

**STATE OF MINNESOTA  
HENNEPIN COUNTY****DISTRICT COURT  
FOURTH JUDICIAL DISTRICT**

Jason Dobosenski,  
on behalf of himself and all others  
similarly situated,

Plaintiff,

v.  
PayDayAmerica, Inc.,

Defendant.

Case Type: Civil Other  
Statutory Violation

**FIRST AMENDED  
CLASS ACTION COMPLAINT  
AND JURY DEMAND**

Case No. 27-cv-15-18990

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**INTRODUCTION**

1. Plaintiff and class member, Jason Dobosenski, (“Mr. Dobosenski” or “Plaintiff”), entered into a series of extraordinarily high-cost loans with Defendant PayDay America, Inc. (“Payday America” or “Defendant”) that violate Minnesota law governing consumer credit and regulated lending.
2. Per the Order and adopted Stipulation, dated September 11, 2017, this first amended class action complaint substitutes Mr. Dobosenski as named plaintiff and class representative on behalf of the class certified on April 26, 2017.

**PARTIES AND VENUE**

3. Plaintiff resides in Blue Earth County, and is a citizen of the state of Minnesota.
4. Defendant is a payday lender with a registered address of 181 River Ridge Circle South, Burnsville, Minnesota 55337.
5. Defendant is licensed with the Minnesota Commissioner of Commerce to conduct business as an industrial loan and thrift company. Defendant holds no other licenses with the Minnesota Commissioner of Commerce.

6. This Court is the proper venue under Minn. Stat. § 542.09 because Defendant engages in the payday lending business in store locations in Hennepin County.

**ALLEGATIONS SPECIFIC TO PLAINTIFF DOBOSENSKI**

*The Payday America Loans*

7. On or about April 30, 2014, Mr. Dobosenski met with an employee of Defendant at one of its stores located in Mankato, Minnesota. Defendant, through its employee, arranged for a loan between Mr. Dobosenski and Defendant.
8. The loan was for a principal amount of \$250, which Mr. Dobosenski received at the time the loan was originated.
9. Along with this loan, Defendant gave Mr. Dobosenski a loan document entitled “Periodic Statement with Cash Advance Feature” (hereinafter “Periodic Statement”) that identified Defendant as the lender as well as the entity that produced the disclosure. On this statement, the loan was identified as Advance Number xxx1635.
10. The Periodic Statement stated a fixed total amount of \$279.07 that Mr. Dobosenski was to pay Defendant by a date certain, May 9, 2014, as repayment of the loan principal, plus finance charges.
11. Mr. Dobosenski paid off the entire amount owed by the due date indicated on the Periodic Statement.
12. On or about May 13, 2014, Mr. Dobosenski again met with an employee of Defendant at its Mankato store location. Defendant, through its employee, arranged for a second loan between Mr. Dobosenski and Defendant.

13. The second loan was also for a principal amount of \$250, which Mr. Dobosenski received at that time.
14. Along with this loan, Defendant gave Mr. Dobosenski a Periodic Statement that identified Defendant as the lender and as the entity that produced the loan. On this Statement, the second loan was identified as Advance Number xxx8687.
15. The Periodic Statement for the second loan stated a total amount of \$279.30 that Mr. Dobosenski was to pay Defendant by a date certain, ten days later, on May 23, 2014, as repayment of the entire principal balance plus finance charges.
16. Before the due date of his second loan, however, Mr. Dobosenski realized it would be difficult for him to pay the entire \$279.30 by May 23, 2014. As a result, he placed a telephone call to the Defendant's store in Mankato to inquire whether he could make his loan payment in installments. The employee, Kimberly Morris, told Mr. Dobosenski that, to avoid default, he must pay the entire amount owed by the due date.
17. Without the ability to make any installment or partial payments, Mr. Dobosenski was unable to pay the entire balance of \$279.30 by May 23, 2014.
18. Each Periodic Statement stated a total finance charge comprising the following components: "Finance Charge resulting from application of Monthly Periodic Rate," "Cash Advance Charge," and "Annual Fee Applicable to Advances."
19. Each Periodic Statement with Cash Advance Feature for each loan stated an "actual" annual percentage rate (APR) calculated using the fixed amount of the loan, the fixed date for repayment and the total finance charges.
20. The terms of Mr. Dobosenski's loans were as follows:

