UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ALICIA EVERETTE, Plaintiff, vs. JOSHUA MITCHEM, et al, Defendants.	)	No. 1:15-cv-01261-CCB

MEMORANDUM IN SUPPORT OF DEFENDANTS MITCHEM'S AND SHAFFER'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR, IN THE ALTERNATIVE, COMPEL ARBITRATION, OR, IN THE ALTERNATIVE, DISMISS FOR FAILURE TO STATE A CLAIM

Defendants Joshua Mitchem ("Mitchem") and Jeremy D. Shaffer ("Shaffer"), by and through the undersigned counsel, for their Memorandum in Support of their Motion to Dismiss for Lack of Personal Jurisdiction, or, in the alternative, Compel Arbitration, or, in the alternative, Dismiss for Failure to State a Claim, state as follows:

I. INTRODUCTION

A. Summary of Argument.

Mitchem and Shaffer move to dismiss the allegations against them in Plaintiff's Complaint for lack of personal jurisdiction because they do not have contacts with Maryland that subject them to the jurisdiction of Maryland courts. Alternatively, the loan agreements ("Loan Agreements," attached hereto as Exhibits 3, 4, 5, and 6, and authenticated by Exhibit 7, Declaration of David Odell) that are the subject of Plaintiff's Complaint and which she entered into with non-party payday lenders require dismissal because they contain an agreement to arbitrate the very claims alleged in Plaintiff's Complaint. Alternatively, Mitchem and Shaffer also move to dismiss Count V of Plaintiff's Complaint because it fails to state a viable claim

under the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* ("EFTA"), in that it is facially conclusive from the Complaint that her EFTA claims are time barred.

B. Relevant Facts Alleged in the Complaint.

The crux of Plaintiff's claims against Mitchem and Shaffer is that she obtained illegal payday loans through websites and entities that are "owned and operated" by FSST Financial Services, LLC, an entity of which Mitchem and Shaffer are asserted to be the "effective owners" ("FSST"). Compl. ¶¶ 1, 13, 29, 30, 31, 44. Action Payday ("Action"), Bottom Dollar Payday ('Bottom Dollar"), and FSST are not a parties to this action and the Complaint does not assert that Mitchem and Shaffer personally entered into loan agreements with Plaintiff. Furthermore, the Complaint expressly concedes that Mitchem and Shaffer are not residents of Maryland, but are "natural persons who reside in Kansas." Compl. ¶ 12. She asserts that personal jurisdiction exists simply because she obtained the payday loans from Action, Bottom Dollar and/or FSST through her computer in Maryland. Compl. ¶¶ 10, 43. Plaintiff's allegations are insufficient to establish personal jurisdiction because the proper analysis turns on what Mitchem and Shaffer have done, and cannot arise because of actions by FSST or its borrowers. Plaintiff does not specifically allege that Mitchem or Shaffer did anything other than generally own and operate websites. As a result, the Court should dismiss the Complaint.

II. ARGUMENTS AND AUTHORITIES

A. Plaintiff's Allegations Fail to Establish Personal Jurisdiction Over Mitchem and Shaffer.

A party may assert by a pre-answer motion that a court lacks personal jurisdiction. Fed. R. Civ. P. 12(b)(2). The plaintiff bears the burden of making a prima facie showing that personal jurisdiction exists. *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 558 (4th Cir. 2014). The court may consider affidavits and other documentary evidence to resolve a motion to dismiss

based on personal jurisdiction. *Id.* In doing so, the court may disregard "conclusory assertions" of personal jurisdiction. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003). *See also Masselli & Lane, PC v. Miller & Schuh, PA*, No. 99-2440, 2000 WL 691100, at *1 (4th Cir. May 30, 2000) (cautioning that in determining personal jurisdiction that "the court need not 'credit conclusory allegations or draw farfetched inferences'" (quoting *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 203 (1st Cir.1994))).

Federal courts follow the law of the state in which they sit to determine personal jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014). *See also* Md. Code Ann., Cts. & Jud. Proc. §§ 6-102,-103 (enumerating the grounds for personal jurisdiction in Maryland). State statutory grounds for jurisdiction are properly exercised only if doing so "comports with the limits imposed by federal due process." *Daimler AG*, 134 S. Ct. at 753. *See also Carefirst*, 334 F.3d at 396 (stating that "[t]he Maryland courts have consistently held that the state's long-arm statute is coextensive with the limits of personal jurisdiction set by the due process clause of the Constitution").

