SC 96499

IN THE MISSOURI SUPREME COURT

JEFF REID,
Appellant,
v.
THE REILLY COMPANY, LLC,
Respondent.

APPEAL FROM THE CIRCUIT COURT OF MISSOURI
SIXTEENTH JUDICIAL CIRCUIT

Honorable Marco Roldan, Judge
Case Number 1616-CV15889

BRIEF OF THE AMERICAN FINANCIAL SERVICES ASSOCIATION AND MISSOURI AUTO DEALERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

Sanders Warren Russell & Scheer LLP
/s/ Joshua D. Scott
Joshua D. Scott MOBAR 64147
40 Corporate Woods
9401 Indian Creek Parkway, Suite 1250
Overland Park, KS 66210
j.scott@swrsllp.com
Attorney for Amicus Curiae
American Financial Services Association

Brydon Swearingen & England
/s/ Gregory C. Mitchell
Gregory C. Mitchell MOBAR 36634
P.O. Box 456
312 E. Capitol Avenue
Jefferson City, MO 65102
gregbse@brydonlaw.com
Attorney for Amicus Curiae
Missouri Auto Dealers Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

Rules

CONSENT OF THE PARTIES TO FILING THIS BRIEF

Respondent consents to the filing of this brief. Appellant denied consent. This brief has been conditionally filed with a motion for leave to file, pursuant to Rule 84.05(f)(3).

STATEMENT OF INTEREST

Amicus Curiae American Financial Services Association ("AFSA") is the primary trade association for the consumer credit industry. Its members provide consumers with many forms of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, payment cards, and credit for non-vehicle retail customers.

For more than 100 years, AFSA has been committed to its mission of promoting safe, ethical lending to responsible, informed borrowers, and to improving and protecting consumers' access to credit. AFSA has long provided research and policy advice to legislators at both the state and federal level. AFSA has authored numerous white papers and studies about the complex issues surrounding consumer credit.[1] AFSA members shape

[1] See e.g. *Fair Lending: Implications for the Indirect Auto Finance Market*, November 19, 2015 *available at* https://www.afsaonline.org/Portals/0/Federal/Issue%20Briefs/Fair%20Lending%20in%20the%20Indirect%20Auto%20Lending%20Market%20Study.pdf; AFSA'S Statement for the Record before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing On: *Examination of the Federal Financial Regulatory System and Opportunities for Reform* (April 6, 2017) *available at*

the industry's direction and positions on a broad range of public policy issues that affect the consumer credit industry. AFSA is the only national association that is solely focused on consumer credit issues.

AFSA strongly believes that credit should be available to everyone who can manage it. That includes individuals who have less than perfect credit scores. Credit is a key driver of economic growth and gives individuals the opportunity to purchase goods and services they need — like cars to get to and from work — by allowing them to pay over time. But the ability of creditors to offer credit to consumers is dependent upon clear compliance standards.

Unfortunately, the current standards for regulatory compliance in Missouri are unclear. That is the result of some Missouri circuit courts wrongfully concluding that entities regulated by the division of finance are subject to the MMPA. Creditors may now be faced with defending their conduct despite having operated in full compliance with the applicable regulations. As a result, creditors now face regulation by enforcement of constantly changing subjective standards. The uncertainty is harming creditors and consumers.

Amicus Curiae Missouri Automobile Dealers Association ("MADA") is the largest trade association of motor vehicle dealers in Missouri. Its predecessor organization was

---

https://www.afsaonline.org/Portals/0/Federal/Comment%20Letters%20and%20Testimony/AFSA%20Testimony%20FI%20and%20CC%20Subcommittee%20Hearing%20on%20CFPB%20Reform%20-4.6.17.pdf.

founded in 1939, and it has represented the interests of automobile dealers since then. MADA is organized as a Missouri nonprofit corporation and is in good standing.

MADA currently serves the needs and interests of 381 "franchise" members, which is approximately 99 percent of all new motor vehicle dealers in the State of Missouri. In addition, MADA serves over 200 "associate" members in the used motor vehicle, powersport, and boat industries. Substantially all MADA members utilize, on a frequent if not constant basis, the financing services provided by members of AFSA, and, therefore, MADA and its members also have a direct and compelling interest in the outcome of this appeal.

