NACTT 57th Annual Seminar San Francisco, CA Educational Materials

2:30 – 3:30 Breakout Session

Abusive Lending Statutes and Remedies

Moderator: Lon A. Jenkins, Chapter 13 Standing Trustee for the District of Utah (Salt Lake City)

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MATERIALS INDEX

"Abusive Lending Statutes and Remedies"
NACTT Annual Seminar
July 7, 2022

Hilary B. Bonial
Lon A. Jenkins
Mark C. Leffler

1. What is Predatory Lending?

    - Any lending practice that imposes unfair or abusive loan terms on a borrower and impairs the borrower's ability to repay, which is designed to benefit the lender not the borrower.
    - May include failing to disclose important terms, imposing unrealistically high interest rates, pressuring a borrower accept an unaffordable loan or loan the borrower does not need

2. Potential Abusive or Predatory Lending Products

    a. Payday loans
        - Short-term loans carrying high interest rates, as high as 500%
        - A cash advance based on income
        - Often involves frequent "roll-overs" = loan churning
        - State regulation varies dramatically
        - May prey on desperate borrowers

    b. Title pawn loans
        - Loan secured by automobile title couple with high interest rate
        - Variety of state regulation – interest rates may be capped under usury laws or treated as "pawn" transactions – hence, "title pawn" loans
        - Studies show 1 in 5 borrowers will lose vehicle to lender

    c. Auto loans
        - May include interest "kick-back" to dealer – borrower may be at mercy of dealer
        - Changing the deal – buyer may need to "renegotiate" at the eleventh hour
        - Price/loan amount inflated by add-on of unnecessary features: GAP insurance, life insurance/credit insurance, service contracts, option package

    d. Tax anticipation loans
        - Short-term loan offered based on amount of tax refund
        - Tax preparer offers immediate refund but takes a fee
        - Low risk loan for lender – refund will be paid to tax preparer
        - Are these loans necessary with electronic tax return filing?

    e. Subprime loans
        - Mostly auto loans since 2008 financial crisis

- High interest loans made to borrowers with poor credit histories and likelihood of defaulting
- Ability to repay loan often not a consideration in making the loan

f. Mortgage refinance
    - The less preferred the borrower, the higher the interest rate
    - Predatory refinance characterized by insufficient or misleading disclosures
    - Often based on amount of home equity, not borrower's ability to repay
    - Borrower's persuaded to borrow more than needed
    - May include balloon payment requiring subsequent refinance with additional higher interest and fees

g. Internet loans
    - No personal interaction, no storefront, no credit check
    - May have excessively long or short maturity
    - Access to borrower's bank account required – potential risk

h. Credit cards
    - Aggressively marketed and promoted
    - Attractive low initial interest rates
    - Easily triggered penalty rates
    - Hidden fees and charges
    - Cash advance minimums

3. Abusive Lending Practices

a. Loan churning/loan flipping
    - Loans designed to hinder borrower's ability to repay loan timely or reduce principal, thus requiring roll over or refinance with additional fees and interest
    - Borrower likely to make little progress in paying principal amount of loan
    - 80+ of payday loans are reborrowed within one month

b. Negative amortization
    - Loan payment is insufficient to pay even monthly interest, which is then added to principal of loan
    - Borrower may end up owing substantially more than original loan amount

c. Excessive prepayment penalties
    - Excessive penalties charged if borrower wants to refinance for more affordable loan
    - Disclosures required by TILA, but language may be confusing
    - Vast majority of subprime loans have excessive prepayment penalties

d. Loan packing
    - Lender adds unnecessary products to loan amount such as credit insurance, life

insurance, income insurance

e. Asset-based lending
    - Lender encourages borrower to borrow more than is need based on amount of equity in residence, rather than on borrower's ability to repay

f. Excessive interest rates/hidden fees
    - Interest rate based on lender's perceived risk (some believe that the high interest rate *is* the risk)
    - Depending on loan amount, even seemingly nominal fees can result in excessive APR
    - Late fees and penalties which are easily triggered
    - Fee for insurance added to loan payment

g. Convenience Fees
    - Additional fees may be charged to borrower for making monthly payments online or by telephone
    - Borrowers unable to "shop" for servicers because servicing of loans frequently transferred

h. Balloon payments
    - Lower monthly payment, but large balloon payment at maturity
    - Borrower likely to have to refinance, incurring possibly higher interest and additional fees

i. Inadequate or misleading disclosures
    - State and federal law may require disclosures, but inadequate, misleading disclosures remain common
    - Failure to explain true costs or risks of loan
    - Disclosures can be confusing, hard to understand, buried in fine print
    - What would a "reasonable" consumer's interpretation be?
    - Disclosures only effective if borrower pays attention to them

4. Statutory Consumer Protection Schemes

a. Federal Law provides a patchwork of statutes and regulations
    - FCRA – Fair Credit Reporting Act
    - FDCPA – Fair Debt Collection Practices Act
    - TILA – Truth in Lending Act

b. State Law Consumer Protection Regimes

    - Sets interest rate limits (usury)
    - UCC – Uniform Commercial Code

c. Interplay Federal and State Consumer Protections Laws vs Bankruptcy
    - *Randolph v. IMBS, Inc*., 368 F.3d. 726 (7th Cir. 2004) (no irreconcilable conflict exists between Fair Debt Collection Practices Act and Bankruptcy Code, so both statutes can be enforced simultaneously)
    - *Sears Roebuck & Co. v. O'Brien*, 178 F.3d 962 (8th Cir. 1999) (state debt collection law violated by creditor sending reaffirmation solicitation letter)
    - *Molloy v. Primus Auto. Fin. Services*, 247 B.R. 804 (C.D. Cal. 2000); *In re* Padilla, 379 B.R. 643 (Bankr. S.D. Tex. 2007) (Bankruptcy Code does not immunize mortgage creditor from causes of action based on Real Estate Settlement Procedures Act)
    - *In re Holland*, 374 B.R. 409 (Bankr. D. Mass. 2007) (no inherent conflict between Bankruptcy Code and provisions of Real Estate Settlement Procedures Act)
    - *In re Faust*, 270 B.R. 310 (Bankr. M.D. Ga. 1998) (recommending judgment under Fair Debt Collection Practices Act for acts that violated discharge injunction)

