IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALMA MORENO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
TITLEMAX OF VIRGINIA, INC., TITLEMAX OF SOUTH CAROLINA, INC., TMX FINANCE, LLC, TMX FINANCE OF VIRGINIA, LLC, TMX FINANCE OF TENNESSEE, LLC, TITLEMAX OF TENNESSEE, LLC, and TITLEMAX OF GEORGIA, LLC,	)	1:23-CV-589
	)	
Defendants.	)	
_____	)	
	)	
ABARA JOHNSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
TITLEMAX OF VIRGINIA, INC., TITLEMAX OF SOUTH CAROLINA, INC., TMX FINANCE, LLC, TMX FINANCE OF VIRGINIA, LLC, TMX FINANCE OF TENNESSEE, LLC, TITLEMAX OF TENNESSEE, LLC, and TITLEMAX OF GEORGIA, LLC,	)	1:23-CV-807
	)	
Defendants.	)	
_____	)	
	)	
ALANA MCCLENDON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
TITLEMAX OF VIRGINIA, INC., TITLEMAX OF SOUTH CAROLINA, INC., TMX FINANCE, LLC, TMX FINANCE OF VIRGINIA, LLC, TMX	)	1:23-CV-865

FINANCE OF TENNESSEE, LLC,)
TITLEMAX OF TENNESSEE, LLC,)
and TITLEMAX OF GEORGIA, LLC,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

THOMAS D. SCHROEDER, District Judge.

These three related cases concern allegations that several out-of-state car title lenders have charged North Carolina customers excessive interest rates on loans. Before the court are the motions to dismiss for lack of personal jurisdiction and alternative motions to transfer venue by Defendants TitleMax of Virginia, Inc., TitleMax of South Carolina, Inc., TMX Finance, LLC, TMX Finance of Virginia, LLC, TMX Finance of Tennessee, LLC, TitleMax of Tennessee, LLC, and TitleMax of Georgia, LLC (collectively "Defendants") in each case. (Doc. 23 in case number 1:23-cv-589; Doc. 17 in case number 1:23-cv-807; Doc. 18 in case number 1:23-cv-865.)[1] Plaintiffs have responded in opposition (Doc. 55), and Defendants have replied (Doc. 56). For the reasons set forth below, the motions to dismiss and alternative motions to transfer venue will be denied.

[1] The complaints and motion to dismiss briefing are identical across the three cases except for minor difference bearing no relevance to these motions. For this reason, the court will refer to the docket entries in case number 1:23-cv-589 unless otherwise indicated. The court's reasoning applies to the motions in each case, and the court discusses them in this aggregated matter only for convenience; the cases are not consolidated.

I. BACKGROUND

A. The Complaints

Plaintiffs are North Carolina residents who entered into one or more car title loan transaction(s) with one or more Defendants. (Doc. 10 ¶ 1.) Defendants are corporate car title loan lenders existing under the laws of states other than North Carolina. (Id. ¶¶ 2-3.)

Plaintiffs allege that Defendants have charged each Plaintiff an interest rate that "far exceeds the maximum annual rate of interest allowed by North Carolina Consumer Finance Act, N.C.G.S. § 53-176, on a consumer loan in the amount loaned by Defendants." (Id. ¶ 21.)

As to personal jurisdiction, Plaintiffs allege in their complaints that the court has jurisdiction because:

> Defendants, via the internet, cellular telephone and/or other media and communication methods solicited, marketed, advertised, offered, accepted, discussed, negotiated, facilitated, recorded liens, collected on, threatened enforcement of, and/or foreclosed upon automobile title loans with Plaintiffs and other North Carolina citizens, [and] for a considerable amount of time prior to the events and transactions with Plaintiffs as alleged herein, Defendants had regular, ongoing, continuous and systematic contacts with the state of North Carolina and Guilford County and its citizens and has conducted business in this state in that Defendants via the Internet, cellular telephone and/or other media and communication methods solicited, marketed, advertised, offered, accepted, discussed, negotiated, facilitated, collected on, threatened enforcement of and foreclosed upon automobile title loans with North Carolina citizens.

(Id. ¶ 4.)