	<u>Loan #1</u>	<u>Loan #2</u>
Advance Number	xxx1635	xxx8687
Agreement Number	377128	377128
Date of Loan	4/30/2014	5/13/2014
Payment Date	5/9/2014	5/23/2014
Amount of Loan	\$250.00	\$250.00
Finance Charge resulting from application of Monthly Periodic Rate	\$2.07	\$2.30
Cash Advance Charge	\$25.00	\$25.00
Annual Fee Applicable to Advances	\$2.00	\$2.00
Amount Owed	\$279.07	\$279.30
Actual APR	471.58%	427.78%

21. The total combined principal, charges and interest for both loans was \$558.37.

*Mischaracterization of Loans as “Open-End Credit”*

22. Defendant had an incentive to characterize these loans as open-end credit in order to be able to impose additional charges allowed by Minn. Stat. § 47.59, subd. 6(c) for open-end credit that Defendant could not permissibly charge to a non-open-end credit account.
23. Defendant, however, did not provide Mr. Dobosenski access to a self-replenishing, reusable line of credit.
24. Defendant did not generally make available to Mr. Dobosenski credit based on any periodic repayment of an outstanding balance.

25. The amount financed, finance charges and annual percentage rate were calculated at the time each loan was originated.
26. The term of each loan was determined at the time each loan was originated.
27. A single date of repayment for the entire loan amount for each loan was scheduled at the time each loan was originated.
28. For each loan entered into by Plaintiff, Plaintiff was given the full amount of the authorized credit amount at the time each of the loans was originated.
29. Plaintiff was required to return to Defendant and obtain authorization for a new Periodic Statement with Cash Advance Feature each time he sought additional credit.
30. Defendant did not apply a finance charge from time to time on any outstanding unpaid balance, but rather immediately imposed a finance charge at the time each loan was originated.
31. Therefore, the loans Defendant made to Plaintiff were not for open-end credit but were closed-end credit instead.

*PayDay America Disclosures*

32. Each Periodic Statement with Cash Advance Feature for each loan stated the annual percentage rate in a font size smaller than 24-point type, and was not in bold type print.

*Loan Default and Debt Collection*

33. Mr. Dobosenski was unable to repay his second loan, identified as Advance Number xxx8687.

34. On or about May 27, 2014, Defendant sent Mr. Dobosenski a letter, entitled “Notice of Dishonor and Demand of Payment,” which provided notice of non-payment, penalties imposed as a result of the non-payment, and the possible commencement of court action.
35. On or about June 11, 2014, Defendant filed a conciliation court action against Mr. Dobosenski in Blue Earth County, case file number 07-CO-14-380, seeking \$308.04, plus a \$72.00 filing fee, for a total of \$380.04. Shortly thereafter, Mr. Dobosenski was served with the conciliation court complaint at his place of employment.
36. On or about August 12, 2014, a default judgment in the amount of \$380.04 was entered against Mr. Dobosenski in favor of Payday America.
37. On September 4, 2014, the Court Administrator for Blue Earth County District Court entered a Notice of Entry and Docketing of Judgment. On that same date, a Writ of Execution was issued in Blue Earth County District Court, Case File No. 07-cv-14-3130, for satisfaction of said judgment in the total amount of \$479.04.
38. Shortly following issuance of the Writ of Execution, Mr. Dobosenski learned from his payroll supervisor at his place of employment that his wages would be garnished until the conciliation court judgment was satisfied.
39. By the next payroll processing date, portions of Mr. Dobosenski’s wages were garnished cumulatively until Defendant’s judgment against him was satisfied.

**CLASS ACTION ALLEGATIONS**

40. Plaintiff substitutes as named plaintiff and class representative in this action under Minn. R. Civ. P. 23.01, 23.02(b) and 23.02(c).

41. The following class was certified on April 26, 2017:

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. In addition, all persons in 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.

42. This class action satisfies all the requirements of Minn. R. Civ. P. 23.01, including numerosity, commonality, typicality and adequacy, as well as the requirements of Minn. R. Civ. P. 23.02(b) and the requirements of predominance and superiority under Minn. R. Civ. P. 23.02(c).

43. Consistent with Minn. R. Civ. P. 23.01(a), the class “is so numerous that joinder of members is impracticable.” Defendant has made nearly 34,000 thousand of the subject loans across Minnesota during the certified class period.