5. Enforcement: Consumer Protection Violations and Bankruptcy

    a. *Stern v. Marshall*, 564 U.S. 462 (2011) may be implicated. There the Supreme Court held that even though a claim was statutorily core under 28 U.S.C. §157(b), it was constitutionally non-core and therefore the bankruptcy court lacked jurisdiction to enter a final order on a claim

        - Proceedings involving claim objections: 28 U.S.C. §157(b)(1) provides that bankruptcy judges may hear and determine all core proceedings arising under title 11

        - 28 U.S.C. §157(b)(2) includes in its listing of "core proceedings" – "counterclaims by the estate against persons filing claims against the estate"

        - Article III, Section 1 of the U.S. Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such other inferior courts as Congress establishes – significantly, unlike bankruptcy judges who are Article I judges, Article III judges serve a lifetime appointment and their compensation cannot be reduced

        - Notwithstanding that the counterclaim in *Stern* arose as a counterclaim to a filed proof of claim and therefore was statutorily core, the tortious interference counterclaim asserted by the debtor was held to be constitutionally non-core because it did not implicate the bankruptcy claim objection

        - According to the *Stern* Court, a counterclaim must "stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process" in order to be considered constitutionally core

        - However, the bankruptcy court in *Taylor v. Allied Title Lending, LLC (In re Taylor)*,

594 B.R. 643 (Bankr. E.D. Va. 2018) held that claims arising under state law alleging that the loan agreement was unenforceable under Virginia law because, among other things, the loan charged a usurious rate of interest, were constitutionally core and thus subject to entry of a final order by the bankruptcy court

b. Filing objection to claim(s)

- 11 USC § 502(a) provides that a claim will be allowed unless objected to. Section 502(b) then describes objections to claims which, if filed, require to the court to "determine the amount of such claim in lawful currency . . . as of the date of the filing of the petition . . . ."

- "[C]laims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed." Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 452 (2007).

- "To rebut the presumption of validity of a claim, an objection must be premised on the grounds for disallowance set forth in section 502(b). [ ]. Section 502(b) instructs the court to determine the amount of the Claim as of the date of the bankruptcy petition and to upset the presumed allowance of the Claim only if and only to the extent that one of nine enumerated grounds for disallowance exist. [ ]. An inquiry into section 502(b)(1) necessitates an inquiry into the underlying substantive law." In re Spiegel, 2022 Bankr. LEXIS 638, at *16-17 (Bankr. N.D. Ill. Mar. 11, 2022).

- The Supreme Court, in Midland Funding, LLC v. Johnson, 137 S.Ct. 1407, 1411-1413 (2017), expressed an expansive view of "claim" under 11 U.S.C. § 101(5), noting that even a claim for an unenforceable debt may be filed if it is filed properly and that Federal Rule of Bankruptcy Procedure 3001(f) provides that "a properly filed 'proof of claim ... shall constitute prima facie evidence of the validity and amount of the claim.'" *Id*. A "properly filed" proof of claim, however, is filed in compliance with Rule 3001.

- For purposes of this discussion, the most likely basis for objecting to a claim based on a predatory loan is 11 USC § 502(b)(1), which provides for the court to disallow a claim "to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . . "

- "With very few exceptions, general usury laws were the only statutes regulating credit costs in the United States prior to the twentieth century. At that point, states began to adopt 'special' usury statutes, such as small loan laws, industrial loan laws, and installment loan laws . . . . Special usury statutes create exceptions to the general usury law for specific classes of transactions. They typically allow a higher rate of interest but impose other restrictions such as limits on loan terms, amounts, and types of security." National Consumer Law Center, *Consumer Credit Regulation* § 2.3.2 (3d ed. 2020).

- For loans of the type being discussed here, the most likely basis to assert a claim objection is that the loan violated a state's usury laws by charging an interest rate above a

state's limit without fitting into any exceptions permitted under state law.

- For example, in *Taylor v. Allied Title Lending, LLC, d/b/a Allied Cash Advance et al.*, Case No. 17-30142-KRH, Adv. Pro. No. 18-3003-KRH (Bankr. E.D. Va.), the debtor objected to the claims of Allied Title Lending, which charged 273.75% interest. Under Virginia law, lenders who were not licensed as finance companies could not offer open-end loans exceeding Virginia's general limit of 12% unless an exception existed. Any such loans that did not fall within an exception were void under Virginia law. One exception to this general usury law allowed lenders to offer open-end credit plans at whatever rates they and the borrower agreed to if the borrower was allowed to pay off the full unpaid balance within 25 days without also having to pay any finance charges. However, Allied always billed a $100 finance charge to borrowers that was applied to the balance on the first day of the loan. Because Allied was not licensed in Virginia as a finance company, the debtor was able to assert the debt to Allied was void under Virginia law and, thus, unenforceable in bankruptcy.

c. Rule 3001(c) requirements

- Among the requirements of "a properly filed proof of claim" under Rule 3001 is, "[i]f, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim." Fed. R. Bankr. P. Rule 3001(c)(2)(A). For claims based on closed-end credit and based on a writing, a copy of the writing must be filed with the claim. Fed. R. Bankr. P. Rule 3001(c)(1). For claims based on open-end or revolving consumer credit, Rule 3001(c)(3)(A) requires the following information to be included with the claim, as applicable:

  (i) the name of the entity from whom the creditor purchased the account;
  (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
  (iii) the date of an account holder's last transaction;
  (iv) the date of the last payment on the account; and
  (v) the date on which the account was charged to profit and loss

- What constitutes a "writing" upon which a claim is based?
  (i) Accounts opened telephonically
  (ii) On-line account opening
  (iii) Response to solicitation (pre-bankruptcy)

    - *In re Nussman*, 2013 WL 5799001 (Bankr. E.D.N.C. Oct. 28, 2013) (credit card claim filed in compliance with Rule 3001(c)(3) was entitled to presumption of validity and was not rendered unenforceable by creditor's failure to comply with state law pleading requirements for collection of such claims)

- *In re Porter*, 374 B.R. 471 (Bankr. D. Conn. 2007) (claims disallowed when not documented because creditors did not respond to debtor's request for documentation)

- *In re Wingerter*, 376 B.R. 221 (Bankr. N.D. Ohio 2007) (Bankruptcy Rule 9011 requires a claim purchaser, before filing a proof of claim with a bankruptcy court, to obtain originating documents or, when such documents are not available, a clear understanding of the nature of the original dealings that support the assertion of a claim against the particular debtor), *appeal dismissed as moot*, 394 B.R. 859 (B.A.P. 6th Cir. 2008), *further decision at In re* Wingerter, 594 F.3d 931 (6th Cir. 2010) (reversing sanctions imposed on debt buyer). *But see In re* Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005) (even if claim does not have prima facie validity under Fed. R. Bankr. P. 3001(f), it remains objector's burden to come forward with evidence to support disallowance)

- *In re Brunson*, 486 B.R. 759 (Bankr. N.D. Tex. 2013) (claim should not be disallowed solely because it does not include documentation)

- *In re Kincaid*, 388 B.R. 610 (Bankr. E.D. Pa. 2008) (although claims were not afforded prima facie validity because claimant failed to establish proper assignment, they were allowed based on admissions contained in debtor's schedules).

- *In re Umstead*, 490 B.R. 186 (Bankr. E.D. Pa. 2013) (although claims failed to include all of the information required by Rule 3001(c)(3)(A), they were presumed valid because omitted information could be obtained from the debtor's bankruptcy schedules)

d. Class actions

- Courts around the country have found that class actions on behalf of debtors, particularly those that address abuses within the bankruptcy process, may proceed within the jurisdiction of a bankruptcy court. *See e.g., Wilborn v. Wells Fargo Bank* (*In re Wilborn*), 609 F.3d 748, 752-55 (5th Cir. 2010) (after analyzing the jurisdictional issues, holding class actions by debtors are expressly allowed and that "[c]lass actions promote efficiency and economy in litigation and permit multiple parties to litigate claims that otherwise might be uneconomical to pursue individual.")

- Bankruptcy Rule 7023 (Rule 23 of the Federal Rules of Civil Procedure) governs class actions in bankruptcy adversary proceedings and may apply in contested matters (see Bankruptcy Rule 9014).

- A class action may be maintained only where plaintiffs satisfy all 4 of Fed. R. Civ. P. 23(a)'s requirements:

  (i) Numerosity - class members are too numerous for practical joinder;

  (ii) Commonality - common questions of law or fact exist for all class members;

  (iii) Typicality — the named plaintiff's claims and defenses are typical of the class; and

  (iv) Adequate representation — the named plaintiff and her or his counsel will fairly and adequately represent the class.

- Rule 7023(b) – then plaintiffs must satisfy **one** of elements of Rule 23(b):

  (i) Numerosity - class members are too numerous for practical joinder;

  (ii) Risk of inconsistent adjudications;

  (iii) Party opposing class has refused to act on grounds that apply generally to the class (generally injunction, not money damages appropriate);

  (iv) Questions of law or fact common to the all class members predominate over any questions affecting only individual members (*In re Wilborn*, 609 F.3d. 748 (5th Cir. 2010) (individual plaintiffs' damages predominate and therefore certification fails); predominate=superiority

- Burden of proof in class certification: Preponderance of the evidence (*Ebin v. Kangadis Food, Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014))

e. *Allied Title Lending*

- Allied had a business model of making loans that violated Virginia law. They also filed proofs of claim in bankruptcy cases. Ms. Taylor's adversary proceeding Complaint alleged 4 items against Allied:

  (i) An individual objection to claim;
  (ii) A class-based objection to claim on behalf of similarly-situated debtors;
  (iii) A class-based claim for monetary damages against Allied for loaning money in violation of Virginia's usury laws; and
  (iv) An individual claim pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 3001, seeking injunctive and declaratory relief based upon her allegations that Allied

filed claims that contained false statements, for an improper purpose, which resulted in damage to her.

(iv) Among numerous motions that Allied filed was a Motion to Compel Arbitration. The Motion to Compel Arbitration cited the Arbitration Agreement entered into by Ms. Taylor when she signed the underlying Line of Credit Agreement with Allied before she filed bankruptcy and upon the requirements of the Federal Arbitration Acr, 9 U.S.C. §§ 1-307. Allied argued the Class Claims were not statutorily or constitutionally core and, therefore, that the Arbitration Agreement should be enforced, Ms. Taylor's claims sent to an arbitrator, and the Adversary Proceeding stayed.

