STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Randy Merle Holte,
on behalf of himself and all others
similarly situated,

Plaintiff

ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

27-CV-15-18990

v.

Payday America, Inc.

Defendants

The above-entitled matter is before the Honorable Daniel H. Mabley on April 6, 2017 pursuant to Plaintiff's Motion for Class Certification. Plaintiff is represented by Vildan Teske and Marisa Katz of Teske, Micko, Katz, Kitzer & Rochel, PLLP. Defendant is represented by Marc Simpson, Douglas Boettge and Calvin Hoffman of Stinson Leonard Street, LLP.

Based upon all the files, records, arguments of counsel, and the Court being fully advised in the premises, the Court makes the following:

IT IS HEREBY ORDERED:

Rule 23 of the Minnesota Rules of Civil Procedure requirements are satisfied:

1. Rule 23.01(a): The class members are too numerous to join. There are tens of thousands of known class members based on the business records of Defendant. This number easily satisfies the numerosity requirement.

2. Rule 23.01(b): This requirement has been met. The record shows that Mr. Holte's claims are based on form documents governing the payday loan transactions at issue, including the Credit Agreements, Periodic Statements and collection letters. These form documents pose common questions, such as (a) whether the payday loans at issue constituted closed-end credit transactions and, if so, whether Defendant is liable under Minnesota's consumer short- term lending law for charging fees in excess of what is permitted for closed-end credit, (b) whether Defendant failed to comply with disclosure requirements for the APRs for each loan as required under the consumer short-term lending law; and (c) whether Defendant unlawfully collected or attempted to collect debts resulting from class members' loans being in default. The primary focus of this litigation is the legal consequences that flow from these form documents and the accompanying payday loan products sold to the Plaintiff and the class.

3. Rule 23.01(c): This requirement has also been met. The typicality requirement does not require all forms to be identical. Defendant's potential liability arises from the common legal theory shared by all class members: violations of Minnesota's consumer short-term lending law. Thus, Mr. Holte's claims are typical of those of the class.

4. Rule 23.01(d): The requirement of adequacy is met. Mr. Holte has the necessary understanding of this litigation, he has participated extensively in its prosecution, he has no interests that are antagonistic to that of the class, and Class Counsel are competent and experienced in consumer class action and complex litigation. Defendant points out that Mr. Holte failed to include this case in his filings for Chapter 13 bankruptcy. Mr. Holte has since cured this omission, which makes this a moot point.

5. Rule 23.02(c): The predominance requirement is satisfied. Defendant listed six affirmative defenses that could be raised against individual class members and argues that these defenses predominate over the common issues of law and fact. However, the fact that an affirmative defense may arise and affect individual class members does not create a conclusion that individual issues predominate over common ones. Generalized evidence exists which proves or disproves the elements of Mr. Holte's and the class' claims on a class-wide basis since such proof obviates the need to examine each class member's individualized position. As a result, the claims in this litigation predominate over individual interests.

a. Primary Purpose

Defendant argues that not every customer took out a payday loan for consumer purposes. However, courts have consistently found that the need to determine the nature of a debt does not preclude class certification. *See, e.g.*, *Hansen v. Ticket Track Inc.*, 213 F.R.D. 412, 416-17 (W.D. Wash. 2003), *Chisolm v. TranSouth Fin. Corp.*, 194 F.R.D. 538, 551 (E.D. Va. 2000).

b. Chapter 7 Bankruptcy Filings by Some Class Members

Because class members might have filed Chapter 7 bankruptcy petitions after obtaining loan, Defendant argues that the predominance requirement is not met. However, the fact that individual class members may have filed for bankruptcy does not require a denial of class certification. *See, e.g. In Re Northwest Airlines Corp.*, 208 F.R.D. 174, 224 (E.D. Mich. 2002), *Gawry v. Countrywide Home Loans, Inc.*, 640 F.Supp.2d 955-56 (N.D. Ohio 2009), *McLean v. First Horizon Home Loan Corp.*, 277 S.W.3d 872, 874 (Mo. App. 2009).

c. Accord and Satisfaction

Defendant argues that the collection subclass is overbroad because it does not exclude class members who entered into payment plans with Defendant. However, like other affirmative defenses, the doctrine of accord and satisfaction does not require a denial of class certification. *See* W. Rubenstein, Newberg on Class Actions § 4:57 (5th ed.), *In re Linerboard Antitrust Litigation*, 305 F.3d 145, 163 (3rd Cir. 2002).

d. The Doctrine of Voluntary Payment

Defendant argues that individualized inquiries would be required to determine if certain class members are barred from relief under the voluntary payment doctrine. However, again, this affirmative defense does not require a denial of class certification. *Id.* The Court may use other procedural methods, such as a creation of a subclass, if this becomes an issue in the case. *Dupler v. Costco Wholesale Corp.*, 249 F.R.D. 29, 45 (E.D.N.Y. 2008).

e. Settlement Agreements between Defendant and Some Class Members

Once again, Defendant argues that the proposed subclass is overbroad because the definition does not account for class members who entered into settlement agreements with Defendant. However, the number of class members who entered into settlement agreements is "approximately one in ten." (Def. Mem. At 18). The Court has not made a determination if these borrowers in fact did release claims against Defendant through settlement agreements. If the Court makes this determination, these borrowers could be ultimately excluded from the subclass definition. Therefore, this is not a bar to certification.

f. *Res Judicata*

Defendant argues that because it obtained default judgments in conciliation court for outstanding debts for an alleged 3,377 class members, due to the doctrine of *res judicata*, these members do not have a subsequent claim against Defendant. However, the claims made by Defendant against the class members do not involve the same set of factual circumstances. In its conciliation court lawsuits, Defendant was seeking debt collection for breach of contract claims. The present case involves improper assessment of certain fees and inadequate disclosure of the APRs calculated for each payday loan transaction. Therefore, *res judicata* does not apply and does not bar class member claims.

6. Rule 23.02(c): The superiority requirement has been met. Class members' claims involve form documents, the same loan products, and are relatively small and litigating them separately would impose burdens upon the class members and the Court, thus making the class action the most efficient and superior method of handling these claims. Absent a class action, there is little likelihood that any class member will know he or she has any claims such as those being advanced in this case.

THEREFORE, the motion for class certification is GRANTED, and the following class is certified:

All persons residing in Minnesota who, from October 2, 2013 to December 31, 2016:

(a) Entered into one or more consumer short-term loans with Payday America, Inc., wherein each loan contained a principal amount, or an advance on a credit limit, of $1,000 or less and required a minimum payment within 60 days of loan origination or credit advance of more than 25 percent of the principal balance or credit advance; and

(b) At the time of origination for each loan transaction, was assessed a finance charge consisting of the following components: "Financing Charge resulting from application of

Monthly Periodic Rate," "Cash Advance Charge," and "Annual Fee Applicable to Advances," and

(c) Received a standard form "Periodic Statement with Cash Advance Feature" at the time of each loan origination or cash advance that stated the actual annual percentage rate (APR) for each loan in less than 24 point type.

Within the above class, Plaintiff also moves for certification of the following subclass:

All those persons identified in (a) - (c) of this definition and who were sent letters by Payday America, Inc., informing the class member of loan default and/or who were served with process in one or more collection lawsuits in a Conciliation Court in Minnesota.

7. It is further ordered that Vildan Teske and Marisa Katz of Teske, Micko, Katz, Kitzer & Rochel, PPLP are appointed as Class Counsel, and that Randy Merle Holte is appointed Class Representative.

Dated: 4/26/17

BY THE COURT:

Daniel H. Mabley
Judge of District Court