To satisfy due process, a nonresident defendant must have "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). These contacts may be established through either general or specific jurisdiction, both of which have been recently restricted by the United States Supreme Court. *See generally Daimler AG*, 134 S. Ct. at 746 (clarifying that only in exceptional cases will general jurisdiction exist), *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (emphasizing that in specific jurisdiction analysis the focus is on the defendant's connection with the forum).

Mitchem and Shaffer are not subject to the general jurisdiction of this Court because they are indisputably domiciled in Kansas. Compl. ¶ 12; Exhibit 1, Declaration of Joshua Mitchem ¶¶ 2-13; Exhibit 2, Declaration of Jeremy D. Shaffer ¶¶ 2-13. *See also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (U.S. 2011) (stating that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile"); *Midtown Pers., Inc. v. Dave*, No. PWG-13-3493, 2014 WL 3672896, at *6 (D. Md. July 22, 2014) (noting that domicile for personal jurisdiction analysis is "physical presence and an intent to remain"). Thus, personal jurisdiction here only conceivably exists if this Court were to have specific jurisdiction over Mitchem and Shaffer. Because Plaintiff fails to demonstrate essential minimum contacts between Maryland and Mitchem and Shaffer, the Court lacks personal jurisdiction. Even if some contact existed between Mitchem and Shaffer and Maryland, fundamental fairness weighs against jurisdiction in Maryland. As a result, dismissal is proper.

1. Specific Jurisdiction Does Not Exist as to Mitchem and Shaffer.

Courts within the Fourth Circuit "employ a three-part test to determine whether the exercise of specific personal jurisdiction over a nonresident defendant comports with the requirements of due process." *Universal Leather, LLC*, 773 F.3d at 559. The analysis considers "'(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the forum state; (2) whether the plaintiff's claims [arose] out of those activities; and (3) whether the exercise of personal jurisdiction is constitutionally reasonable.'" *Id.* (quoting *Tire Eng'g & Distribution, LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 302 (4th Cir. 2012)). The Supreme Court recently explained that "the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121. Because the due process limitations are intended to protect nonresident defendants, jurisdictional

determinations are based on the defendant's contacts with the forum—not the plaintiff's. *Id.* at 1122. Furthermore, "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* The issue to resolve then is "whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 1125. Plaintiff fails to allege any action by Mitchem and Shaffer that occurred within Maryland or was otherwise purposefully directed by them individually towards Maryland.

Instead, Plaintiff's Complaint broadly asserts that Mitchem and Shaffer "advertised, marketed, distributed, collect or sold usurious payday loans to Plaintiff and the class she seeks to represent in Maryland." Compl. ¶ 12. This conclusory allegation need not be credited by the Court. *Carefirst*, 334 F.3d at 402; *Masselli & Lane, PC*, 2000 WL 691100, at *1. Even so, it is contradictory to the remaining allegations of the Complaint. The basis of the Complaint is that Plaintiff obtained illegal payday loans from Action, Bottom Dollar, and FSST—all entities absent from this litigation. Compl. ¶¶ 44-45. The Complaint seeks relief from loans to which neither Mitchem nor Shaffer are alleged to be a party. Furthermore, the Complaint does not allege that either Mitchem or Shaffer were even participants in any loan transaction at issue in the lawsuit. At best, Plaintiff suggests that she entered the loans after interacting with representatives through an automatic chat feature of the website. Compl. ¶ 44. She does not assert that these representatives, however, were either Mitchem or Shaffer. Compl. ¶ 44. In fact, neither Mitchem or Shaffer (a) know or have ever communicated with Plaintiff, (b) have ever lent money to a Maryland resident, and (c) are employees of Action, Bottom or FSST. Ex. 1, Declaration of Joshua Mitchem ¶¶ 14, 15 and 16; Ex. 2, Declaration of Jeremy Shaffer ¶¶ 14, 15 and 16.

