

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

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

Case Type: Civil Other

Statutory Violation

Plaintiff,

Case No. 27-cv-15-18990

v.

The Hon. Daniel Mabley, presiding

Payday America, Inc.

Defendant.

DECLARATION OF THE HONORABLE ARTHUR J. BOYLAN (RET.)

I, Arthur J. Boylan, declare:

Background

1. I submit this Declaration in support of preliminary approval of the class action settlement reached as a result of good faith, arm's length and highly professional negotiations between Class Counsel and counsel for Payday America.

2. I began my legal career in 1976 as a trial attorney, representing both plaintiffs and defendants. I served for ten years as a District Court Judge on Minnesota's general jurisdiction court. I was privileged to be appointed as a Federal Magistrate Judge in 1996. In 2010, I was named Chief Magistrate Judge of the District Court for the District of Minnesota. I served in that capacity until I retired on January 8, 2014 and subsequently began my full-time mediation practice.

3. I have extensive experience as a mediator. As one of the Federal Courts' Alternative Dispute Resolution Neutrals, I have assisted the parties in settling thousands of cases, including in the areas of consumer protection, antitrust, securities law, class action,

copyright and employment law. Illustrative notable cases in which I have served as a mediator include: *Target Data Breach Litigation* (consumer data breach class action); *Brady v. The National Football League* (antitrust/labor lockout); *Stockwalk Group v. Deutsche Bank/E*Trade v. Nomura Canada* (securities law); *Guidant/Boston Scientific Implantable Defibrillators Product Liability Litigation* (MDL); *Rottland v. Pinnacle* (copyright); *MN Association of Nurse Anesthetists v. Allina* (whistleblower); *Levaquin Pharmaceutical Product Liability Litigation* (MDL); *Peterson v. Seagate* (class action employment); *Lockwood Motors v. General Motors* (class action franchise); *Zurn Pex Plumbing Product Liability* (MDL); *Insignia Systems v. News America* (antitrust); *Minneapolis Firefighters v. Medtronic* (shareholders class action/securities); *USA, ex rel., Allen v. Guidant* (whistleblower); *Auto-Owners Ins. Co. v. Kottkes' Bus Service* (school bus, personal injury); and *ADT v. Swenson* (wrongful death product liability). In my role as a mediator, I consider myself to be a neutral, representing neither plaintiffs nor defendants.

Mediation Process

4. The parties engaged in settlement discussions early in the case both directly and also with the assistance of another mediator during a mediation session held on November 29, 2016. That mediation failed and the parties continued to litigate the case, moving forward to class certification and summary judgment motions. The parties retained me to serve as a mediator in this matter in March 2018, following the Court's decision on the cross motions for summary judgment.

5. Before the mediation process, I requested, received and reviewed written materials from counsel for the parties setting out their respective positions and views concerning the facts, claims, defenses and assessments of risks in the litigation. I also

reviewed the pleadings filed in this litigation, including Plaintiffs' First Amended Class Action Complaint; the orders and memoranda opinions issued by the court regarding Defendant's motion to dismiss, Plaintiff's motion for class certification and the parties' cross motions for summary judgment.

6. I conducted a day-long mediation of this case on May 14, 2018 that went well into the night. The parties exchanged numerous offers and counter-offers and vigorously advocated and defended their respective positions on behalf of their clients. During the mediation session, I met individually with counsel for each party and also facilitated joint discussions between counsel. Through this process, I became intimately familiar with the nature of the claims and defenses asserted in this case.

7. While both parties were confident in the strength of their respective positions, continued litigation carried a substantial risk for both sides. Absent a settlement, the litigation in this matter would likely have continued for a long time and at significant expense to both sides with uncertain results. This litigation is complex and involved numerous difficult factual and legal issues in an evolving area of the law. Based on my review of the mediation submissions provided by the parties, the detailed presentations by Class Counsel and Payday America's counsel, and conducting the mediation session, it is my opinion that continued litigation posed significant risks for both sides.