Plaintiffs further allege the following:

- "TitleMax has regularly solicited customers in part in North Carolina and conducted other activities in part in North Carolina[.]" (Id. ¶ 8.)
- "TitleMax entered into North Carolina to take possession of motor vehicles." (Id. ¶ 10.)
- "TitleMax has registered to assert motor vehicle title liens with the North Carolina DMV and ha[s] thousands of active liens on North Carolina owned and titled motor vehicles," and has done so for "each Plaintiff's vehicle." (Id. ¶¶ 11, 18.)
- TitleMax has admitted under oath that it conducts radio advertisements in North Carolina. (Id. ¶ 12.)
- "TitleMax, in many cases, has business locations located just over the North Carolina state line for the purpose of entering into loan transactions with North Carolina residents in an effort to avoid the application of North Carolina law." (Id. ¶ 13.)
- "Defendants knew or should have known that each Plaintiff was a North Carolina resident and held a North Carolina title on his or her vehicle." (Id. ¶ 15.)
- "TitleMax intentionally and regularly accepts payments from North Carolina consumers while those consumers are physically

in the state of North Carolina by mail, telephone debit card payments, online payments by Western Union and by payment through the TitleMax smart phone application." (Id. ¶ 16.)

- "TitleMax regularly and intentionally take[s] actions and measures to enforce those loans in North Carolina, including conversion and sales of collateral automobiles owned by North Carolina consumers." (Id. ¶ 17.)

Plaintiffs plead the following[2] claims for relief: (1) North Carolina Consumer Finance Act, N.C. Gen. Stat. § 53-165, et seq.; (2) North Carolina Consumer Finance Act, N.C. Gen. Stat. § 24-1.1; (3) North Carolina Unfair and Deceptive Acts, N.C. Gen. Stat. § 75-1.1; (4) Punitive Damages; (5) Piercing the Corporate Veil; and (6) Motion to Compel Arbitration. (Id. ¶¶ 20-56.) Plaintiffs seek statutory damages, treble damages, punitive damages, attorney's fees, and orders staying the matters and referring them to individual arbitrations for each Plaintiff. (Id. at 8.)

B. Procedural Background

In the Moreno case, 1:23-cv-589, Defendants timely answered the complaint and asserted the defense of lack of personal jurisdiction. (Doc. 16 at 7.) Plaintiffs then moved on August 16, 2023, to compel arbitration. (Doc. 18.) Two weeks thereafter,

[2] The complaints omit a "Fourth Claim for Relief" and instead jumps from the Third to the Fifth.

Defendants moved to dismiss for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2), for only some Plaintiffs in the action. (Doc. 23; Doc. 24 at 2 n.4 (stating that the motion to dismiss applies only to Plaintiffs whose cars were not repossessed in North Carolina).)[3] On October 24, 2023, Defendants then moved to stay consideration of the motion to compel arbitration (Doc. 41), citing the pending motion to compel jurisdictional discovery by Plaintiffs (Doc. 36). On February 23, 2024, the court granted Plaintiffs' motion to compel arbitration as to the Plaintiffs not subject to Defendants' motion to dismiss and granted Defendants' motion to stay consideration of the remainder of Plaintiffs' motion to compel arbitration pending resolution of the motion to dismiss. (Doc. 54.) Following the completion of jurisdictional discovery, the motion to dismiss has been fully briefed and is ready for resolution.

In the Johnson and McClendon actions, Defendants answered the complaints and asserted lack of personal jurisdiction as a defense; they subsequently moved to dismiss the complaints only as to some Plaintiffs in the action. (Doc. 18 at 2 n.4 in case number 1:23-cv-807; Doc. 19 at 2 n.4 in case number 1:23-cv-865.)[4] Plaintiffs

[3] Defendants have since withdrawn the motion to dismiss against Harold Kelly and Natasha Dawson after jurisdictional discovery revealed that they had their vehicles repossessed. (Doc. 56 at 10 n.5.)

[4] Plaintiffs do not argue that the motions to dismiss should be denied on the ground that Rule 12(b) states that a "motion asserting [a Rule

in the Johnson and McClendon actions have not moved to compel arbitration. The parties in the Johnson and McClendon actions conducted jurisdictional discovery simultaneously with the parties to the Moreno action pursuant to court order, and the motions to dismiss are likewise ready for resolution.