Plaintiff hopes to impute personal jurisdiction to Mitchem and Shaffer. Assuming *arguendo*, however, that Plaintiff adequately alleged that even the above-referenced entities had sufficient minimum contacts with Maryland, the asserted roles of Shaffer and Mitchem as "the operators and effective owners of FSST Financial Services, LLC" fails to establish specific jurisdiction. Compl. ¶ 13. *See also Calder v. Jones*, 465 U.S. 783, 790 (1984) (stating that "[e]ach defendant's contacts with the forum State must be assessed individually"); *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1420 (10th Cir. 1988) (noting that "'[p]urposeful availment analysis turns upon whether the defendant's contacts are attributable to his own actions or solely to the actions of the plaintiff.... [and generally] requires ... affirmative conduct by the defendant which allows or promotes the transaction of business within the forum state'" (quoting *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986))); *Windsor v. Spinner Indus. Co.*, 825 F. Supp. 2d 640, 643 (D. Md. 2011) (stating that "the defendant must take some deliberate action to specifically target the markets of the forum State in particular before it will be deemed to have submitted to personal jurisdiction there"). As to either general or specific jurisdiction, the "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopertos Nacionales de Colombia , SA v. Hall*, 466 U.S. 408, 417 (1984); *accord Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). It follows that Plaintiff's effort to impute personal jurisdiction should be disregarded.

Dismissal is proper because the Complaint fails to allege any specific conduct by Shaffer and Mitchem individually that was directed towards Maryland and related to the Complaint. Further, as this Court recognized in *Harte-Hanks Direct Mktg./Baltimore, Inc.*, courts in the Fourth Circuit "may not exercise personal jurisdiction over a corporation's agent if the agent's

only connection to the forum state is as an officer or employee of a non-resident corporation that committed a tort in the state, and if the agent's own involvement in that tort occurred outside of the forum state." *Harte-Hanks Direct Mktg./Baltimore, Inc. v. Varilease Tech. Fin. Grp., Inc.*, 299 F. Supp. 2d 505, 514 (D. Md. 2004) *Also see Stokes v. JPMorgan Chase Bank, NA*, No. 8:11-CV-02620, 2012 WL 527600, at *4 (D. Md. Feb. 16, 2012) (ruling that "[t]he jurisdiction this court has over [defendant LLC], which sold a loan to [Plaintiff] in Maryland, does not pass to [individually named defendant] merely because he was a principal of [defendant LLC] in the absence of any individual contacts between [individually named defendant] and the State of Maryland"); *Birrane v. Master Collectors, Inc.*, 738 F. Supp. 167, 169 (D. Md. 1990) (noting that "there is no basis whatsoever for holding that merely because a corporation transacts business…or has other substantial contacts with the state, an individual who is its principal should be deemed to have engaged in those activities personally").

This Court does not have personal jurisdiction over Mitchem and Shaffer without allegations that Mitchem and Shaffer affirmatively and purposefully availed themselves to Maryland. Plaintiff's Complaint, however, is limited to factual allegations regarding non-party entities of which Mitchem and Shaffer are alleged to be merely the owners or operators. Ownership or a general role in operations is not a basis to haul Mitchem and Shaffer into court in every state where borrowers that access the various websites referenced above happen to be. *See Shamsuddin v. Vitamin Research Products*, 346 F. Supp. 2d 804, 817 (D. Md. 2004) (cautioning against a conclusion that "would mean that [defendant] potentially would be subject to personal jurisdiction in any forum where a resident purchases one or two of [defendant's] products over the Internet…[and] would negate one of the critical functions of the Due Process Clause, which is to ensure the 'orderly administration of the laws' in a federal system"). There is no showing

that Mitchem and Shaffer somehow targeted Maryland through their actions as individuals, as opposed to their alleged actions as owners or operators of the lenders, which Plaintiff does not allege occurred in Maryland. Because the Complaint omits any factual allegations regarding the conduct of Mitchem and Shaffer related to Maryland and the Complaint, no personal jurisdiction exists.

2. The Exercise of Jurisdiction Over Mitchem and Shaffer Would Be Constitutionally Unreasonable.

Even if Plaintiff had alleged and could prove a basis for specific jurisdiction over Mitchem and Shaffer—which she cannot—it would be unreasonable to exercise personal jurisdiction here. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-78 (1985) (holding that "minimum requirements inherent in the concept of 'fair play and substantial justice' may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities" (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980))); *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 279 (4th Cir. 2009) (listing factors that a court may consider in ensuring the appropriateness of the forum). "'[T]he reasonableness prong of the due process inquiry evokes a sliding scale: the weaker the plaintiff's showing on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction.'" *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 351 F. Supp. 2d 334, 353 (D. Md. 2004) (quoting *Ticketmaster–New York*, 26 F.3d at 210.

