully paid off their loan contracts and paid illegal interest on LDW fees;
 - ii. 1,116 consumers whose loans are still active and who have paid illegal interest on LDW fees; and
 - iii. 2,488 consumers whose loans were charged-off.
- b. “Clearly and Conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in the following ways:
 - i. a visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - ii. the disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

- iii. the disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 - iv. the disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 - v. when the representation or sales practice targets a specific audience, such as Children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- c. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- d. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- e. “Loss Damage Waiver” or “LDW” means the product that Respondent places on borrower accounts for a monthly fee when the borrower has insufficient insurance, and which covers cancellation of the borrower’s debt in the event of a total vehicle loss, or the cost of a repair if the vehicle is not a total loss.

- f. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- g. “Relevant Period” means from January 1, 2016 through and including the Effective Date.
- h. “Respondent” means 3rd Generation, Inc. dba California Auto Finance, and its successors and assigns.

IV

Bureau Findings and Conclusions

The Bureau finds the following:

- 4. Respondent is a California corporation with its principal place of business in Orange, California.
- 5. Respondent indirectly originates and services subprime auto loans by taking assignment of retail-installment-sales contracts that automobile dealers make with borrowers.
- 6. These activities are “consumer financial products and services” under the CFPAs. 12 U.S.C. § 5481(5), 15(A)(i).

7. Respondent is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6).
8. When consumers obtain auto loans from car dealers that assign their loans to Respondent, consumers’ loan agreements require them to use Respondent’s LDW product. The LDW agreement specifies that if the consumer fails to maintain car insurance subject to certain specifications, Respondent will add the LDW product to the consumer’s account. When Respondent adds the LDW product, Respondent charges the consumer a monthly LDW fee. In the event of a repair, Respondent will pay the cost of the repair. In the event of a “total vehicle loss,” Respondent will cancel the consumer’s debt.

**Findings and Conclusions as to
Interest Charged on Late Payments of LDW Fees**

9. If a consumer is required to carry LDW, Respondent’s internal system adds an amount, sometimes thousands of dollars, to the principal of the loan. As a result, the total loan balance increases, as does the new amortized loan payment. Respondent discloses the increase as a monthly LDW fee but fails to disclose to consumers that interest accrues on late payments of that fee.
10. Respondent’s LDW contract and subsequent notices regarding LDW describe LDW as either an extra dollar amount per month or as a fee

included in a “new monthly payment,” but they fail to disclose that Respondent charges interest on late LDW fee payments.

11. Many of Respondent’s customers are subprime borrowers with low or no credit scores. Many of Respondent’s customers pay late, and interest accrues on LDW for each day that the customer is late, so the customer will end up paying more for LDW than was initially disclosed.
12. During the Relevant Period, Respondent charged 5,782 consumers a total of \$565,813 in interest on late LDW fee payments, including \$168,162 in interest to 2,178 consumers who have fully paid off their loan contracts; \$117,582 in interest to 1,116 consumers whose loans are still active; and \$280,069 in interest to 2,488 consumers whose loans were charged-off.
13. Charging consumers interest for late LDW fee payments without their consent or knowledge caused them substantial injury that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.
14. These acts and practices violated the CFPB, 12 U.S.C. §§ 5531(c), 5536(a).

V

Prohibition on Unfair Practices

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

15. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the origination and servicing of auto loans, are permanently restrained and enjoined from charging interest on LDW fees without Clearly and Conspicuously disclosing the material terms and conditions to consumers.

VI

Order to Pay Redress

IT IS FURTHER ORDERED that:

16. Within 10 days of the Effective Date, Respondent must reserve or deposit \$168,162 into a segregated deposit account for the purpose of providing redress to Affected Consumers as required by this Section.
17. Within 30 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Enforcement Director will have the discretion to make a determination

of non-objection to the Redress Plan or to direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Redress Plan, Respondent must revise and resubmit the Redress Plan to the Enforcement Director within 15 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