II. ANALYSIS

A. Personal Jurisdiction

1. Standard of Review

"When a federal court sits in diversity, it 'has personal jurisdiction over a non-resident defendant if (1) an applicable state long-arm statute confers jurisdiction and (2) the assertion of that jurisdiction is consistent with constitutional due process.'" Perdue Foods LLC v. BRF S.A., 814 F.3d 185, 188 (4th Cir. 2016) (quoting Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1199 (4th Cir.1993)). North Carolina's long-arm statute "is construed to extend jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause." Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v.

12(b)(2)] defense[] must be made before pleading if a responsive pleading is allowed." Fed. R. Civ. P. 12(b). While the rule uses the word "must," courts have permitted post-answer Rule 12(b)(2) motions where the answer preserves lack of personal jurisdiction as a defense. See Wright & Miller, Federal Practice & Procedure, § 1361 (3d ed. 2024) (collecting cases). Plaintiffs have also not argued that the answer inadequately preserved the defense such that Defendants would not be entitled to the flexibility other courts have afforded similarly-situated defendants. In any event, because the court denies the motions here on the merits, this timing issue need not be addressed further.

Nolan, 259 F.3d 209, 215 (4th Cir. 2001) (citing Century Data Sys., Inc. v. McDonald, 428 S.E.2d 190, 191 (N.C. Ct. App. 1993)). "Thus, the dual jurisdictional requirements collapse into a single inquiry as to whether the defendant has such 'minimal contacts' with the forum state that 'maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Id. (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).[5]

There are two kinds of personal jurisdiction: general and specific. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011). Plaintiffs here contend that specific, rather than general, jurisdiction applies. (Doc. 55 at 11-19); Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919 (stating that general jurisdiction exists where defendant is "essentially at home" in the state).

Specific jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 592 U.S. 351, 359 (2021). The three requirements for specific personal jurisdiction are "(1) the extent to which the defendant purposefully availed

[5] North Carolina's long-arm statute enumerates several specific "grounds" that confer jurisdiction, the existence of any one of which suffices. N.C. Gen. Stat. § 1-75.4. Plaintiffs argue that some of these specific grounds in the long-arm statute apply to Defendants. (Doc. 55 at 7-8 (citing N.C. Gen. Stat. §§ 1-75.4(1)(d), (4)(a), (6)(b), and (6)(c)).) Defendants disagree. (Doc. 24 at 6.) Because the court holds that it has personal jurisdiction over Defendants consistent with the Due Process Clause, it need not address the parties' positions regarding these more specific grounds in the long-arm statute.

itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." UMG Recordings, Inc. v. Kurbanov, 963 F.3d 344, 352 (4th Cir. 2020) (internal quotation marks omitted).

First, for the purposeful availment inquiry, courts will assess whether the defendant has certain "minimum contacts" with the forum. Ford Motor Co., 592 U.S. at 359 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)). The contacts must show "the defendant deliberately 'reached out beyond' its home — by, for example, 'exploi[ting] a market' in the forum State or entering a contractual relationship centered there." Id. (quoting Walden v. Fiore, 571 U.S. 277, 285 (2014)); see also id. at 360 (discussing requirement that defendant fairly have "clear notice" that it could be haled into court for its conduct and collecting cases).

As the Supreme Court explained in International Shoe:

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

Int'l Shoe Co., 326 U.S. at 319. "[W]ith respect to interstate contractual obligations, [the Supreme Court] ha[s] emphasized that parties who 'reach out beyond one state and create continuing relationships and obligations with citizens of another state' are subject to regulation and sanctions in the other State for the consequences of their activities." Burger King Corp., 471 U.S. at 473 (quoting Travelers Health Assn. v. Virginia, 339 U.S. 643, 647 (1950)). "[A]lthough physical presence in the forum is not a prerequisite to jurisdiction, [] physical entry into the State — either by the defendant in person or through an agent, goods, mail, or some other means — is certainly a relevant contact." Walden, 571 U.S. at 285 (internal citations omitted). By contrast, "random, isolated, or fortuitous" contacts, Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984), or the "unilateral activity of another party or a third person," Hanson v. Denckla, 357 U.S. 235, 253 (1958), do not give rise to personal jurisdiction.

Second, a plaintiff's claim must "must arise out of or relate to the defendant's contacts with the forum." Ford Motor Co., 592 U.S. at 359 (internal quotation marks omitted). While this means there must be a "affiliation" or "relationship" between the contacts and the controversy, the Supreme Court has clarified that the plaintiff need not show that its claim "came about because of the defendant's in-state conduct." Id. at 361-63 (emphasis added)

(rejecting "causation-only approach").