(v) The Bankruptcy Court held that Ms. Taylor's class claims—Counts II and III—were constitutionally core and that referring the claims to arbitration "would conflict with the essential purpose of the bankruptcy process to quickly and efficiently resolve claims against the Debtor's estate . . . ." Taylor v. Allied Title Lending, LLC (In re Taylor), 594 B.R. 643, 650 (Bankr. E.D. Va. 2018).

a. The Court analyzed these issues by applying the Fourth Circuit Court of Appeals' decision in Moses v. CashCall, Inc., 781 F.3d 63 (4th Cir. 2015) (per curiam), which the Court described as "strikingly similar" to the case at bar. Taylor, 594 B.R. at 651.

b. The Court stated that Count II was like the first claim in CashCall, which was constitutionally core "because this issue involved the claim allowance process". Id. at 653. Quoting CashCall, the Court stated, "[R]esolution of [the Debtor's] claim that the Loan Agreement . . . was illegal could directly impact claims against her estate and her plan for financial reorganization . . . ." Id. quoting CashCall, 781 F.3d at 72. As such, the Court held that referring Count II—"which directly pertains to the Debtor's plan of reorganization and the claims allowance process of the bankruptcy court to arbitration"—to arbitration would conflict with the Bankruptcy Code. Id.

c. As for Count III (the Usury Claim), the Court found it "readily distinguishable" from the constitutionally non-core counterclaim in CashCall because it was not a completely separate cause of action but, instead, "would necessarily be resolved by the Court in the claim allowance process". Id. at 653-654. Even though the damages that could be awarded arose from pre-petition collections (the remedy provided by Virginia law was disgorgement of amounts collected), they flowed directly from the determination of whether the loans violated Virginia law—a determination the Court was required to make in the claim allowance process.

(vi) On appeal, the District Court affirmed, finding Counts II and III to be constitutionally core. Allied Title Lending, LLC v. Taylor, 420 F. Supp. 3d 436, 449 (E.D. Va. 2019).

a. Count III was constitutionally core because, "in resolving whether Virginia's consumer finance and usury statutes void the Credit Agreement giving rise to Allied's Claims, the Bankruptcy Court simultaneously resolves Taylor's right — and the right

of the putative class that she seeks to represent — to monetary relief, and vice versa. In other words, Virginia law couples the avoidance of a usurious loan with a right to monetary relief." Id. at 450.

b. Upon finding Counts II and III to be constitutionally core, the District Court examined whether the bankruptcy court had abused its discretion in denying Allied's request for arbitration. Citing Moses v. CashCall, the District Court affirmed the Bankruptcy Court's denial of arbitration, saying,

> Indeed, because resolution of Counts II and III would determine the very validity of Allied's Claims against Taylor's bankruptcy estate, referral of those Counts to arbitration would defeat the "animating purpose" of the Bankruptcy Code to facilitate the efficient reorganization of Taylor's estate through a centralized claims allowance process. CashCall, 781 F.3d at 83 (Gregory, J., concurring). By referring Counts II and III to arbitration, or by keeping one and referring the other, the Bankruptcy Court would risk inconsistent results — results that directly impact the reorganization of Taylor's bankruptcy estate.
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> Taylor, 420 F. Supp. 3d at 451.

- Allied then appealed to the 4th Circuit Court of Appeals. On the eve of oral argument, a settlement was reached which was later approved by the Bankruptcy Court.

- In the settlement, Allied agreed to disallowance of its claim in the Taylor case, payment to Ms. Taylor of $10,000, payment of $125 to all similarly situated debtors who had filed Chapter 13 in the district on or after January 1, 2016 and in whose cases Allied filed a proof of claim, and payment of $280,000 in fees and costs to debtor's counsel. Allied also agreed to withdraw all of its claims in the Eastern District of Virginia arising out of its Line of Credit products sold after July 31, 2012 and not to pursue such claims in future cases.

(i) Arbitration clause enforcement

- Regarding decisions about whether an inherent conflict exists between the Bankruptcy Code and sending a matter to arbitration, "the court of first impression has discretion to decide whether to withhold arbitration, a decision that is subject to review for abuse of that discretion." Moses v. CashCall, Inc., 781 F.3d 781 F.3d 63, 72-73 (4th Cir. 2015) (*citing* Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d 1011, 1019–20 (9th Cir. 2012); Mintze v. Am. Gen. Fin. Servs., Inc. (In re Mintze), 434 F.3d 222, 228 (3d Cir. 2006); Gandy v. Gandy (In re Gandy), 299 F.3d 489, 494 (5th Cir. 2002).

- When deciding whether a claim goes to arbitration, the statutorily core or statutorily non-core distinction is important but not dispositive. As stated in Cashcall, the pertinent question is not just whether this is a core claim but how to maintain the efficient process

for reorganizing debts.

The core/non-core distinction, however, is not mechanically dispositive in deciding whether a bankruptcy judge may refuse to send a claim to arbitration. Instead, what matters fundamentally is whether compelling arbitration for a claim would inherently undermine the Bankruptcy Code's animating purpose of facilitating the efficient reorganization of an estate through the "[c]entralization of disputes concerning a debtor's legal obligations...." 781 F.3d at 83-84 (Gregory, J., concurring regarding the non-core, debt collection practices claim) (citations removed).

- The Cashcall court acknowledged that "although bankruptcy courts *generally* have no discretion to refuse to arbitrate a non-core claim" (italics in original) the reason is that "they are generally only tangentially related to the bankruptcy case." Id. at 83 (quoting Ackerman v. Eber (In re Eber), 687 F.3d 1123, 1130 n. 6 (9th Cir. 2012)). Although the discretion is "necessarily narrow" for a bankruptcy court to refuse to compel a non-core claim to arbitration, the court applied "substantial interference" with the bankruptcy process as the test for when that discretion can withhold non-core claims from arbitration. Id. at 84 and 92.

