

**STATE OF MINNESOTA
HENNEPIN COUNTY**

**DISTRICT COURT
FOURTH JUDICIAL DISTRICT**

Case Type: Civil Other
Statutory Violation

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

Plaintiff,

v.

PayDayAmerica, Inc.,
Defendant.

Case No. 27-cv-15-18990
The Hon. Daniel Mabley, presiding

**AFFIDAVIT OF MARISA KATZ IN SUPPORT OF PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Marisa Katz, being first duly sworn on oath, states and deposes:

1. I am one of the Class Counsel representing the Plaintiff and the class in the above-captioned case. I make this affidavit in support of Plaintiff’s Motion for Preliminary Approval of Class Settlement and is based upon my personal knowledge, records and information available to me, as well as the terms and conditions set forth in the parties’ Settlement Agreement (“Settlement”), of which a true and correct copy is attached hereto as Exhibit 1. I am a partner at my firm Teske, Katz, Kitzer & Rochel, PLLP in Minneapolis, Minnesota, which includes my law partner, Vildan Teske, who is also Class Counsel in this case. Attached as Exhibit 2 is a true and correct copy of the unpublished case, *In re Target Corp. Customer Data Sec. Breach Litig.*, 2015 U.S. Dist. LEXIS 155137 at *14 (D. Minn. Nov. 17, 2015), cited in Plaintiff’s memorandum.

Background of this Litigation and Settlement Negotiations

2. I, along with my partner Vildan Teske, began investigating Defendant's payday loan practices during the summer of 2015. On October 2, 2015, original Plaintiff, Randy Merle Holte, commenced this class action against Payday America asserting claims under the Minnesota Consumer Short-Term Lending Law, Minn. Stat. §§ 47.59 and 47.601, seeking monetary and equitable relief, statutory penalties and attorneys' fees and costs.
3. Defendant filed a motion to dismiss all of Plaintiff's claims under Minn. R. Civ. P. 12.02(e) on October 22, 2015.
4. After full briefing and oral argument, on May 16, 2016, the Court issued an order and accompanying memorandum opinion denying Defendant's motion to dismiss all three counts contained in the Class Action Complaint.
5. The parties thereafter engaged in full discovery, exchanging multiple interrogatories, requests for production of documents, requests for admissions, reviewed produced documents, conducted depositions, and engaged in many discussions regarding outstanding discovery and negotiated differences that arose as to remaining discovery issues.
6. In the Fall of 2016, the parties agreed to temporarily stay the litigation in an attempt to settle this litigation. At that time, the parties engaged in early, informal discussions to determine the scope of the putative class and potential damages. In addition, Defendant had produced some of its financial statements and tax returns for purposes of a potential settlement so that Plaintiff could evaluate the company's ability to pay into a settlement fund. At this still relatively early stage of the litigation, however, there remained disagreement as to the scope of the class, whether a class could be certified and the state

of Defendant's financial condition. The parties reached an impasse and any further discussion of settlement ended, which included a failed mediation on November 29, 2016.

7. Plaintiff moved for class certification on March 10, 2017. Following full briefing and oral argument, the Court granted class certification on April 26, 2017. Class Counsel hired the class administrator, Angeion Group and notice of the pending class action was sent to class members on August 11, 2017. The deadline for class members to opt-out of the litigation was October 10, 2017, and of the nearly 34,000 member class, 17 class members had elected to exclude themselves from the class litigation.
8. The parties filed cross motions for summary judgment, with each party seeking summary judgment on all three counts of the class action complaint. On February 5, the Court denied Defendant's motion for summary judgment in its entirety and partially granted Plaintiff's motion for summary judgment on all three counts.
9. Not long following the Court's order regarding summary judgment, the parties agreed to re-visit settlement negotiations with a mediator. In March, the parties retained retired United States Magistrate Judge and experienced mediator, Arthur J. Boylan, for a mediation scheduled on May 14, 2018.
10. In preparation for the mediation, the parties prepared detailed mediation submissions, apprising Judge Boylan of the claims and defenses in this case, the litigation history, the Court's previous pre-trial orders and other documents relevant to the case. Counsel for the parties also exchanged information and conferred by telephone on a number of occasions prior to the scheduled mediation to help enable the parties and the mediator to be as productive as possible during the mediation.