Third, the court must inquire into whether the exercise of personal jurisdiction would be "constitutionally reasonable." Consulting Eng'rs Corp. v. Geometric Ltd., 561 F.3d 273, 279 (4th Cir. 2009). Relevant to this inquiry are "(1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies." Id. (citing Burger King Corp., 471 U.S. at 477).

2. Burden of Proof

As a preliminary matter, Defendants contend that the court should require that Plaintiffs establish personal jurisdiction by the preponderance of the evidence. (Doc. 24 at 5; Doc. 56 at 1-2.) Plaintiffs, by contrast, argue that they need only make a *prima facie* showing. (Doc. 55 at 7.)[6]

"Under Rule 12(b)(2), a defendant must affirmatively raise a personal jurisdiction challenge, but the plaintiff bears the

[6] The parties have treated the Defendants collectively in the motion to dismiss briefing, and as a result, Defendants have not made any particularized challenge to personal jurisdiction as to any specific Defendant. The court therefore only addresses the motions to dismiss as raised by Defendants. Cf. Robertson v. Anderson Mill Elementary Sch., 989 F.3d 282, 290-91 (4th Cir. 2021) (discussing the need for a plaintiff to have notice of the basis for a *sua sponte* Rule 12(b)(6) dismissal and an opportunity to respond to the issues raised).

burden of demonstrating personal jurisdiction at every stage following such a challenge." Grayson v. Anderson, 816 F.3d 262, 267 (4th Cir. 2016). A plaintiff's burden varies "according to the posture of a case and the evidence that has been presented to the court." Id. at 268. Where a court relies on "only the parties' motion papers, affidavits attached to the motion, supporting legal memoranda, and the allegations in the complaint, a plaintiff need only make a *prima facie* showing of personal jurisdiction to survive the jurisdictional challenge." Id. In this posture, the court "must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff." Id.

In cases where the facts underlying personal jurisdiction are in dispute, the district court has "broad discretion to determine the procedure that it will follow in resolving the Rule 12(b)(2) motion." Id. One such mechanism, where "the court deems it necessary and appropriate, or if the parties so request," may be to conduct an evidentiary hearing. Id. at 269. Where an evidentiary hearing would "ultimately serve no meaningful purpose," the court need not hold one. Id. A court may only impose the preponderance of the evidence standard if it has conducted an evidentiary hearing. Id. at 268. The Fourth Circuit has clarified that an "evidentiary hearing" need not include live testimony and requires only that the parties have a "fair

opportunity to present both the relevant jurisdictional evidence and their legal arguments." Id.

Here, the parties have conducted limited jurisdictional discovery and presented the results in their briefs. As set out below, there are no material factual disputes as to Defendants' contacts with the forum, and certainly none that the court cannot resolve on the briefs. Rather, the parties principally contest whether the contacts amount to "purposeful availment" of the forum. An evidentiary hearing would therefore serve no meaningful purpose, and even so, Plaintiffs have cleared the higher bar of establishing personal jurisdiction by the preponderance of the evidence. Accordingly, the court need not decide whether the procedures employed here amount to a "fair opportunity" that may trigger the preponderance of the evidence standard.

B. Personal Jurisdiction Over Defendants

1. Purposeful Availment

Plaintiffs argue that they have presented sufficient contacts by Defendants with the forum state of North Carolina. (Doc. 55 at 11-15.) In support, Plaintiffs have attached a sworn declaration by each Plaintiff that describes his or her interaction with Defendants. Plaintiffs have summarized in charts the findings of these declarations. (Doc. 55-49; Doc. 30-17 in 1:23-cv-807; Doc. 30-42 in 1:23-cv-865.) The charts collect whether each Plaintiff

(1) is a North Carolina resident and presented TitleMax with a North Carolina driver's license;

(2) heard or saw a TitleMax radio or television advertisement in North Carolina;

(3) received a TitleMax marketing mailer in North Carolina;

(4) was referred to TitleMax by someone in North Carolina;

(5) discussed or was solicited a loan by TitleMax while in North Carolina;

(6) signed an arbitration agreement with TitleMax that requires a location convenient to the Plaintiff;

(7) had a lien recorded by TitleMax with the North Carolina Department of Motor Vehicles ("NC DMV");

(8) made payments in or from North Carolina to TitleMax;

(9) had TitleMax arrange a repossession of his or her vehicle in North Carolina; and

(10) had TitleMax actually repossess his or her vehicle in North Carolina.