8. In preparation for the mediation, Class Counsel obtained Payday America's financial statements and tax returns for the past four years. Given the potential size of the total statutory damages that a court could award in this case, there was a real risk that Payday America could have sought bankruptcy protection .

9. The very large size of the Class in this case (over 33,000 class members) juxtaposed with Defendant's size and financial condition and limited ability to pay into a class settlement fund, as well as the costs of administering a class settlement that would require notice to and communications with these class members, as well as attorney fees and costs, made it a difficult negotiation process on both sides.

10. The mediation in this case was conducted on both sides by highly experienced and highly skilled counsel who were fully prepared and had an excellent understanding of the strengths and weaknesses of the claims and defenses asserted in the litigation. While demonstrating consistent professionalism, counsel for each side zealously, yet at all times with civility, advanced their respective arguments in the best interests of their respective clients. Each side demonstrated a willingness to continue to litigate rather than accept a settlement that was not in the best interests of their clients.

11. The hard-fought negotiations in this matter were exhausting and, at times, frustrating for the parties and their counsel. However, the discussions and exchanges allowed the parties to express their respective views of the strengths and weaknesses of the parties' positions in the case. Throughout these negotiations, the settlement process was conducted at arm's-length and, while conducted in a highly professional manner, was quite adversarial.

The Settlement

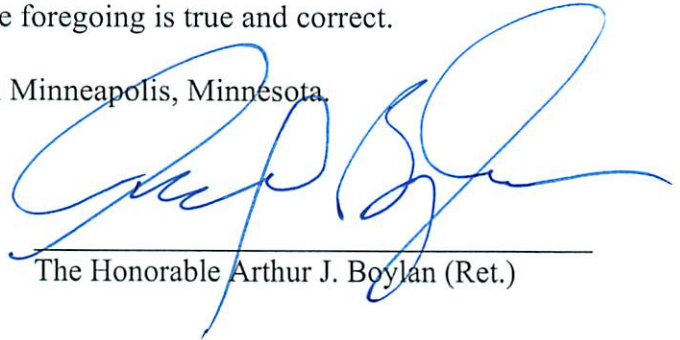
12. Through these good faith, rigorous negotiations and mediation sessions, the parties reached an agreement to settle this action. The settlement provides for very significant equitable relief to the Class. As the class data shows, a significant majority of the class members are individuals that are struggling financially and are thus repeat customers of Defendant. The various types of equitable relief detailed in the settlement agreement will

provide very real monetary relief to the class members. As Defendant's affidavit shows, in the years to come, Defendant will forego charging and collecting millions of dollars of loan fees because of this settlement. Also, class members that owe balances on loans from the class period will no longer have to pay them and any unpaid judgments Defendant has against class members will be considered satisfied (accomplished by Defendant filing satisfactions in each case file). All of this relief will translate to millions of dollars of benefit to the members of the Class and beyond.

10. 13. The Court, of course, will determine the fairness, reasonableness and adequacy of the settlement under governing legal standards. From my perspective as mediator, however, I can attest that the proposed settlement is a reasonable result, obtained at arm's length after a professionally conducted, adversarial negotiating process and is consistent with the risks and potential rewards of the claims asserted when gauged against the alternative of continued, uncertain litigation. Based on the facts and circumstances presented by the parties, my review of the pleadings and other papers filed in this litigation, my experience as a mediator including in mediating class action settlements, and settlements reached in similar litigation, it is my opinion that the settlement provides for substantial benefits and relief to the Class and is a fair, adequate and reasonable settlement reached through arm's-length negotiations by skilled, well-informed counsel with sufficient information from investigation, discovery and very hard-fought litigation and through the intensive mediation process described above. It is my opinion that the settlement is not only within the range of reasonableness and subject to preliminary approval, but is fair, adequate, and reasonable and in the best interests of the Class, free from any collusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of June, 2018, in Minneapolis, Minnesota.



The Honorable Arthur J. Boylan (Ret.)