11. On May 14, 2018, the parties devoted nearly 12 hours of negotiation, in good-faith and at arm's-length with Judge Boylan's assistance. The parties were eventually able to reach settlement of the action on the terms set forth in the Settlement Agreement.
12. One of the biggest challenges for Class Counsel during the course of mediation was determining the most reasonable and adequate way to provide redress to a 33,449-member class of consumer borrowers by a payday lending company with limited cash resources. The class also consisted of a debt-collection subclass of consumers who had collectively taken out approximately 13,000 loans that went into default and upon which Payday had engaged in debt collection efforts.
13. Class Counsel spent a large amount of time reviewing and analyzing the class data produced by Defendant leading up to the mediation. Given the various points of data that were produced, Class Counsel determined that the amount of overcharge payments made by the class totaled \$3,611,023. These overcharge amounts paid per class member ranged widely from \$2 (*e.g.*, for one loan taken out by one class member) to \$630 (*e.g.*, for 178 loans taken out by one class member) during the class period. Given this wide range, the average overcharge payments made by class members totaled \$108. Of the entire class, 12,190 class members (36.3% of the class) paid a total of \$20 or less in overcharges.
14. During the May 14 mediation, Class Counsel devoted considerable time to addressing the issue of monetary compensation to the nearly 34,000-member class in the context of Defendant's financial condition, as well as the significant costs associated with administering cash compensation to each class member. Class Counsel analyzed, in detail, Defendant's financial information, including available assets and outstanding debt and other liabilities, as well as the class damages data, both before and during the

mediation. Class Counsel, along with Judge Boylan, discussed and considered the cost-benefit analysis, weighing the costs of administration to enable cash awards for class members against the actual amounts class members would be getting.

15. As the day wore on, it became clear that Defendant's financial condition and current debt structure made it unfeasible to pay sufficient money into a settlement fund to pay for costs of administering a cash payment, a cash payment to class members that would be more than a few dollars, the class's statutory attorney fees, as well as the costs of litigation. After running through multiple models for possible distribution and the amounts of cash that would be needed, it became apparent that the costs of administration, which Class Counsel estimates would be anywhere from \$40,000 to \$100,000 to issue a majority of cash awards for objectively insubstantial cash amounts outweighed the relatively minor economic benefit of giving some amount of cash to class members.
16. In the end, the most reasonable solution with the most long-term economic benefit for the class was to permanently stop Payday's business practice of selling its loan products as open-end credit and assessing those overcharges. Furthermore, given that the payday loan customer base comprises consumers who, in large numbers, return to Defendant for additional loans, the permanent ending of Defendant's practice that resulted in overcharge payments was a fair and reasonable result in light of the limited funds at Defendant's disposal.
17. The parties also negotiated for Defendant to pay the costs of administering this settlement, including notice to the Class, updating and maintaining the class action website and any other tasks related to administration; costs associated with the mediation

(namely the mediator fees); and create and pay into a Settlement Fund the total amount of \$750,000 to pay the Class's statutory attorney fees and litigation costs as well as a representative service award. Specifically, this amount contemplates a class representative service award to Jason Dobosenski in the amount of \$7,500 for his dedication of time and service in this litigation, the reimbursement of Plaintiff's litigation costs in the amount of \$28,000, and \$714,500 in attorneys' fees for over three years of effort and hard fought litigation (all on a contingent basis with no guaranty of recovery) in which Class Counsel prevailed on four pre-trial motions on a contingency basis: Defendant's motion to dismiss, Plaintiff's motion for class certification and both parties' cross motions for summary judgment. Furthermore, in my experience, given the large number of class members, there will be much work to be done *after* final approval of settlement, as there will be many inquiries about the settlement by class members that will require both attorney and staff time, as well as issues that come up for individual class members. Given comparable class cases (in terms of the number of class members) that Class Counsel have handled in the past, it is reasonable to estimate that there will be several hundred additional hours expended by Class Counsel and their firm in the year after approval of this settlement.

Fairness and Reasonableness of the Settlement

18. The history of this case indicates that the proposed settlement is the product of arm's length negotiations, devoid of any fraud or collusion, and weighs strongly in favor of approving the settlement. This action was commenced in October 2015 after months of investigation and due diligence by Class Counsel, and was vigorously prosecuted and defended by both sides for nearly three years. Every pre-trial motion, dispositive and

non-dispositive, was hotly contested, fully researched, briefed and argued before the Court. The parties engaged in full discovery, including document productions and depositions.

- 19. Over the course of this case, two mediations were scheduled: the first one in November 2016, which was unsuccessful, and the one on May 14, which resulted in this Settlement.
- 20. After negotiations that were hard-fought on both sides, and with the assistance of a very experienced and well-respected mediator, the parties came to agreement on a fair, reasonable and equitable way to benefit the class given the challenging circumstances surrounding Payday's financial condition and the class size.
- 21. I believe that, after investigation of the facts and after carefully considering the circumstances, it would be in the best interests of the class for this Settlement to be approved.
- 22. Based on my experience litigating and settling class action cases, I consider this settlement to be fair, reasonable, adequate and in the best interests of Settling Class Members, particularly in light of the delay, risks and expense of protracted litigation balances against the benefits afforded to the class.

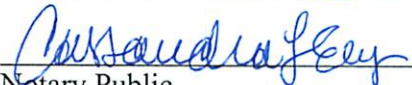
Further Affiant sayeth not.



 Marisa Katz

Subscribed before me, Notary,

This 7th day of June, 2018.



 Notary Public

My commission expires: JANUARY 31, 2022