AFSA and MADA have been carefully monitoring the development of recent court decisions interpreting the legislature's exemption of liability from the MMPA. AFSA and MADA respectfully submit this *amicus* brief to provide their expertise in interpreting regulatory schemes affecting consumer creditors, including consumer protection statutes to aid the Court in interpreting and applying the MMPA to effectuate the intended purpose of the legislature.

ARGUMENT

I. Introduction

This case arises out of a contract dispute between Plaintiff/Appellant and his former-employer, Defendant/Respondent, The Reilly Company, LLC. In the trial Court, The Reilly Company, LLC argued that it was exempt from liability under the Missouri Merchandising Practices Act by virtue of an exemption for various regulated entities contained in § 407.020.2(2). The trial Court dismissed the action, but did not directly address that

argument.

On appeal, Respondent again argued that it is exempt from liability under the MMPA. The Missouri Western District Court of Appeals correctly concluded that because Respondent is a regulated entity within the meaning of § 407.020.2(2), it is not subject to liability under the § 407.913 of the MMPA. That conclusion is consistent with the plain language of the MMPA, as well as decisions interpreting the MMPA from the United States District Courts of Missouri, the Eighth Circuit Court of Appeals, and the Missouri Southern District Court of Appeals.

One of the issues before this Court is the interpretation of §§ 407.020 and 407.913, specifically the regulated entities exemption set forth § 407.020.2(2). This is a matter of great concern to AFSA and its members who, as regulated entities, are already subject to comprehensive regulatory schemes by the federal government and the State of Missouri. The regulations that pertain to consumer credit are the byproduct of years of research and policy debate by Congress and the states and serve to define what constitutes lawful practices for creditors and establish rights and remedies for consumers.

Virtually every aspect of consumer credit transactions is regulated. The Consumer Credit Protection Act (CCPA)[2] is comprised of a number of laws which protect various aspects of consumer credit. For example, the Truth in Lending Act (TILA) and Regulation Z govern the manner in which credit terms and credit cost are communicated to consumers

[2] 15 U.S.C. §§ 1601-1693r

and provides mechanisms for enforcing violations.[3] The Fair Debt Collection Practices Act (FDCPA)[4] defines unfair and deceptive practices in the context of debt collection as well as enforcement mechanisms ranging from administrative actions by the Federal Trade Commission (FTC) to civil remedies for aggrieved consumers.

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act)[5] and the Fair Credit Reporting Act (FCRA)[6] provide similar protections regarding the safe-keeping, dissemination, and use of credit reporting information. The Equal Credit Opportunity Act (ECOA)[7] established prohibitions on restricting access to credit based on race, age, national origin, religion, and other factors.

The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, also known as the Dodd-Frank Act,[8] created the Consumer Financial Protection Bureau ("CFPB") to provide additional supervisory oversight and enforcement of regulations pertaining to consumer credit transactions. The CFPB has broad authority to conduct investigations of companies that fall under its supervisory authority as well as those that come under its enforcement authority (See 12 U.S.C. §5563). The Dodd-Frank

---

[3] 15 U.S.C. § 1601, et seq.; 12 C.F.R. §226.1 et seq.; 12 C.F.R. §1026.1 et seq.

[4] 15 U.S.C. § 1692 et seq.

[5] 15 U.S.C. § 1681 et seq.

[6] *Id*.

[7] 15 U.S.C. § 1691 et seq.

[8] 12 U.S.C. § 5301 et seq.

Act also provides for civil remedies for violations and allows for enforcement actions to be brought by each state's Attorney General.

The above-referenced laws are not intended to be an exhaustive list of federal regulation of consumer credit providers. But even a cursory review of the federal requirements related to consumer credit reveals a comprehensive body of law covering all facets of consumer credit transactions.

Even though federal regulation of consumer credit transactions is very extensive, the states have developed their own body of regulations that supplement the existing federal regulations. In order to do business in Missouri, a creditor must agree to submit to that additional level of regulation. The result is a predictable and stable understanding of what constitutes lawful practices in consumer credit transactions in the State of Missouri.

It is against that backdrop of extensive regulation that the Missouri legislature enacted the Missouri Merchandising Practices Act. The MMPA was intended to supplement the common law definition of fraud — effectively acting as a gap-filler for a gray area between common law and statutory rights of action. But consumer credit transactions are so heavily regulated that the Missouri Legislature excluded them, and other similarly regulated entities, from those subject to the extraordinarily broad definition of "unlawful practice" within the meaning of the MMPA.