- U.S. Supreme Court decisions impacting enforcement of arbitration clauses:

    - *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987) (arbitration clause need not be enforced if there exists an inherent conflict between arbitration and the statutory scheme's underlying purpose)

    - *Henry Schein Inc., v. Archer & White Sales Inc.*, 139 S.Ct. 524 (2019) (arbitrator in the first instance decides arbitrability of issue)

    - *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018) (language of statute must be clear and manifest it its intent to override arbitration before arbitration clause will be deemed unenforceable)

(ii) Sovereign immunity issues

- Federally recognized Indian tribes have immunity from suit based on their sovereign status. "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). That tribal sovereign immunity extends to the tribes' commercial activites, on and off the reservation. Kiowa Tribe v. Manufacturing Techs. Inc., 523 U.S. 751, 758 (1998).

- Payday lenders have developed a method to attempt to avoid state usury laws. Sometimes called "rent-a-tribe" schemes, these lenders do most of their lending over the internet and

affiliate with a Native American tribe to attempt to insulate themselves from federal and state law by piggy-backing onto the tribe's sovereign legal status and general immunity from suit under federal and state laws.

- Rent-a-tribe schemes have come under increasing scrutiny from regulators, with one prominent perpetrator convicted and sentenced to 16 years in prison related to federal racketeering and truth-in-lending laws. https://www.justice.gov/usao-sdny/pr/scott-tucker-sentenced-more-16-years-prison-running-35-billion-unlawful-internet-payday

- Challenges in federal court to these loans have been successful when they have shown they are sham arrangements. Some factors to consider have been the location of the lending and collection operations, the degree to which the tribe is involved in how the loans are financed or underwritten, and the amount of the profits the tribe receives. See, for example, Hayes v. Delbert Services Corp., 811 F.3d 666 (4th Cir. 2016).

- Even assuming *arguendo* that a creditor has legitimate standing to assert sovereign immunity based on its purported connection to a Native American tribe, it may not assert sovereign immunity to prevent a bankruptcy court from enforcing its Rules governing a claim that it voluntarily filed.

  It is traditional bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that procedure. If the claimant is a State, the procedure of proof and allowance is not transmitted into a suit against the State because the court entertains objections to the claim. The State is seeking something from the debtor. No judgment is sought against the State. The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a res. It is nonetheless such because the claim is rejected in toto, reduced in part, given a priority inferior to that claimed, or satisfied in some way other than payment in cash. When the State becomes the actor and files a claim against the fund it waives any immunity which it otherwise might have had respecting the adjudication of the claim.

  Gardner v. State of N.J., 329 U.S. 565, 573–74 (1947).

(iii) Fee shifting

- In the United States, a doctrine known as the American Rule generally prohibits litigants from recovering attorney's fees or costs from opposing parties regardless of the outcome of the case unless one of the recognized exceptions applies. See Chambers v. NASCO, Inc., 501 U.S. 32, 35 (1991). One exception to the American Rule is when a statute contains a fee-shifting provision in favor of a prevailing party. Baker Botts LLP v. ASARCO LLC, 135 S. Ct. 2158, 2164 (2015) ("We have recognized departures from the American Rule only in specific and explicit provisions for the allowance of attorneys' fees under selected statutes.") (internal quotations omitted).

- In Perdue v. Kenny, 559 U.S. 542, 130 S.Ct. 1662 (2010), the United States Supreme Court decided that the lodestar method for determining reasonable fees should be used instead of the "Johnson factors," explaining that the lodestar calculation is objective.

  > Although the lodestar method is not perfect, it has several important virtues. First, in accordance with our understanding of the aim of fee-shifting statutes, the lodestar looks to "the prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). Developed after the practice of hourly billing had become widespread . . . , the lodestar method produces an award that *roughly* approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case. Second, the lodestar method is readily administrable . . . ; and unlike the Johnson approach, the lodestar calculation is "objective," . . . and thus cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results.
  >
  > 559 U.S. at 550-52, 130 S.Ct. at 1671-72.

- The Court made clear that "there is a 'strong presumption' that the lodestar figure is reasonable, but that presumption may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." 559 U.S. at 554, 130 S.Ct. at 1673. Although "a 'reasonable attorney's fee' is a matter that is committed to the sound discretion of a trial judge, the Supreme Court has previously stated, "[w]hen . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours [spent] are reasonable, the [lodestar calculation] is presumed to be the reasonable fee contemplated" by a statute. Blum v. Stenson, 465 U.S. 886, 897, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984).

- Practice tips: Disclose your agreement regarding fees promptly pursuant to Rule 2016, even if your litigation involves a fee-shifting statute. Maintain detailed, contemporaneous time records. Avoid block billing and break up large chunks of time into component parts if possible. When filing a fee application—especially if it will be contested—prepare a detailed, well-written pleading explaining the value of your legal services and sufficient detail for a court to understand what your time records show and why it was important. Consider obtaining a separate Declaration from an experienced attorney in your area that supports your hourly rates.

IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division

In re: Shirley Dean Taylor **Case No. 17-30142-KRH**
Debtor **Chapter 13**

SHIRLEY DEAN TAYLOR,
Plaintiff

v. **Adv. Pro. No. 18-03003-KRH**

ALLIED TITLE LENDING LLC
d/b/a ALLIED CASH ADVANCE, and

CERASTES, LLC,
Defendants.