Here, exercising personal jurisdiction over Mitchem and Shaffer would be unreasonable because they have not affirmatively directed any conduct at Maryland; in short, the connection to Maryland is extremely attenuated. Furthermore, it would be burdensome for them to litigate in Maryland particularly where an alternative federal court exists in their domicile, the United States District Court for the District of Kansas. *See Terracom v. Valley Nat. Bank*, 49 F.3d 555,

561 (9th Cir. 1995) (commenting that "the law of personal jurisdiction is asymmetrical and is primarily concerned with the defendant's burden"); *Am. Info. Corp. v. Am. Infometrics, Inc.*, 139 F. Supp. 2d 696, 701 (D. Md. 2001) (ruling that because plaintiff's showing of minimum contacts was low, "the burden on the defendant at least balances the plaintiff's interest in convenience, and the availability of jurisdiction anywhere in the country, over anyone with a Web site that accepts a rudimentary form inquiry, hardly promotes the most efficient resolution of controversies"). As a result, dismissal is proper.

B. Alternatively, This Court Should Compel Arbitration of Plaintiff's Claims Pursuant to the Arbitration Provision in the Loan Agreements.

In the event that this Court does not grant Mitchem's and Shaffer's motion to dismiss for lack of personal jurisdiction, this Court should alternatively dismiss to enforce the arbitration provision in the loan agreements and compel arbitration of Plaintiff's claims. Section 5 of the Loan Agreements (" Arbitration Agreement") provides that, "This Agreement is made pursuant to a transaction involving commerce and shall be governed by the United States Federal Arbitration Act" ("FAA"). Exs. 3, 4, 5, and 6, Loan Agreements, ¶ [5(j). Pursuant to the Supremacy Clause of the United States Constitution, the FAA preempts contrary state law. *Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201, 1203 (2012).

The FAA requires a court to compel arbitration where (1) there is a written agreement to arbitrate; and (2) the dispute is within the scope of the arbitration agreement. 9 U.S.C. § 4; *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). It "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original). Mandatory adherence to the FAA reflects "'a liberal federal policy favoring arbitration

agreements.'" *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 669 (2012) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983)). Here, the FAA requires this Court to compel arbitration for the following reasons:

All of Plaintiff's claims relate to "disputes" governed by the Arbitration Agreement, which applies to claims made against the lenders, as well as those made against "related third parties," and "the validity and scope" of the Arbitration Agreement. Exs. 3, 4, 5, and 6, Loan Agreements, ¶ 5(c).

Further, the Arbitration Agreement states that the words "dispute" and "disputes" to which it applies are given the broadest possible meaning. The Arbitration Agreement clearly states that Plaintiff agreed to, among other things, waive her right to have a trial by jury or court other than small claims, serve as a representative, a private attorney, or in any other representative capacity, and/or to participate as a member of a class of claimants in any lawsuit filed against the lenders or any related third parties. Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(c). In addition, the Arbitration Agreement clearly states that all disputes, including any representative claims against the lender and/or related third parties, shall be resolved by binding arbitration only on an individual basis. Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(d). Moreover, the Arbitration Agreement is clearly labeled "**ARBITRATION AGREEMENT AND WAIVER OF JURY TRIAL**," set forth in its own section, and portions were properly bolded and capitalized to draw Plaintiff's attention to same. Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5.

According to Plaintiff's own allegations, her claims arise from and are related to the Loan Agreements she purports to have entered into with non-party payday lenders allegedly "owned and operated" by Mitchem and Shaffer. Compl. ¶ 31, 43-44. Therefore, the Arbitration Agreement is applicable to the claims made by Plaintiff in this action.

Again, the Arbitration Agreement applies to Plaintiff's "disputes" with "related third parties." Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(c). Further, the "validity and scope of [the Arbitration] Agreement and any claim or attempt to set aside [the Arbitration] Agreement" is subject to arbitration. Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(b) and (c). It follows that an arbitrator must decide not only the validity of the Arbitration Agreement, but also whether Mitchem and Shaffer are included in the scope of the phrases "related third parties" and, therefore, whether they are entitled to invoke the Arbitration Agreement with respect to Plaintiff's claims.