(Id.) Defendants do not contest the accuracy of the charts' contents as representations of each Plaintiff's declaration. Rather, Defendants contend that the declarations do not include "basic details" or supporting documentation for the statements therein, such that it is "impossible for [them] to analyze Plaintiffs' statements and determine whether they are true." (Doc.

56 at 5-6.) As a result, in Defendants' view, the declarations are "useless and inappropriate." (Id.)

Defendants' conclusory characterization of Plaintiffs' declarations is unpersuasive. While the declarations follow a form pattern, the details in each are well beyond "basic" and, indeed, each declaration does include supporting documentation attached for many of the contentions therein. (See, e.g., Doc. 55-28 (attaching with the declaration a loan agreement, lien recording application, car title, and invoice of payments).) For example, the declaration of Plaintiff Derrick Trenier describes that he is a North Carolina resident, was told by a South Carolina-based TitleMax employee to bring his North Carolina car title, driver's license, and car to South Carolina to obtain a loan, that TitleMax recorded a lien on his title in Raleigh, North Carolina, and that TitleMax told him to download an app on his phone to make payments from North Carolina. (Doc. 55-18.)

The sworn statements within the declarations are themselves affirmative evidence that Defendants have chosen not to rebut with any countervailing evidence that would put the testimony in dispute. If Defendants wished to properly call the declarations into question, Defendants needed to proffer evidence or, alternatively, move for rebuttal discovery to assist in so doing. Altria Client Servs. LLC v. R.J. Reynolds Vapor Co., No. 1:20CV472, 2023 WL 1069744, at *2 (M.D.N.C. Jan. 27, 2023) ("Attorneys'

arguments in briefs are not evidence[.]"). In November 2023, the magistrate judge initially declined Defendants' request for rebuttal discovery because it was premature. (Doc. 45 at 3 n.2.) However, Defendants were expressly permitted to move for rebuttal discovery in the future, if they could make a showing that it was needed. (Id.) Over the following six months, Defendants failed to do so. Defendants' conclusory critiques of the declarations are therefore unpersuasive and do not rebut the declarations' contents.[7]

As to the relevant contacts with the forum, Plaintiffs have shown, and Defendants do not contest, that Defendants have entered North Carolina to record a lien on every Plaintiff's vehicle with NC DMV. (Doc. 55-49; Doc. 30-17 in 1:23-cv-807; Doc. 30-42 in 1:23-cv-865.) Defendants characterize this contact as "[a] *de minimis* interaction[] with the forum state" because it "requires

[7] Defendants lodge a number of other criticisms of Plaintiffs' evidence and briefs. First, Defendants criticize other sources of evidence, including awards and orders from unrelated arbitration proceedings, a partial transcript from an unrelated arbitration proceeding, and an affidavit and declaration from two TitleMax employees from 2020. (Doc. 56 at 2-10.) Because the court finds that it has jurisdiction without reference to these sources of evidence, it need not decide whether it would be appropriate to consider them. Second, Defendants repeatedly argue that Plaintiffs have violated Local Rule 7.2(a)(2), which requires citation to the record for factual assertions. This contention is unavailing, as Plaintiffs routinely cited to the record throughout their brief for relevant factual contentions. Third, while Plaintiffs did lump together the total number of Plaintiffs across several lawsuits when discussing contacts with the forum, (e.g., Doc. 55 at 4), Defendants' position that this tactic undermines Plaintiffs' claims is unavailing, as the court's inquiry is not cabined to Defendants' contacts with the Plaintiffs in each respective action. Ford Motor Co., 592 U.S. at 359.

nothing more than filing a form with the North Carolina Department of Transportation." (Doc. 24 at 11.) Defendants also cite to Porter for the proposition that merely recording a lien is insufficient to confer personal jurisdiction. Porter v. Rohrman, No. 21-cv-1221, 2022 WL 180754, at *1 (D. Md. Jan. 20, 2022).