AMENDED COMPLAINT OBJECTING TO CLAIM NO. 8-1 AND NO. 8-2, FOR DAMAGES, COSTS, AND ATTORNEY FEES PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT OF 15 U.S.C. § 1692, FOR CLASSWIDE RELIEF, DECLARATORY RELIEF, FOR INJUNCTIVE RELIEF, AND FOR EQUITABLE RELIEF PURSUANT TO 11 U.S.C. § 105

COMES NOW the Plaintiff, SHIRLEY DEAN TAYLOR, ("Plaintiff", or "Ms. Taylor"), by counsel, and for her Complaint against the Defendants, she alleges as follows:

I. PRELIMINARY STATEMENT

1. This is an action objecting to claims pursued by Defendants in the related Chapter 13 bankruptcy case pursuant to 11 U.S.C. § 502(b)(1), and for all other similarly situated debtors. This action seeks declaratory relief, injunctive relief, actual damages, statutory damages, costs and attorneys' fees brought pursuant to Virginia statutes governing consumer finance companies, Virginia Code §§ 6.2-1500 to 6.2-1543, the Virginia usury law, and the Fair Debt Collection

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Practices Act, 15 U.S.C. § 1692 ("FDCPA"). Plaintiff brings this action individually and on behalf of all others similarly situated to recover remedies by reason of the Defendants' violations of the Virginia Code, the FDCPA, and Fed. Bankr. Rule 3001(c).

2. The violating actions addressed in this complaint stem from Defendant Allied Title Lending, LLC's actions in making consumer loans that charge interest in excess of 12 percent without a license in violation of Va. Code §6.2-1501(A), charging finance charges on purportedly open-end credit in violation of Va. Code §6.2-312(a), and collecting on loans that are null and void in violation of Va. Code §6.2-1541.

3. The violating actions addressed in this complaint also arise from Cerastes, LLC's use of false, misleading, and deceptive misrepresentations or means in connection with the collection of a debt in violation of 15 U.S.C. § 1692e and the use of unfair or unconscionable means to collect or attempt to collect a debt in violation of 15 U.S.C. § 1692f.

4. Additionally, Defendants have failed to comply with Fed. Bankr. Rule 3001(c) regarding the information required to be provided with Proofs of Claims.

II. JURISDICTION

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(b), and 1334, and 11 U.S.C. §§ 105 and 502, and Federal Rules of Bankruptcy Procedure 3001, 3007, and 7001(7) and (9) in that this action arises in and relates to Plaintiff's Chapter 13 bankruptcy case.

6. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (C), and (O). The claims in this case arise under 28 U.S.C. §§ 1331 and 1332, and 15 U.S.C. § 1692k(d). To the extent that the Court finds that any of Plaintiff's claims in this complaint are non-core claims, Plaintiff consents to entry of final judgment on all claims presented in this matter by the Bankruptcy Court.

7. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and 1409.

8. Because Federal Rule of Bankruptcy Procedure 3007(b) prohibits proceedings to recover money or property (Rule 7001(1)), to request equitable relief (Rule 7001(8)), or to request declaratory relief (Rule 7001(9)) from being brought within an Objection to Claim, but allows an Objection to Claim to be brought in an Adversary Proceeding, it is appropriate for Plaintiff to bring an Adversary Proceeding to resolve the matters in controversy, which include Plaintiff's objection to claim and request for money and equitable relief.

III. PARTIES

9. Plaintiff Shirley Dean Taylor is the debtor in the related Chapter 13 case. She is a "consumer" as defined by 15 U.S.C. §1692a(3).

10. Defendant Allied Title Lending, LLC, d/b/a Allied Cash Advance ("Allied") is a Delaware limited liability company that filed a Proof of Claim, designated by the Court as Claim No. 8-1 ("Claim 8-1"), in the related Chapter 13 case.

11. Defendant Allied is owned, operated, and managed by the same group of persons who have owned, operated, and managed the limited liability company, Allied Cash Advance Virginia, LLC ("ACAV") during its operation in Virginia.

12. Allied and ACAV have maintained the same places of business, registered agents, and principal office addresses during their operations in Virginia.

13. Allied and ACAV have provided loans to Virginia consumers since 2003 in the form of payday loans, car title loans, consumer finance loans, and open-end credit plan loans.

14. Allied's affiliate entity, ACAV, was a licensed Virginia payday lender from May 1, 2003 to April 6, 2009, when it surrendered its payday lending license.

15. Since ACAV surrendered its payday lending license, Allied has attempted to

provide short-term, small-dollar loans to Virginians that mimic payday loans but are in the form of open-end credit plans; this credit product is provided only in Virginia and is the only type of credit product Allied has offered in Virginia for several years.

16. Allied, operating either under its own name or through its affiliate, ACAV, has intimate knowledge of the nuances of consumer finance lending regulations in Virginia.

17. Defendant Cerastes, LLC ("Cerastes") is a Delaware limited liability company that filed a Proof of Claim, designated by the Court as Claim No. 8-2 ("Claim 8-2"), in the related Chapter 13 case. On the same day it filed Claim 8-2, Cerastes also filed a Transfer of Claim Other Than For Security (the "Original Transfer of Claim"), alleging that it is the transferee of Claim 8-1. Five (5) days later, on October 3, 2017, Cerastes filed a second Transfer of Claim Other Than For Security (the "Second Transfer of Claim"), also alleging that it is the transferee of Claim 8-1.

18. Cerastes' business model is to buy defaulted consumer accounts from debt sellers where the debtor has filed for Chapter 13 bankruptcy protection, and then to prosecute Proofs of Claims on those accounts.

19. Cerastes uses instrumentalities of interstate commerce in its business which has the principal purpose of collecting debts.

20. Cerastes is a "debt collector" as defined by 15 U.S.C. §1692(a)(6).

IV. FACTUAL ALLEGATIONS

21. On January 11, 2017, Plaintiff filed Chapter 13 bankruptcy. Plaintiff, a salaried employee of the U.S. Probation Office, and her husband, who receives seasonal income as a football referee, had found themselves unable to manage their debt payments with their income. Plaintiff's debts include a mortgage with Midland Mortgage, a high-interest car loan with Credit

Acceptance, and numerous high-interest unsecured loans, including a loan from Defendant Allied. Unable to maintain her debt load with her household income, Plaintiff sought relief under Chapter 13. Plaintiff's Chapter 13 Plan was confirmed on September 1, 2017.