Mitchem and Shaffer are entitled to enforce the Arbitration Agreement for two main reasons despite the fact that they are non-signatories to the at-issue Loan Agreements. First, when a non-signatory attempts to invoke the provisions of an arbitration clause, the party seeking to avoid arbitration is estopped from such avoidance when that party must rely on the terms of the written agreement in asserting its claims or when those claims are intertwined with the underlying contract. *Wachovia Bank, Nat. Ass'n v. Schmidt*, 445 F.3d 762, 769 (4th Cir. 2006). Here, it is clear that all of Plaintiff's claims against Mitchem and Shaffer are entirely predicated on the Loan Agreements, and, thus, Mitchem and Shaffer are entitled to invoke the Arbitration Agreement. Second, Mitchem and Shaffer are third-party beneficiaries of the Loan Agreement. Under Maryland law, third-party beneficiaries may enforce arbitration agreements. *Dickerson v. Longoria*, 995 A.2d 721, 742 (Md. 2010) (stating that "[d]espite the fact that a third-party beneficiary is not a party to the contract, he or she can bring suit to enforce the contract").

In sum, all of Plaintiff's claims against Mitchem and Shaffer are covered by the Arbitration Agreement. Any challenge Plaintiff makes to the Arbitration Agreement must be

heard by the arbitrator. By filing this lawsuit, Plaintiff has refused arbitration. As a result, this Court should compel arbitration.

C. This Court Should Enforce the Class Action Waiver and Dismiss the Class and Representative Claims.

The Loan Agreements clearly provide that Plaintiff waived her right to "SERVE AS A CLASS REPRESENTATIVE, A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS IN ANY LAWSUIT FILED AGAINST [THE LENDERS] AND/OR RELATED THIRD PARTIES." Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(c). Further, the Loan Agreements provide that all disputes shall be resolved by binding arbitration on an individual basis. Exs. 3, 4, 5, and 6, Loan Agreements ¶ 5(d). It follows that this court should strike Plaintiff's class action allegations. Plaintiff cannot argue that the Arbitration Agreement prohibition on class arbitration is unconscionable as that argument was expressly foreclosed by the United States Supreme Court. AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011); Muriithi v. Shuttle Exp., Inc., 712 F.3d 173, 180 (4th Cir. 2013).

Accordingly, the RMDs respectfully request that this Court enforce the Class Action Waiver and dismiss the asserted class and representative claims with prejudice.

D. Plaintiff Fails to State A Viable Claim Under the EFTA.

Even if this Court were not to grant Defendants Shaffer and Mitchem any relief with respect to their motion to dismiss for lack of personal jurisdiction or, in the alternative, motion to compel arbitration and enforce the class action waiver, alternatively, this Court should dismiss

Count V of the Complaint for failure to state a claim, because Plaintiff's claim under the EFTA is barred on its face by the one-year statute of limitations.[1]

Plaintiff asserts that the subject matter jurisdiction of this Court is proper under the EFTA. Compl. ¶ 8. An EFTA action must be filed "within one year from the date of the occurrence of the violation." 15 U.S.C. § 1693m(g). Here, Plaintiff alleges, albeit on information and belief, that a violation occurred when Plaintiff was extended credit by Action PayDay and Bottom Dollar PayDay conditioned upon her agreement to repay "by means of preauthorized electronic fund transfers." Compl. ¶¶ 49, 159. Her Complaint limits the allegations of alleged illegal payday loans to transactions that occurred in 2013. Compl. ¶¶ 43, 48. Furthermore, she asserts that she began repaying the loans "over the course of 2013" presumably through preauthorized electronic fund transfers as alleged.[2] Compl. ¶¶ 48, 49. She did not file this lawsuit, however, until May 1, 2015. *See* Compl. 36.