44. There are questions of law or fact that are common to all members of the class, which questions predominate over any question affecting only individual class members. The principal common questions include, but are not limited to:

- A. Whether Defendant's sale of the subject loans was impermissibly characterized as open-end credit in order to impose charges allowed by Minn. Stat. § 47.59, subd. 6(c) for open-end credit?
  - B. Whether Defendant charged more than the maximum allowed interest rate plus \$25 for closed-end loans by assessing a "Cash Advance Charge" and "Annual Fee Applicable to Advances" for each of the subject loans?
  - C. Whether Defendant sold loans that, at the time of each loan origination, failed to disclose the annual percentage rate in at least a 24-point type font?
  - D. Whether Defendant collected or attempted to collect on debt that was void as a matter of law and, therefore, engaged in a prohibited debt collection practice under Minn. Stat. § 332.37?
45. Plaintiff's claims are typical of the claims of the class members.
46. Plaintiff will fairly and adequately protect the interests of all class members in the prosecution of this action. He is similarly situated with, and has suffered similar injuries as, the members of the class he is representing. Plaintiff and the class have been wronged and Plaintiff wishes to obtain redress for the wrong, and wants Defendant prohibited from perpetrating similar wrongs on others. To that end, Plaintiff has retained counsel experienced in handling consumer class actions and complex litigation. Neither Plaintiff nor his counsel have any interest which might cause them not to vigorously pursue this action.

47. Certification is appropriate under Minn. R. Civ. P. 23.02(b) where, as here, Plaintiff, on behalf of the class, is seeking systematic reform through injunctive relief. Rule 23.02(b) provides a basis for certifying a class in an action challenging a pattern and/or practice of illegal conduct. In particular, certification is appropriate under Rule 23.02(b) where commonality findings are based primarily on the fact that Defendant's conduct is central to the claims of all class members irrespective of their individual circumstances.
48. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:
- A. The amounts in controversy are small enough to discourage prosecution of individual actions.
  - B. If such litigation were prosecuted individually, it would cause a great multiplicity of actions unnecessarily.
  - C. Concentration of the litigation concerning this matter in this Court is desirable.
  - D. The class is manageable, particularly in light of Defendant's use of standard forms and its uniform assessment of "Cash Advance Charges" and "Annual Fees Applicable to Advances" based on the amount of cash advanced for each loan origination.
49. The class as defined herein has been certified pursuant to Minn. R. Civ. P. 23.02(c) because the questions of law or fact common to the members of the class will predominate over any questions affecting only individual members, and a Rule 23 class action is superior to other methods for a fair and efficient

adjudication of the controversy and causes of action stated in this Complaint. To the best of Plaintiff's knowledge, no similar litigation is currently pending by other members of the class.

### **COUNT I**

#### **Violations of Minnesota Consumer Short-Term Loan Law Maximum Rates**

50. Plaintiff re-alleges all above paragraphs.
51. The loans sold by Defendant that are the subject of this class action lawsuit are "consumer short-term loans" as defined under Minn. Stat. § 47.601, subd. 1(d).
52. Defendant is a "consumer short-term lender" as defined under Minn. Stat. § 47.601, subd. 1(e).
53. Defendant engaged in the business of making these consumer short-term loans.
54. Defendant is a "financial institution" as defined under Minn. Stat. § 47.59, subd. 1(k).
55. The loans sold by Defendant are closed-end for purposes of determining maximum rates and charges under Minn. Stat. § 47.59.
56. Minn. Stat. § 47.59, subd. 3 authorizes finance charges for both open credit and closed-end loans on "the unpaid balance of the principal amount not to exceed the greater of: (1) an annual percentage rate not exceeding 21.75 percent; or (2) the total of (i) 33 percent per year on the part of the unpaid balance of the principal amount not exceeding \$1,125; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$1,125."
57. Minn. Stat. § 47.59, subd. 6(d) authorizes a financial institution to impose a "onetime loan administrative fee not exceeding \$25 in connection with closed-end credit...[,] " in addition to the maximum allowed finance charge.