22. Prior to filing bankruptcy, on July 25, 2016, Plaintiff borrowed $1,500.00 from Allied, and Allied prepared a Line of Credit Agreement and Plan (the "Agreement"), which Plaintiff signed. See Exhibit 1.

23. Pursuant to the Agreement, Allied charged Plaintiff an annual percentage rate of interest of 273.75% on the credit.

24. As a condition for giving the credit, Allied immediately charged Plaintiff an origination fee of $100.00 (the "Origination Fee") before disbursing the net proceeds to her. See Exhibit 2, a partially-redacted Transaction History (the "Transaction History").

25. Under Virginia law, this $100.00 Origination Fee was a finance charge.

26. On the same day the Agreement was signed, Defendant generated an initial billing statement which reflected a one-day billing cycle.

27. The initial billing statement made clear that Allied added the Origination Fee on to the Plaintiff's account on the same day that the Plaintiff received the loan proceeds, and during this one-day billing cycle.

28. The initial billing statement also made clear that Ms. Taylor could not avoid payment of the Origination Fee, that is, she owed the Origination Fee regardless of when she paid on her account. Thereafter, the billing statement made clear that she could avoid "additional" finance charges, over and above the Origination Fee, if the balance that included the Origination Fee was paid in full before the payment due date.

29. The Agreement also made clear that the Origination Fee is "billed to your account when you open this Line of Credit." See Exhibit 1, p. 2.

30. While the Agreement defined and provided for a "Grace Period" within which the consumer may pay the consumer's outstanding balance without incurring additional finance charges (also referred to in the Agreement as "Contingent Finance Charges"), Allied's Origination Fee was not subject to the Grace Period. See Exhibit 1, p. 2.

31. Plaintiff used the money obtained through the Agreement with Allied for ordinary personal and household purposes.

32. On the date of the Agreement, Allied was not licensed by the Virginia State Corporation Commission (the "Commission") as a consumer finance company.

33. On March 21, 2017, Allied filed Claim 8-1, asserting that it held a non-priority unsecured claim in the amount of $2,756.92 for "money loaned". See Exhibit 3.

34. The phrase "money loaned" made this claim appear to be for a loan of money rather than an open-end account.

35. In the Part 2, Box 7 of the Claim 8-1, Allied answered "Yes" in response to the question, "Does [the claim amount] include interest or other charges?"

36. An attachment to Claim 8-1 entitled "Statement of Accounts" sets forth the following itemization of the principal, interest, fees, expenses, and other charges embedded in the claim amount:

BALANCE CLAIMED:	$2756.92
PRINCIPAL OWED:	$1350.00
INTEREST:	$1331.92
FEES:	$75.00
EXPENSES:	$0.00
OTHER CHARGES:	$0.00
	$2756.92

37. On August 29, 2017, Ms. Taylor, through counsel, filed an Objection to Claim No. 8-1 and Memorandum in Support Thereof ("Objection to Claim 8-1"). Objection to Claim 8-1 cited the Ms. Taylor's inability to assess the accuracy of the interest and fees without a copy of the writing upon which the apparent claim for closed-end credit was based.

38. Whether based on open-end credit or closed-end credit, Claim 8-1 does not comply with Rule 3001(c).

39. For closed-end credit, it fails to include the writing on which the claim is based, and for open-end credit it does not include the required information about the date of last payment and the date the account was charged-off.

40. The failure to include the charged-off date was a false representation that the account had never been charged-off.

41. The failure to include the last payment date was a false representation that no payments had ever been made on the account.

42. On September 28, 2017, Cerastes filed the Original Transfer of Claim, claiming to be the transferee from Allied Cash Advance of the Original Claim. A copy of the Original Transfer of Claim is attached as Exhibit 4.

43. The Original Transfer of Claim identifies “Allied Cash Advance” as the transferor of Claim No. 8-1, and it identifies “Allied Cash Advance” under the heading “Seller Information”.

44. These statements are false because Cerastes did not purchase anything from Allied Cash Advance or any Allied-related company.

45. Instead, Cerastes knowingly purchased accounts from an entity, Erios LLC, (“Erios”) that had purchased the accounts from another entity, Porania, LLC, (“Porania”) that had purchased accounts from an entity called Axcess Financial Services, Inc (“Axcess”).

46. Whether Axcess purchased the Plaintiff’s account from Allied or exactly how Axcess obtained any rights to Ms. Taylor’s account is unknown.

47. Cerastes falsely represented that it had purchased information about the Plaintiff’s account directly from Allied to conceal several aspects of the actual chain of assignments, including that the intermediate transferors had violated Fed. Bankr. Rule 3001(e)(2) by not filing their respective evidence of transfers with the Court.

48. Cerastes also wanted to conceal these transfers to allow it to claim that the Plaintiff’s account had never been charged-off, and thus the date of charge-off would be inapplicable.

49. On May 4, 2017, Axcess sold some “charged-off receivables” also called “Charged-Off Accounts” without recourse or warranty to Porania pursuant to a Purchase and Sale Agreement dated April 25, 2017. (See, Bill of Sale and Assignment, Doc. 11-1 filed by Cerastes as part of its Motion to Dismiss).

50. On May 8, 2017, Porania sold some “charged-off receivables” that it now called the “Accounts” without recourse or warranty to Erios pursuant to a Purchase and Sale Agreement

dated May 8, 2017. (See, Bill of Sale, Doc. 11-2 filed by Cerastes as part of its Motion to Dismiss).