Until very recently, no Missouri appellate court had addressed the interpretation of the regulated entities exemption and it is an issue of first impression for this Court. The United States Eastern and Western District Courts and the 8th Circuit Court of Appeals have consistently held that regulated entities are exempt from liability under the MMPA. But

Missouri Circuit Courts have inconsistently applied the exemption. The Missouri Western District Court of Appeals decision in this case was the first Missouri appellate decision to directly address the interpretation of the regulated entities exemption. Its interpretation is consistent with the federal decisions — the entities regulated by under the chapters set forth in § 407.020.2(2) are exempt from liability under the MMPA. On September 27, 2017, the Missouri Southern District Court of Appeals reached the same result.

AFSA and MADA respectfully urge this Court, if it elects to interpret the regulated entities exemption, to interpret it in a manner consistent with every federal and Missouri appellate court ruling to date and hold that the plain language of § 407.020.2(2) exempts regulated entities from the definition of "unlawful practice" and, therefore, from liability under the MMPA, whether the claim is brought pursuant to § 407.913 or § 407.025.

II. The Plain Language of § 407.020 Creates a Bright Line Rule Exempting Regulated Entities From the Definition of "Unlawful Practice" for Purposes of the Act.

The general definition of an "unlawful practice" for purposes of the MMPA is found in § 407.020:

> 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful

practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

The definition contained in subsection 1 is extraordinarily broad and applies in a number of contexts, including consumer transactions, charitable organizations, and employment.

Although the legislature clearly intended for the definition of "unlawful practice" to be extremely broad, the legislature did not intend for that definition to be unlimited. The limitations the legislature imposed on the definition of "unlawful practice" are found in Subsection 2 of § 407.020, which states as follows:

2. Nothing contained in this section shall apply to:

…

(2) Any institution, company, or entity that is subject to chartering, licensing, or regulation by the director of the department of insurance, financial institutions and professional registration under chapter 354 or chapters 374 to 385, the director of the division of credit unions under chapter 370, or director of the division of finance under chapters 361 to 369, or chapter 371,

unless such directors specifically authorize the attorney general to implement the powers of this chapter or such powers are provided to either the attorney general or a private citizen by statute.

The plain language of subsection 2 creates a bright line rule exempting the enumerated regulated entities from anything defined as an "unlawful practice" in any portion of § 407.020.[9] The exemption for regulated entities applies *unless* one of two conditions is met: (1) the director of state agency responsible for regulating those entities specifically "authorizes the attorney general to implement the powers of this chapter;" or, (2) the attorney general or a private citizen is authorized to bring an action against a regulated entity by statute.[10]

III. The Missouri Western District Court of Appeals Correctly Applied the Bright Line Rule of § 407.020 to § 407.913 and held that regulated entities are exempt from liability under § 407.913.

A. When harmonized, the plain language of §§ 407.020 and 407.913 exempts regulated entities from liability under § 407.913.

The Merchandising Practices Act ("MPA") serves as a supplement to the common-law definition of fraud. *Zmuda v. Chesterfield Valley Power Sports, Inc.*, 267 S.W.3d 712, 716 (Mo.App. E.D. 2008). Its purpose is to "preserve fundamental honesty, fair play and

[9] RSMo § 407.020.5 defines what constitutes an "unlawful practice" for long-term health facilities.

[10] RSMo § 407.020.2(2).

right dealings in public transactions." *Id*. The general definition of conduct that constitutes an "unlawful practice" within the meaning of the MMPA is set forth in § 407.020. On its face, that definition applies actions taken "before, during or after" the sale, advertisement or solicitation, which necessarily includes consumer transactions and inducements to sell merchandise — like agreements to pay commissions.[11] The definition of "unlawful practice" is intentionally broad to prevent evasion by overly meticulous definitions. *Zmuda* at 716. But the legislature imposed a significant limitation on that definition – it does not apply to regulated entities identified in § 407.020.2(2). Thus, regulated entities cannot commit an unlawful practice within the MMPA, whether as an employer who makes a misrepresentation to an employee, or as a seller to a consumer.