58. Each loan sold to Plaintiff and the class charged the maximum-allowed finance charge under Minn. Stat. § 47.59, subd. 3.
59. In addition to the maximum-allowed finance charge, each loan sold to Plaintiff and the class imposed a “Cash Advance Charge” of either \$25.00 (for loans up to \$350) or \$30.00 (for loans ranging from \$351 to \$1,000).
60. In addition to the maximum-allowed finance charge, and the “Cash Advance Charge,” each loan sold to Plaintiff and the class imposed an “Annual Fee Applicable to Advances” in the following amounts, depending on the amount of cash advanced for each loan:

<u>Cash Advance</u>	<u>Annual Fee Applicable to Advances</u>
\$100-\$300	\$2.00
\$301-\$400	\$5.00
\$401-\$450	\$10.00
\$451-\$500	\$15.00
\$501-\$550	\$20.00
\$551-\$600	\$25.00
\$601-\$650	\$30.00
\$651-\$700	\$35.00
\$701-\$750	\$40.00
\$751-\$1000	\$50.00

61. Defendant imposed charges on each loan to Plaintiff and the class in excess of those allowed under Minn. Stat. § 47.59, subd. 6.

62. Consumer short-term lenders are prohibited from making a consumer short-term loan “in which interest rates, fees, charges, or loan amounts exceed those allowable by section 47.59, subd. 6 ... other than by *de minimis* amounts if no pattern or practice exists.” Minn. Stat. § 47.601, subd. 2(a)(3)(ii).
63. Defendant engages in a pattern or practice of charging borrowers fees and charges on short-term loans that exceed amounts allowable by section 47.59, subd. 6.
64. Defendant imposed fees and charges on the subject loans that exceeded amounts allowable by section 47.59, subd. 6 and were for more than *de minimis* amounts.
65. Defendant’s imposition of fees and charges on the subject loans in excess of the amounts allowable by § 47.59, subd. 6 violate Minn. Stat. § 47.601, subd. 2(a)(3)(ii).
66. For violations of Minn. Stat. § 47.601, subd. 2(a)(3)(ii), Defendant is liable to Plaintiff and the class for all money collected or received in connection with any loan; actual, incidental, and consequential damages; statutory damages of up to \$1,000 per violation; costs, disbursements, and reasonable attorney fees; and injunctive relief. Minn Stat. § 47.601, subd. 6(a).
67. For the same violations, the subject loans are void and Plaintiff and the class are not obligated to pay any amount owing on those loans. Minn. Stat. § 47.601, subd. 6(b).
68. Plaintiff and the class have incurred actual, incidental and/or consequential damages and other harm, and have incurred attorneys’ fees and legal expenses as result of Defendant’s unlawful conduct.

**COUNT II****Violations of Minnesota Consumer Short-Term Loan Law Disclosure Requirements**

69. Plaintiff re-alleges all above paragraphs.
70. A consumer short-term lender must furnish a copy of a written contract to the borrower that the actual annual percentage rate charged listed in bold, 24-point type, under Minn. Stat. § 47.601, subd. 2(c).
71. Defendant failed to include the annual percentage rate in bold, 24-point type on the document provided to Plaintiff and the class for each of the subject loans in violation of Minn. Stat. § 47.601, subd. 2(c)(4).
72. Defendant's failure to provide Plaintiff and the class with the required disclosures constitute violations of Minn. Stat. § 47.601, subd. 2(c).
73. For each violation of Minn. Stat. § 47.601, subd. 2, Defendant is liable to Plaintiff and the class for all money collected or received in connection with any loan; actual, incidental, and consequential damages; statutory damages of up to \$1,000 per violation; costs, disbursements, and reasonable attorney fees; and injunctive relief. Minn. Stat. § 47.601, subd. 6(a).
74. For the same violations, the subject loans are void and Plaintiff and the class are not obligated to pay any amount owing on those loans. Minn. Stat. § 47.601, subd. 6(b).
75. Plaintiff and the class have incurred actual, incidental and/or consequential damages and other harm, and have incurred attorneys' fees and legal expenses as a result of Defendant's unlawful conduct.

