

ALLEGATIONS SPECIFIC TO PLAINTIFF HOLTE

The PayDay America Loans

6. On or about April 28, 2015, Mr. Holte met with an employee of Defendant at one of its stores located at 168 N. Blake Road in Hopkins, Minnesota. Defendant, through its employee, arranged for a loan between Mr. Holte and Defendant.
7. The loan was for a fixed amount of \$400, which Mr. Holte received at the time the loan was originated.
8. Along with this loan, Defendant gave Mr. Holte a one-page loan document titled “Periodic Statement with Cash Advance Feature” (hereinafter “Periodic Statement”) that identified Defendant as the lender and the entity that produced the disclosure. On this statement, the loan was identified as Advance Number xxx2816.
9. The Periodic Statement stated a fixed amount of \$438.68 that Mr. Holte was to pay Defendant at a fixed date ten days later, on May 8, 2015, as repayment of the loan.
10. Within one week following May 8, 2015, Defendant, with Plaintiff’s authorization, automatically withdrew \$438.68 from Mr. Holte’s personal checking account.
11. On or about May 13, 2015, Mr. Holte again met with an employee of Defendant at one of its stores located at 168 N. Blake Road in Hopkins, Minnesota. Defendant, through its employee, arranged for a second loan between Mr. Holte and Defendant.

12. The second loan was for a fixed amount of \$200, which Mr. Holte received at the time the loan was originated.
13. Along with this loan, Defendant gave Mr. Holte a one-page loan document titled “Periodic Statement with Cash Advance Feature” (hereinafter “Periodic Statement”) that identified Defendant as the lender and the entity that produced the disclosure. On this statement, the second loan was identified as Advance Number xxx0638.
14. The Periodic Statement for the second loan stated a fixed amount of \$228.65 that Mr. Holte was to pay Defendant on a fixed date nine days later, on May 22, 2015, as repayment of the loan.
15. Within one week following May 22, 2015, Defendant, with Plaintiff’s authorization, automatically withdrew \$228.65 from Mr. Holte’s personal checking account.
16. On or about June 3, 2015, Mr. Holte again met with an employee of Defendant at one of its stores located at 168 N. Blake Road in Hopkins, Minnesota. Defendant, through its employee, arranged for a third loan between Mr. Holte and Defendant.
17. The third loan was for a fixed amount of \$180, which Mr. Holte was given at the time the loan was originated.
18. Along with the third loan, Defendant gave Mr. Holte a one-page loan document titled “Periodic Statement with Cash Advance Feature” (hereinafter “Periodic Statement”) that identified Defendant as the lender and the entity that produced the disclosure. On this statement, the third loan was identified as Advance Number xxx1031.

19. The Periodic Statement stated a fixed amount of \$209.64 that Mr. Holte was to pay Defendant at a fixed date 16 days later, on June 19, 2015, as repayment of the loan.
20. Within one week following June 19, 2015, Defendant, with Plaintiff's authorization, attempted to automatically withdraw the \$228.65 from Mr. Holte's personal checking account; however, Mr. Holte's account did not maintain sufficient funds to cover the entire amount of the withdrawal and it resulted in an account overdraft.
21. For each of the three loans, Mr. Holte was required to pay the fixed amount by the fixed repayment date to avoid being held in default and thus incurring additional charges.
22. 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."
23. 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.
24. The terms of the loans were as follows:

	<u>Loan #1</u>	<u>Loan #2</u>	<u>Loan #3</u>
Advance Number	xxx2816	xxx0638	xxx1031
Agreement Number	392823	392823	392823
Date of Loan	4/28/2015	5/13/2015	6/3/2015
Payment Date	5/8/2015	5/22/2015	6/19/2015

Amount of Loan	\$400.00	\$200.00	\$180.00
Finance Charge resulting from application of Monthly Periodic Rate	\$3.68	\$1.65	\$2.64
Cash Advance Charge	\$30.00	\$25.00	\$25.00
Annual Fee Applicable to Advances	\$5.00	\$2.00	\$2.00
Amount Owed	\$438.68	\$228.65	\$209.64
Actual APR	352.96%	580.96%	375.65%

25. The total combined Principle, Charges and Interest for all three loans is **\$876.97**.

Mischaracterization of Loans as “Open-End Credit”

26. 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.
27. Defendant, however, did not provide Plaintiff access to a self-replenishing, reusable line of credit.
28. Defendant did not generally make available to Plaintiff credit based on periodic repayment of an outstanding balance.
29. The amount financed, finance charges and annual percentage rate were calculated at the time each loan was originated.
30. The term of each loan was determined at the time each loan was originated.
31. A single date of repayment for the entire loan amount for each loan was scheduled at the time each loan was originated.

32. 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.
33. Plaintiff was required to return to Defendant and obtain authorization for a new Periodic Statement with Cash Advance Feature each time Plaintiff sought additional credit.
34. 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.
35. Therefore, the loans Defendant made to Plaintiff were not for open-end credit.