The remaining sections of the MMPA serve to supplement and clarify what constitutes unlawful conduct as defined by § 407.020 in a variety of contexts. The Missouri Western District Court of Appeals correctly determined that the sections at issue in this case, §§ 407.912-913, "specifically address the unlawful practice where a principal fails to timely pay a sales representative commissions in connection with the sale of merchandise in trade or commerce." *Reed v. The Reilly Company, Inc.*, 2017 WL 1629370 *3 (May 2, 2017).

Where one statute deals with a subject in general terms and another deals with the

[11] RSMo § 407.020.1 ("Any act, use or employment declared unlawful by this subsection violates this subsection whether committed *before, during or after the sale, advertisement or solicitation.*") (emphasis added).

same subject in a more minute way, the two should be harmonized if possible[.]' " *Harrison v. MFA Mut. Ins. Co.*, 607 S.W.2d 137, 144 (Mo. banc 1980) (citation omitted). "[P]rovisions of one [statute] having special application to a particular subject will be deemed a qualification to another statute general in its terms." *City of Raytown v. Danforth*, 560 S.W.2d 846, 848 (Mo. banc 1977).

The Western District Court of Appeals correctly applied the rules of construction set forth by this Court to the plain language of § 407.020 and §§ 407.912-913 and properly concluded that §§ 407.912-913 are merely "qualifications" of § 407.020. *Reed* at *4. It correctly concluded that § 407.913 does not apply to the Respondent because it is exempt from liability under the MMPA by operation of § 407.020.2(2).

When read together, the plain language of the statutes clearly demonstrate that the legislature intended for regulated entities to be exempt from liability under § 407.913. Because the intent of the legislature is clear from the plain language of the statutes, there is no need for this Court to resort to the rules of statutory construction in this case. AFSA MADA urge this Court to adopt the Western District Court's harmonious reading of § 407.020 and § 407.913 and hold that §§ 407.912-913 do not apply to regulated entities as defined by § 407.020.2(2). This Court's interpretation of § 407.020 is important for other cases that are on the horizon.

IV. The Missouri Southern District Court of Appeals Correctly Applied the Bright Line Rule of § 407.020 to § 407.025 and held that regulated entities are exempt from liability under § 407.025.

A. The plain language of §§ 407.020 and 407.025 is also clear — § 407.025

does not create a private right of action against those entities that are regulated by the chapters enumerated in § 407.020.2.

The Missouri Southern District Court of Appeals recently addressed the meaning of §§ 407.020 and 407.025 in a case that may soon be before this Court.[12] The legislature defined when a consumer can file a civil action under the MMPA to recover damages in § 407.025:

> 1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice *declared unlawful by section 407.020*, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages.

(emphasis added). The plain language of § 407.025.1 provides consumers with a private right of action for "practices declared unlawful by § 407.020." Nothing in § 407.020 applies to the regulated entities enumerated in § 407.020.2(2), unless one of two narrow exemptions applies.[13]

The meaning of §§ 407.020 and 407.025 when read together was discussed in a recent case in the Missouri Southern District Court of Appeals, *Meyers v. Kendrick*, 2017 WL 4276261 (September 27, 2017). One of the defendants in that case was a bank that was

[12] *Meyers v. Kendrick*, 2017 WL 4276261 (September 27, 2017).
[13] RSMo § 407.020.2(2).

subject to chartering and regulation by the Missouri Division of Finance under chapter 362 of the Missouri Revised Statutes. *Id*. at *1. The bank filed a motion for summary judgment on the plaintiffs' MMPA claim arguing that it was exempt from liability pursuant to RSMo. § 407.020.2. *Id*. The trial court held that the MMPA does not apply to "certain financial institutions" and entered judgment in favor of the bank. *Id*.

On appeal, the plaintiffs did not dispute that the bank was a regulated entity within the meaning of § 407.020.2, but argued that the circuit court should not have granted the bank's motion for summary judgment because § 407.025.1 provided them with a cause of action against the bank under Chapter 407. *Id*. at *3. Specifically, the plaintiffs asserted that:

> [T]he internal exception following the exemption language in the last phrase of section 407.020.2(2)—"unless such directors specifically authorize the attorney general to implement the powers of this chapter or *such powers are provided to* either the attorney general or *a private citizen by statute*" (emphasis added)—negates the preceding exemption language because private citizens are given the right to implement the powers of chapter 407 by section 407.025.

Id at *5. The bank responded that § 407.025.1 is subject to the definition of "unlawful practice" as defined by § 407.020, which explicitly does not apply to regulated the regulated entities enumerated in § 407.020.2. *Id*.