Because the alleged EFTA violations occurred in 2013, it is facially conclusive from the allegations that Plaintiff's Complaint was filed well beyond the EFTA's one-year statute of limitations. *Houck v. Local Fed. Sav. & Loan, Inc.*, 996 F.2d 311 (10th Cir. 1993) (stating that "[t]he applicable Electronic Fund Transfer Act law is clear. According to § 1693m(g), an action must be commenced within one year from the date of occurrence. No court is free to ignore the law made by Congress"); *Dorsey v. Enter. Leasing*, No. CV 14-800 (CKK), 2015 WL 309527, at

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[1] In the event this Court does not grant Defendants Shaffer's and Mitchem's motion to dismiss for lack of subject matter jurisdiction or, in the alternative, motion to compel arbitration and enforce the class action waiver, these Defendants reserve the right to raise additional grounds on which Plaintiff has failed to state a claim upon which relief can be granted.

[2] If it is Plaintiff's contention that no such electronic fund transfers occurred, then she has not stated a claim under the EFTA and dismissal is still proper. *See Wike v. Vertrue, Inc.*, 566 F.3d 590, 593 (6th Cir. 2009) (stating that the EFTA statute of limitations begins to run when the first illegal transfer takes place reasoning "[b]ecause there is no assurance at the time a payee attempts to initiate a transfer that anything will come of it, there is good reason to think Congress created a cause of action that accrues only when the reality of harm, not its mere possibility, takes place-which is when "transfers" occur").

*3 (D.D.C. Jan. 26, 2015) (dismissing claim asserting violation of EFTA more than three years after the violation occurred); *Repay v. Bank of Am., N.A.*, No. 12 CV 10228, 2013 WL 6224641, at *5 (N.D. Ill. Nov. 27, 2013) (dismissing EFTA claims reasoning "[b]ecause Plaintiff had a complete and present cause of action in October 2011 (at the time of the first transfer), the statute of limitations on this claim expired one year later in October 2012 and Plaintiff's EFTA claim, filed in December 2012, is time-barred"); *Apostolidis v. JP Morgan Chase & Co.*, No. 11-CV-5664 JFB WDW, 2012 WL 5378305, at *8 (E.D.N.Y. Nov. 2, 2012) (dismissing EFTA claim filed more than one year after violation occurred and rejecting equitable tolling arguments where complaint did not set forth plaintiff's "reasonable diligence" or "extraordinary circumstances"). As a result, dismissal of Count V is proper.

Because subject matter jurisdiction of this Court was founded upon the EFTA, the remaining state claims should also be dismissed. Compl. ¶ 8. *See also* 28 U.S.C. § 1367(c)(3) (providing that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim...if…the district court has dismissed all claims over which it has original jurisdiction"); *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (noting that "trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished"). Here, Plaintiff's only federal claim is time barred and must be dismissed. This court has previously recognized that accordingly the remaining state claims should be dismissed. *Baumgarten v. Castruccio*, No. CIV. CCB-11-2506, 2013 WL 4541166, at *2 (D. Md. Aug. 26, 2013) (ruling "[b]ecause this court only had original jurisdiction over [plaintiff's] federal claims, and they are time barred and must be dismissed, even if his state law claims are not untimely, the court will not exercise supplemental jurisdiction under § 1367").

III. CONCLUSION

Dismissal is proper because Plaintiff fails to establish the personal jurisdiction of this Court over Mitchem and Shaffer. Her Complaint fails to allege specific conduct by Mitchem and Shaffer that was directed at Maryland or related to her Complaint and her attempt to merely impute personal jurisdiction upon them is improper. Alternatively, the Loan Agreements at issue clearly require arbitration of the claims asserted in her Complaint and necessitate dismissal. Also, her lone federal claim is time-barred by the EFTA and supplemental jurisdiction is unwarranted. As a result, this Court must dismiss the Complaint.

WHEREFORE, Defendants Joshua Mitchem and Jeremy D. Shaffer respectfully request this Court to dismiss them as defendants in this lawsuit for lack of personal jurisdiction, or, in the alternative, and without waiving their defense of lack of personal jurisdiction, Defendants Joshua Mitchem and Jeremy D. Shaffer request this Court dismiss to compel arbitration and enforce the class action waiver or, in the alternative, dismiss for failure to state a claim pursuant to the Electronic Fund Transfer Act, and for any and all other relief this Court deems just and equitable.

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CERTIFICATE OF SERVICE

The undersigned certifies that on Friday, July 10, 2015, a copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which sent electronic notification of such filing to all those individuals currently electronically registered with the Court.

/S/
DAVID B. APPLEFELD (Bar No. 08311)