Defendants' characterization of recording a lien as merely "filing a form" ignores that systematically recording liens in North Carolina, and thus attempting to perfect their security interest in Plaintiffs' vehicles, is paradigmatic of "enjoy[ing] the benefits and protection of the laws of [North Carolina]." Int'l Shoe, 326 U.S. at 319; N.C. Gen. Stat. § 20-58 (providing for process to perfect security interest on motor vehicle); (Doc. 55-49 (demonstrating lien placed on every Plaintiff's vehicle); Doc. 55-53 (showing that TitleMax entities have recorded over 50,000 liens with the NC DMV as of 2020); Wall v. Automoney, Inc., 877 S.E.2d 37, 46-47 (N.C. Ct. App. 2022) (crediting recording liens on vehicles with NC DMV as a relevant contact), rev. denied, 884 S.E.2d 739 (N.C. 2023).[8] Furthermore, Porter fails to support Defendants. There, a *pro se* plaintiff failed to make a *prima facie* showing of personal jurisdiction because she failed to

[8] Defendants contend that docket entry 55-53 is irrelevant because it does not "reference any specific Plaintiffs in this action." (Doc. 56 at 8.) This position misapprehends the court's the purposeful availment inquiry, which focuses on the Defendants' contacts with the forum, not just those directly with a Plaintiff. Ford Motor Co., 592 U.S. at 359.

set forth any jurisdictional facts; rather, she merely asserted that the defendants had crossed state lines. Id.

In addition, Plaintiffs point to many more contacts, the truth of which Defendants do not contest: arranging the repossession of and actually repossessing vehicles in North Carolina; systematically making loans to North Carolina residents; running television and radio advertisements that are broadcast in North Carolina; and sending marketing mailers into North Carolina. (Doc. 55-49; Doc. 30-17 in 1:23-cv-807; Doc. 30-42 in 1:23-cv-865); see Burger King Corp., 471 U.S. at 473 (stating that parties who "'reach out beyond one state and create continuing relationships and obligations with citizens of another state' are subject to regulation and sanctions in the other State for the consequences of their activities" (citation omitted)); Walden, 571 U.S. at 285 (describing "physical entry into the State — either by the defendant in person or through an agent, goods, mail, or some other means" as "certainly a relevant contact"); Ford Motor Co., 592 U.S. at 357, 365 (pointing to marketing and advertising in the forum state as a relevant contact, among others); Wall, 877 S.E.2d at 46-47 (finding personal jurisdiction where defendant made thousands of loans to North Carolinians and perfected security interests in debtor's vehicles with NC DMV, among other contacts); McQueen v. Huddleston, 17 F. Supp. 3d 248, 252 (W.D.N.Y. 2014) (finding purposeful availment where defendant sent collection

letters into the state and made two phone calls into the state and left voicemails related to debt collection).

As to repossession, specifically, Defendants have only moved to dismiss the claims by Plaintiffs who were not subject to repossession, though they do not concede that repossession alone confers personal jurisdiction. (Doc. 24 at 2 n.4.) As a result, in Defendants' view, the vehicle repossessions ought not be relevant to the court's inquiry on these motions to dismiss. (Id. at 12.) This position contravenes long-standing Supreme Court jurisprudence on purposeful availment, which requires the court to inquire into the defendant's contacts "with the forum State," not just the plaintiff. Walden, 571 U.S. at 284 (citing Burger King Corp., 471 U.S. at 475)).

To be sure, Defendants point to actions they have not taken in North Carolina, or individual contacts that would not alone confer personal jurisdiction. (Doc. 24 at 11-16 (Defendants stating that contract offer and acceptance occurred outside of forum, that payment by Plaintiffs in North Carolina is a "unilateral act," that the loan agreements do not require any performance in North Carolina, and that the TitleMax website does not include reference to North Carolina).)[9] Defendants attached a

[9] Plaintiffs contend that certain of these contacts are relevant, such as TitleMax receiving payments from North Carolina and TitleMax discussing and soliciting loan contracts while Plaintiffs were in North Carolina. (Doc. 55 at 11-12.) The court expresses no view on whether

declaration by Christopher Dunn, an employee of TMX Finance Corporate Service, Inc., who similarly only attests to things that TitleMax does not do in North Carolina, rather than rebutting any of Plaintiffs' affirmative evidence of relevant contacts with the forum. (Doc. 24-1 (noting litany of things TitleMax does not do in North Carolina; not rebutting recording liens, repossessing vehicles, or systematically lending to North Carolina residents; stating only that TitleMax has a policy against marketing in North Carolina, but not describing policy's enforcement or effectiveness or rebutting that TitleMax has marketed in North Carolina).) In the absence of Defendants' contacts with North Carolina, these facts would bear more weight. But they do not vitiate the contacts Defendants do have.