The Missouri Southern District Court of Appeals looked to the plain language of both sections and properly determined that, when read together, the intent of the legislature

is clear and unambiguous — regulated entities identified in § 407.020.2 are not subject to a private right of action under § 407.025.1. *Id*. at *5. In reaching that conclusion the Southern District Court of Appeals correctly stated that the plaintiffs' reading of the two sections "ignores and contradicts that clear and plain language" used in § 407.020 and § 407.025 in two ways. *Id*.

> First, it requires acceptance of the absurd conclusion that the legislature intended for the exemption from the application of section 407.020 provided in section 407.020.2(2) to be completely subsumed and eliminated by the last exception to that exemption through the application of section 407.025.1. Second, it completely ignores the cross reference language to section 407.020 in section 407.025.1. Such a reading, therefore, renders both the initial exemption language in section 407.020.2(2) and the cross reference language in section 407.025.1 superfluous and meaningless. The Meyerses cite us to no relevant legal authority that allows us to engage in such a strained reading of these statutes to find lack of clarity or an ambiguity in the clear and unambiguous language actually used by the legislature in these statutes.

Id. (emphasis added).

The same argument advanced by the plaintiffs in *Meyers* — and by the Appellant in this case — was rejected as "circular" by the U.S. District Court for the Eastern District of Missouri in the context of credit unions. *Rashaw v. United Consumers Credit Union*, No. 11-0105-CV-W-ODS, 2011 WL 2110806, at *6 (W.D. Mo. May 26, 2011) aff'd, 685 F.3d

739 (8th Cir. 2012). The District Court reasoned that "[f]or Plaintiffs' argument to be credited, what must be granted is the power to enforce section 407.020 against credit unions. To hold otherwise would eliminate the exclusion." *Id*. The Eighth Circuit Court of appeals affirmed the holding stating:

> The district court rejected these contentions as contrary to the plain language of § 407.020.2. We agree. The contention that one provision of the MMPA completely negates another violates well-accepted principles of statutory construction.

Rashaw v. United Consumers Credit Union, 685 F.3d 739, 745 (8th Circuit, 2012).

To date, every appellate court that has addressed the interpretation of these two sections has properly reached the same conclusion. In addition to the cases cited above and the decision of the Missouri Western District Court of Appeals in this case, other federal courts have held that regulated entities are exempt from liability under the MMPA. While not binding on this Court, the federal courts' interpretations of the meaning of § 407.020, represent their best prediction of how this Court would interpret it. See *Prudential Ins. Co. of America v. Rand & Reed Powers Partnership*, 972 F.Supp. 1194, 1200-01 (N.D. Iowa 1997. To date, those federal courts have all interpreted § 407.020 to impose a bright line exemption from liability under the MMPA for regulated entities.

In *Myers v. Sander*, No. 4:13CV2192 CDP, 2014 WL 409081, at *7 (E.D. Mo. Feb. 3, 2014), the United States District Court for the Eastern District found that the MMPA exclusion applied to title insurance companies absent an express authorization by the director of insurance against title insurance companies. *See also Reitz v. Nationstar*

Mortgage, LLC, 954 F.Supp.2d 870, 892-3 (D. Mo., 2013) (Holding loan servicer exempt from the MMPA); *see also Moran v. Missouri Credit Union*, No. No. 11–0189–CV–W–ODS, 2011 WL 2110824, at *5 (W.D. Mo. May 26, 2011) (a companion case to *Rashaw* reaching an identical decision).

The goal of statutory analysis is to ascertain the intent of the legislature, as expressed in the words of the statute. *United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy*, 208 S.W.3d 907 (Mo. banc 2006)(internal citation omitted). "If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then we are bound by that intent and cannot resort to any statutory construction in interpreting the statute." *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. Banc 2011). The plain language in § 407.020 and § 407.025 is clear and unambiguous — the legislature intended to exempt regulated entities from liability under the MMPA.

If this Court is inclined to rule on the interpretation of §§ 407.020 and 407.025, AFSA and MADA respectfully urge this Court to adopt the analysis of the Southern District Court of Appeals in *Meyers* and hold that § 407.025.1 does not create a private right of action against those entities, like Reilly, that are regulated by the chapters enumerated in § 407.020.2.