**COUNT III**  
**Debt Collection Practices Violations**

76. Plaintiff re-alleges all above paragraphs.
77. A consumer short-term lender attempting to collect on an indebtedness in connection with a consumer short-term loan must not engage in prohibited debt collection practices referenced in Minn. Stat. § 332.37. Minn Stat. § 47.601, subd. 3.
78. A violation of the federal Fair Debt Collection Practices Act is defined under Minn. Stat. § 332.37(12) as a prohibited debt collection practice.
79. A consumer short-term lender attempting to collect on an indebtedness in connection with a consumer short-term loan is prohibited from using any false, deceptive, or misleading representations in connection with the collection of a debt, including the false representation of the amount or legal status of the debt. Minn. Stat. § 47.601, subd. 3; Minn. Stat. § 332.37(12) (defining violations of 15 U.S.C. § 1692e(2)(A) as a prohibited debt collection practice under Minnesota law).
80. Defendant's false, deceptive and misleading representations that Plaintiff and the class owed money to it on loans that were void constitute a prohibited debt collection practice under Minn. Stat. § 332.37.
81. A consumer short-term lender attempting to collect on an indebtedness in connection with a consumer short-term loan is prohibited from using any false, deceptive, or misleading representations in connection with the collection of a debt, including threatening to take any action that cannot be legally taken or that is not intended to be taken. Minn. Stat. §§ 47.601, subd. 3; 332.37(12) (defining

- violations of 15 U.S.C. § 1692e(5) as a prohibited debt collection practice under Minnesota law).
82. Defendant's false, deceptive and misleading representations and threats that Defendant could take legal action against Plaintiff and the class on loans that were void constitute a prohibited debt collection practice under Minn. Stat. § 332.37.
83. Each prohibited debt collection practice under Minn. Stat. § 332.37 engaged in by Defendant constitutes a violation of Minn. Stat. § 47.601, subd. 3.
84. For each violation of Minn. Stat. § 47.601, subd. 3, Defendant is liable to Plaintiff and the class for all money collected or received in connection with any loan; actual, incidental, and consequential damages; statutory damages up to \$1,000 per violation; costs, disbursements, and reasonable attorney fees; and injunctive relief. Minn. Stat. § 47.601, subd. 6(a).
85. For the same violations, the subject loans which Defendant attempted to collect, and any associated charges, are void and Plaintiff and the class are not obligated to pay any amount owing on that loan. Minn. Stat. § 47.601, subd. 6(b).
86. Plaintiff and the class have incurred actual, incidental and/or consequential damages and other harm, and have incurred attorneys' fees and legal expenses as a result of Defendant's unlawful conduct.

**PRAYER FOR RELIEF**

Plaintiff and class representative, Jason Dobosenski, respectfully requests that this Court:

- A. Certify this action as a class action on behalf of the proposed class as defined herein pursuant to Minn. R. Civ. P. 23, including the substitution of Jason

Dobosenski as Class Representative, and undersigned counsel as Class Counsel;

- B. Find that Defendant has violated Minn. Stat. §§ 47.601;
- C. Declare that Defendant's practices of selling closed-end loans and assessing charges permissible by law only for open-end credit loans and collecting or attempting to collect on those loan balances to be in violation of Minnesota law and enter an injunction prohibiting Defendant from engaging in said practices;
- D. Order a return of all money received by Defendant from Plaintiff and the class or paid by Plaintiff and the class in connection with the subject loans, including all interest and finance charges and principal amounts, under Minn. Stat. § 47.601, subd. 6(a);
- E. Declare that the subject loans to Plaintiff and the class by Defendant are void and that Plaintiff and the class are not obligated to pay any amounts owed on those loans, and that any money paid by Plaintiff and the class on these loans should be returned to them, under Minn. Stat. § 47.601, subd. 6(b);
- F. Award Plaintiff and the class their damages, inclusive of all damages pursuant to Minn. Stat. § 47.601, subd. 6(a)(2);
- G. Award Plaintiff and the class statutory damages of up to \$1,000 per violation pursuant to Minn. Stat. § 47.601, subd. 6(a)(3);
- H. Award Plaintiff and the class costs, disbursements and reasonable attorney fees pursuant to Minn. Stat. § 47.601, subd. 6(a)(4);

- I. Award damages in an amount greater than \$50,000 for the relief requested;  
and
- J. Award any further legal and equitable relief that the Court deems just and  
proper.

Dated: October 11, 2017.

**TESKE, MICKO, KATZ,  
KITZER & ROCHEL, PLLP**

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### **ACKNOWLEDGEMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys' fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2 to the party against whom the allegations in the pleading is asserted.

Dated: October 11, 2017

By: s/ Marisa C. Katz  
Marisa C. Katz (Minn. Bar No. 389709)