Plaintiffs have thus pointed to a preponderance of evidence of sufficient minimum contacts between Defendants and the forum to establish purposeful availment.

2. Relation to Claims

Plaintiffs contend that the requirement that Defendants' contacts "arise out of or are relate to" their claims is met. (Doc. 55 at 16-17.) Specifically, they note that their claims relate to the loans that were the product of Defendants' contacts with the forum. (Id.) Defendants merely incorporate by reference

these are relevant to the personal jurisdiction inquiry, as Plaintiffs have otherwise established sufficient minimum contacts.

their purposeful availment arguments for this prong of the personal jurisdiction analysis. (Doc. 24 at 16 n.8.)

To the extent Defendants contend that certain contacts, such as repossessions or advertising, are irrelevant to Plaintiffs' claims because not all Plaintiffs subject to the motions to dismiss allege that these contacts were directed at them specifically, the Supreme Court has rejected such an argument. In Ford Motor Company, the Court held that a plaintiff need not show that a defendant's contacts with the forum caused the claim; rather, a plaintiff need only show that the claim "relates" to the defendant's contacts with the forum. Ford Motor Co., 592 U.S. at 371. Accordingly, even though the plaintiffs in Ford Motor Company had purchased allegedly defective used vehicles from third parties, and even though Ford had designed, manufactured, and initially sold the vehicles in question in different states, Ford was subject to the laws of the fora in which the suits were brought. Id. at 355-57. This followed because Ford's "veritable truckload of contacts" with the fora — including selling the same type of cars involved in the crashes, advertising, having dealerships, and offering repair services in the fora — created the conditions for the plaintiff to purchase the vehicles in question. Id. at 366-67, 371. To the Court, it did not matter that the plaintiffs did not establish, much less allege, that these contacts strictly caused the claims. Id. at 371. Rather, all that was required was

that the contacts had a "non-causal affiliation" to the claims. Id. at 352 (internal quotation marks omitted); id. at 374 (Alito, J., concurring) (agreeing that a "common-sense relationship" existed because the "whole point" of Ford's contacts was to put Ford vehicles on the road).

Under this formulation, the "arising out of or relates to" prong is clearly satisfied here. There is no question that Defendants' contacts with the forum — e.g., recording tens of thousands of liens (including on every Plaintiff's vehicle in these cases) in North Carolina, arranging and actually repossessing vehicles in North Carolina, and advertising title loans in North Carolina — relate to Plaintiffs' claims of being charged excessive interest on title loans by Defendants. That, for example, the Plaintiffs subject to the motion did not have their vehicles repossessed does not mean that Defendants' repossessions of other North Carolinians' vehicles is not related to their claims. To the contrary, Defendants' serial repossessions of others' vehicles is related to each Plaintiff's claims to the extent that they were carried out to enforce the exact type of contract that each Plaintiff signed and alleges violates North Carolina law. Accordingly, the claims are sufficiently related to Defendants' contacts.

3. Constitutional Reasonableness

The court also finds constitutional reasonableness here. As

Plaintiffs argue, and Defendants do not contest, Defendants do not face a substantial burden of litigating in North Carolina, as perhaps demonstrated best by their not contesting personal jurisdiction for many Plaintiffs subject to these actions. Further, North Carolina has an interest in "protect[ing] North Carolina residents from predatory lending by nonresident [] loan corporations." Troublefield v. AutoMoney, Inc., 876 S.E.2d 790, 801 (N.C. Ct. App. 2022). Finally, Defendants have not argued, and the court does not observe, that there is any measurable conflict with "interstate federalism" principles by maintaining the suit in North Carolina. Ford Motor Co., 592 U.S. at 368.

In sum, Plaintiffs have established that the court has personal jurisdiction over Defendants.