V. Failure to Interpret § 407.020 to Include a Bright Line Exemption From Liability Under the MMPA for Regulated Entities Would Harm Missouri Consumers and Creditors.

AFSA members provide critical support to Missouri consumers and commercial entities such as MADA members in the form of access to credit. Credit is used to make

essential purchases — like automobiles — that allow individuals to get to and from work, buy groceries, and pick up their children from school. Purchases made with credit create new jobs and drive economic growth throughout the state. In 2016, MADA's members generated $17.1 billion in sales — 18.4% of Missouri's total retail sales that year.[14] That simply would not be possible without access to credit supplied by members of AFSA.

Because credit is such a critical component of the economy, the manner in which credit is sold and serviced is already comprehensively regulated at the federal and state levels. Those regulatory schemes are the result of historical experience, comprehensive research, and policy discussions by various legislative and administrative bodies, with the input of groups representing all manner of credit market participants.

After balancing the interests of consumers and credits, the Missouri legislature codified its policy determinations and tasked the Division of Finance with enforcing them. The result is a framework that provides guidance for creditors and consumers, as well as penalties for non-compliance. It also affords a measure of predictability that allows for accurate pricing of credit-risk. The Division of Finance actively and routinely audits those companies under its authority to ensure compliance with the laws and regulations it is tasked with enforcing. Other state regulators act in a similar manner.

MADA's members, in particular, depend upon a predictable and stable credit market in order to meet the transportation needs of Missouri consumers. The volatility in credit

[14] Driving Missouri's Economy: Annual Contribution of Missouri's New-Car Dealers *available at* https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474837342.

cost and availability that would occur as a result of creating liability under the MMPA for regulated lenders would directly harm Missouri's franchise new-vehicle and used-vehicle dealers by limiting the financing options available for potential purchasers, especially those with subprime credit histories.

In addition, franchise new-motor vehicle dealerships, buoyed by a stable and predictable credit market, collectively generate substantial local economic benefits in Missouri. MADA's franchise dealer members employ over 20,000 Missouri citizens. New vehicle sales by dealers constitute approximately 15% of all Missouri retail sales, and, nationally, new vehicle sales generate approximately 15% of all state sales tax revenue. Therefore, any destabilization of the retail credit market stands to produce wide-reaching impacts beyond the direct interests of MADA members themselves.

If this Court does not find that § 407.020.2 creates a bright line rule exempting regulated entities from the MMPA, it could destabilize the credit market and rob creditors and consumers of the predictability and uniformity that the regulatory schemes provide. The result will likely be higher prices and less access to credit, both of which would harm both consumers and creditors in the long run and could have a wide-ranging impact on Missouri's economy writ large.

CONCLUSION

AFSA and MADA respectfully urge this Court, if it addresses the meaning of the regulated entities exemption, to adopt the Western District Court's harmonious reading of § 407.020 and § 407.913 and hold that §§ 407.912-913 do not apply to the regulated entities set forth in § 407.020.2(2). Furthermore, if the Court reaches the interpretation of §§

407.020.2(2) and 407.025, read together, AFSA and MADA urge the Court to hold that § 407.025 does not create a private right of action against those entities that are regulated by the chapters enumerated in § 407.020.2.

Respectfully submitted:

Sanders Warren Russell & Scheer LLP
/s/ Joshua D. Scott
Joshua D. Scott MOBAR 64147
40 Corporate Woods
9401 Indian Creek Parkway, Suite 1250
Overland Park, KS 66210
j.scott@swrsllp.com
Attorney for Amicus Curiae
American Financial Services Association

Brydon Swearingen & England
/s/ Gregory C. Mitchell
Gregory C. Mitchell MOBAR 36634
P.O. Box 456
312 E. Capitol Avenue
Jefferson City, MO 65102
gregbse@brydonlaw.com
Attorney for Amicus Curiae
Missouri Auto Dealers Association

CERTIFICATE OF SERVICE AND OF COMPLIANCE

I hereby certify that on the 24th day of October, 2017, the foregoing was electronically filed using the Missouri eFiling system, which will send notice of electronic filing to all registered attorneys of record. I further certify that pursuant to Rule 55.03(a), I signed the original of the foregoing and that the original signed copy is maintained at our office. I further certify that the foregoing complies with the limitations contained in Rule 84.06(b). The foregoing brief contains 4,525 words.

/s/ Joshua D. Scott
Attorney