PayDay America Disclosures

36. Each Periodic Statement with Cash Advance Feature for each loan did not state the name and title of the individual employee or representative who signed the contract on behalf of the lender.
37. Each Periodic Statement with Cash Advance Feature for each loan stated the annual percentage rate in a font size smaller than 24-point type.

Loan Defaults

38. To pay for each of the three loans, Defendant required Mr. Holte to provide it with the information necessary for it to make direct debit withdrawals from Mr. Holte's personal checking account held at BMO Harris Bank. Mr. Holte provided Defendant authorization for the direct debit withdrawals for each of the three loans.
39. Mr. Holte was unable to repay the third loan, identified as Advance Number xxx1031, due to insufficient funds in his checking account.

40. On or about June 30, 2015, PayDay America sent Mr. Holte a letter providing notice of non-payment, penalties imposed as a result of the non-payment, and the possible commencement of court action.
41. On or about July 31, 2015, PayDay America filed a conciliation court action in Hennepin County, case file number 27-CO-15-5327, seeking \$248.64 (plus \$70.00 filing fee, plus disbursements). Mr. Holte is currently summoned to appear in Conciliation Court on October 8, 2015.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action under Minn. R. Civ. P. 23.01, 23.02(b) and 23.02(c) on behalf of the following class and subclass:

All persons residing in Minnesota who, within the applicable statute of limitations,

- (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 \$1000 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: "Finance Charge resulting from application of Monthly Periodic Rate," "Cash Advance Charge," and "Annual Fee Applicable to Advances;" and
- (c) Received a standard form statement at the time of each loan origination that stated the annual percentage rate (APR) for each loan in less than 24 point type and which is the same or substantially similar to the "Periodic Statement With Cash Advance Feature."

Within the above class, Plaintiff also moves for certification of the following subclass: all those persons identified in (a), (b) and (c) of this definition and who were sent letters by PayDay America, Inc. informing the borrower of loan default and/or were served with process in one or more collection lawsuits in a Conciliation Court in Minnesota.

Plaintiff specifically excludes from the class Defendant's employees, officers, directors or heirs; and this Court, this Court's direct family members and Court personnel.

43. 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).
44. Consistent with Minn. R. Civ. P. 23.01(a), the proposed class "is so numerous that joinder of members is impracticable." Defendant has made thousands of the subject loans across Minnesota within the applicable statute of limitations. Detailed and actual information on the class can be ascertained through account records maintained by Defendant. Joinder would be impracticable given the large number of consumers from all over the state who have entered into the subject loans.
45. 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?
46. Plaintiff's claims are typical of the claims of the class members.
47. 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 seeks to represent. 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.
48. 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.

49. 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.
50. The class as defined herein is certifiable 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

51. Plaintiff re-alleges all above paragraphs.
52. 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).

53. Defendant is a “consumer short-term lender” as defined under Minn. Stat. § 47.601, subd. 1(e).
54. Defendant engaged in the business of making these consumer short-term loans.
55. Defendant is a “financial institution” as defined under Minn. Stat. § 47.59, subd. 1(k).
56. The loans sold by Defendant are closed-end for purposes of determining maximum rates and charges under Minn. Stat. § 47.59.
57. 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.”
58. 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.
59. Each loan sold to Plaintiff and the class charged the maximum-allowed finance charge under Minn. Stat. § 47.59, subd. 3.
60. 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).
61. 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

62. Defendant imposed charges on each loan to Plaintiff and the class in excess of those allowed under Minn. Stat. § 47.59, subd. 6.
63. 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).
64. 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.

65. 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.
66. 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).
67. 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).
68. 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).
69. 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

70. Plaintiff re-alleges all above paragraphs.
71. 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 24-point type, under Minn. Stat. § 47.601, subd. 2(c).

72. Defendant failed to include the annual percentage rate in 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).
73. Defendant's failure to provide Plaintiff and the class with the required disclosures constitute violations of Minn. Stat. § 47.601, subd. 2(c).
74. 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).
75. 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).
76. 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

77. Plaintiff re-alleges all above paragraphs.
78. 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.

79. A violation of the federal Fair Debt Collection Practices Act is defined under Minn. Stat. § 332.37(12) as a prohibited debt collection practice.
80. 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).
81. 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.
82. 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).
83. 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.

84. Each prohibited debt collection practice under Minn. Stat. § 332.37 engaged in by Defendant constitutes a violation of Minn. Stat. § 47.601, subd. 3.
85. 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).
86. 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).
87. 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, Randy Merle Holte, 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 appointment of Randy Merle Holte as Class Representatives and undersigned counsel as Class Counsel;
- B. Find that Defendant, PayDay America, Inc., 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 PayDay America, Inc. 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 PayDay America, Inc. 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 2, 2015.

**TESKE, MICKO, KATZ,
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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 2, 2015

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