C. Alternative Motion to Transfer Venue

In the alternative to dismissal, Defendants argue that the court should transfer "the action to the appropriate district court encompassing the TitleMax location where the Plaintiff's title loan was executed and the loan funds were conveyed." (Doc. 24 at 17.) When assessing a venue transfer request under 28 U.S.C. § 1404(a), courts have considered: "(1) the weight accorded to plaintiff's choice of venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice." Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc., 791 F.3d 436, 444 (4th Cir. 2015); Speed Trac Techs.,

Inc. v. Estes Express Lines, Inc., 567 F. Supp. 2d 799, 802 (M.D.N.C. 2008) (providing similar factors for consideration). The moving party has the burden of showing that a transfer is warranted. Plumbing Servs., Inc., 791 F.3d at 444. As a general rule, the plaintiff's choice of forum "should rarely be disturbed." Mamani v. Bustamante, 547 F. Supp. 2d 465, 469 (D. Md. 2008) (quoting Collins v. Straight Inc., 748 F.2d 916, 921 (4th Cir. 1984)).

Defendants contend that transfer is warranted because "the content of the loan agreements between each Plaintiff and a TitleMax entity" occurred "entirely outside of this forum"; "a majority of Plaintiffs did not even list addresses within the Middle District of North Carolina in their loan agreements"; "no Defendant is located within North Carolina, so there is no evidence . . . within the forum"; and "the state where each loan agreement was made has an interest in enforcing its laws." (Doc. 24 at 18-19.) In support, Defendants filed a chart that lists the district to which they would like the court to transfer each Plaintiff's claim. (Doc. 24-2 at 8-18.)

In response, Plaintiffs argue that their choice of forum is entitled to significant weight and that this district is convenient. (Doc. 55 at 20-21.) Plaintiffs also contend that this court is best positioned to apply the North Carolina laws under which their claims are brought. (Id. at 22.) Finally,

Plaintiffs maintain that splicing this action, which has many Plaintiffs, across several district courts would be unduly burdensome. (Id. at 19.)

Defendants have not met their burden. First, Defendants fail to support their position that Plaintiffs' choice of forum should be afforded "no weight" simply because many live outside the forum. This position ignores that factors such as Plaintiffs' sharing the same counsel, might make choosing this forum a sensible and convenient option. (Doc. 55 at 20.)[10] Further, as Plaintiffs point out, Defendants' contention that there is "no evidence" in the forum lacks any evidentiary basis. (Doc. 24 at 18.) As to convenience to the parties and witnesses, Defendants do not explain how splintering these actions across at least three district courts in several states would be more convenient to the parties and witnesses. Indeed, under these circumstances, where many Plaintiffs have filed suit in this district, the interests of judicial efficiency would be significantly harmed by transferring the venue of Plaintiffs' claims in piecemeal fashion. Forsburg v. Wells Fargo & Co., 596 F. Supp. 3d 572, 587 (W.D. Va. 2022)

[10] While a motion to compel arbitration is not presently before the court, it would also be inefficient to transfer these cases to districts in other states and potentially have arbitration proceedings ordered (according to the terms of Defendants' own arbitration provisions) back to a location convenient to the Plaintiff — i.e., North Carolina. (Doc. 55 at 2-3.) Indeed, TitleMax entities have been ordered to do just that in recent related cases. See Goins v. TitleMax of Virginia, 672 F. Supp. 3d 78, 81-82 (M.D.N.C. 2023) (describing prior order to compel arbitration).

(considering judicial efficiency on motion to transfer venue). Furthermore, the court agrees with Plaintiffs that this court is well-suited to assess the claims brought under North Carolina law. Accordingly, Defendants' alternative motion to transfer venue will be denied.

III. CONCLUSION

For the reasons stated, therefore,

IT IS ORDERED that Defendants' motions to dismiss and alternative motions to transfer venue (Doc. 23 in case number 1:23-cv-589; Doc. 17 in case number 1:23-cv-807; Doc. 18 in case number 1:23-cv-865) are DENIED.

IT IS FURTHER ORDERED that Defendants in the Moreno action, case number 1:23-cv-589, shall have 30 days from the entry of this order to respond to the remainder of Plaintiffs' motion to compel arbitration (Doc. 18). If the motion is opposed, Plaintiffs shall have 30 days from the date of the response to file a reply.

/s/ Thomas D. Schroeder
United States District Judge

May 31, 2024