18. The Redress Plan must describe the process for providing redress and must include the following requirements.
 - a. With respect to the 2,178 Affected Consumers who fully paid off their loan contracts and paid illegal interest on LDW fees totaling \$168,162, Respondent must mail a certified or bank check.
 - b. With respect to the 1,116 Affected Consumers whose loans are still active and who have paid illegal interest on LDW fees totaling \$117,582, Respondent must issue account credit and mail a certified or bank check of the difference if the account credit exceeds the Affected Consumer's balance.
 - c. With respect to the 2,488 Affected Consumers whose loans were charged-off but who were charged \$280,069 in illegal interest on

LDW fees, Respondent must request that consumer-reporting agencies (CRAs) to which Respondent furnished inaccurate information about the Affected Consumers correct or update the inaccurate information in accordance with 15 U.S.C. § 1681s-2(a)(2). Where Respondent cannot furnish a correction or update, Respondent will request that the CRAs to which it furnished the information delete the tradeline.

19. If, after completing redress administration under the Redress Plan, the amount of redress provided to Affected Consumers is less than \$168,162, Respondent must, within 30 days of the completion of the Redress Plan, pay the difference between the amount of redress provided to Affected Consumers and \$168,162 to the Bureau or the Bureau's agent by wire transfer according to the Bureau's wiring instructions.
20. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

21. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

VII

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

22. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order and by taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay the Bureau a \$50,000 civil money penalty.
23. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
24. The civil money penalty paid under this Consent Order will be deposited in the Bureau's Civil Penalty Fund, as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
25. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
 - b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, for any civil money penalty paid under this Consent Order.
26. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will

not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

VIII

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

27. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
28. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
29. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
30. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement

Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

IX

Reporting Requirements

IT IS FURTHER ORDERED that:

31. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
32. Within 7 days of the Effective Date, Respondent must:

- a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent;
 - b. identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
 - c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
33. Respondent must report any change in the information required to be submitted under Paragraph 32 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
34. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), sworn to under penalty of perjury, which, at a minimum:
- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has

- complied with each such paragraph and subparagraph of the Consent Order;
- b. describes in detail the manner and form in which Respondent has complied with the Redress Plan; and
 - c. attaches a copy of each Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.

X

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

35. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
36. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
37. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section IX, any future executive officers, as well as to any

managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

38. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
39. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 36 and 37 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 38.

XI

Recordkeeping

IT IS FURTHER ORDERED that:

40. Respondent must create and retain the following business records:
 - a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions

- to the Bureau.
- b. all documents and records pertaining to the Redress Plan, described in Section VI, above.
 - c. for each individual Affected Consumer: the consumer's name, address, phone number; amount paid, the dates on which the consumer was charged LDW fees, a copy of the consumer's contract, and, if applicable, the date and reason consumer left the program.
 - d. for the LDW product, accounting records showing the gross and net revenues generated by the LDW product.
 - e. all consumer complaints and refund requests related to LDW (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
 - f. records showing, for each employee providing services related to the LDW product, that person's name, telephone number, email, physical, and postal address, job title or position, dates of service, and, if applicable, the reason for termination.
 - g. records showing, for each service provider providing services related to the LDW product, the name of a point of contact, and that person's telephone number, email, physical, and postal address, job title or

position, dates of service, and, if applicable, the reason for termination.

41. Respondent must make the documents identified in Paragraph 40 available to the Bureau upon the Bureau's request.

XII

Notices

IT IS FURTHER ORDERED that:

42. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re 3rd Generation, Inc. dba California Auto Finance, File No. 2021-CFPB-0003* ,'" and send them by overnight courier or first-class mail to the below addresses and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XIII

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

43. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

XIV

Compliance Monitoring

IT IS FURTHER ORDERED that:

44. Within 14 days of Respondent's receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
45. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.

46. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section IV; or (c) compliance with the Consent Order. The person interviewed may have counsel present.
47. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XV

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

48. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.
49. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines that good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XVI

Administrative Provisions

IT IS FURTHER ORDERED that:

50. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 51. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.
51. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order to the extent such practices occurred before the Effective Date and the Bureau knew about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect

any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

52. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
53. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
54. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

55. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
56. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under §1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
57. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

58. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 19th day of May, 2021.

David K. Uejio

David Uejio
Acting Director
Consumer Financial Protection Bureau