51. The unique aspect of this transfer is that someone deleted the word “Charged-Off” before the word “Accounts” from the May 4 Bill of Sale, such that each time this word appears on the May 8 Bill of Sale, it references only Accounts; an extra space before the word “Accounts” the first time it appears shows where this deletion occurred.

52. Then, that same day, on May 8, 2017, Erios sold “Accounts” to Cerastes without recourse or warranty pursuant to a different Purchase and Sale Agreement dated May 8, 2017.

53. Evidence of this transfer from Erios to Cerastes was attached to the Original Transfer of Claim in the document entitled “Exhibit 3 Bill of Sale and Assignment” (the “Erios Bill of Sale and Assignment”). This transfer is described as set forth below:

> **KNOW ALL MEN BY THESE PRESENTS,** that the undersigned, Erios, LLC (“Seller”), for good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to Cerastes, LLC ("Buyer"), its successors and assigns, all rights, title and interest in and to certain receivables (the “ Accounts”), related documents evidencing a security interest, liens or other security instruments or encumbrances executed, filed and/or created in conjunction with collateral securing the Accounts. Such Accounts are described in the attached Appendix A and referred to as the Accounts in the Purchase and Sale Agreement between Assignor and Assignee and dated May 8, 2017.

54. Thus, on May 8, 2017, after Erios had bought some assets that were identified as “charged-off receivables”, it and Cerastes used a Bill of Sale that removed that word entirely. On this document, the extra space from the deletion of the word “charged-off” before “Accounts” created an odd word-processing error where the beginning quote is by itself at the end of a line.

55. The “Erios Bill of Sale and Assignment” is signed by Jonathan Koop, who is identified as the Manager of Erios

56. The Bill of Sale from Porania to Erios is also signed by Jonathan Koop as Manager of Porania.[1]

57. As transferors of claims filed in this Court, both Porania and Erios were required by Bankr. Rule 3001(e)(2) to file evidence of these transfers with the Clerk of the Court.

58. The Appendix A referenced in the "Exhibit 3 Bill of Sale and Assignment" document is also attached to the Original Transfer of Claim, and it sets forth the following description of the Accounts subject to these transfers:

> Assets which are the subject of the Bill of Sale and Assignment to which this Annex A is attached are as listed in the Excel files named the following:
>
> The individual Accounts transferred are described in the final electronic files named
>
> **Axcess BK File**
>
> With respect to those Assets in the Excel files named in this Annex A, the Purchase and Sale Agreement dated May 8, 2017.

59. Also on September 28, 2017, Cerastes filed Claim 8-2, which amended Claim 8-1. A copy of Claim 8-2 is attached as Exhibit 5.

60. Claim 8-2 states in Part 1, Box 2 that the claim was acquired from Erios, LLC.

61. Claim 8-2 states in Part 2, Box 7 that the amount of the claim is $2,756.92. Also in Part 2, Box 7 of Claim 8-2, in answer to the question, "Does [the claim amount] include interest or other charges?", Cerastes answered "No".

62. That answer to the question about interest and fees is false.

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[1] Mr. Koop also represented in another filing in this Court that he is also the Sole Member of Capital Enterprise Services, LLC, which is purportedly the Manager of Porania, LLC. See *Ernestine Robinson v. Porania et al.*, Adv. No. 17-03023-KLP, Docket No. 44, dated June 6, 2017. Mr. Koop is also the Chief Executive Officer, founder, and owner of Bankrupt Debt Acquisitions. See https://castleplacement.com/portfolio/bk-acquisitions/, last date visited December 9, 2017.

63. In Part 2, Box 8 of Claim 8-2 Cerastes provided no response to the question "What is the basis of the claim?"

64. In direct contradiction to Cerastes's statement in Part 2, Box 7, there is an attachment to Claim 8-2 entitled "Account Summary" which sets forth the following itemization of the principal, interest, fees, expenses, and other charges embedded in the claim amount:

Balance at Time of Filing:	$2,756.92	Principal Balance:	$1,350.00
Interest:	$1,331.92	Fees, Expenses or Other Charges:	$75.00

65. The Account Summary attached to Claim 8-2 also states the following:

a. That the last payment date was December 15, 2016;

b. That the entity to whom the debt was owed at the time of the accountholder's last transaction on the account is Allied Cash Advance; and

c. That the entity from whom the creditor (i.e., Cerastes) purchased the account is Erios, LLC.

66. The Account Summary does not state the charged-off date, but instead states N/A.

67. According to the documents regarding whatever Axcess sold to Porania, that Porania sold to Erios, and that Erios then sold to Cerastes, the account was charged-off before Axcess sold it. Thus, the representation by Cerastes that a charged-off date was inapplicable was false.

68. Also attached to Claim 8-2 is a 20-page Exhibit, among which is the Line of Credit Agreement between Plaintiff and Allied and the Transaction History.

69. The Transaction History shows the following, among other things:

a. The account was opened on 7/25/2016 at 16:26:40;

b. A draw of $1,500.00 was made on 7/25/2016 at 16:26:43;

c. An “origination fee” of $100.00 was charged on 7/25/2016 at 16:26:46;

d. A “Statement” was generated on 7/25/2016 at 16:26:48;

e. On 8/26/2016, a payment of $250.00 was applied to the account with $150.00 being applied to principal and $100.00 being applied to the origination fee;

f. On 8/30/2016, interest of $410.62 was applied to the balance;

g. Plaintiff paid Allied a total of $795.62 before filing bankruptcy;

h. On 1/17/17, six days after Plaintiff filed for bankruptcy protection, Allied added interest of $311.85 and late fees of $15.00 to the account; and

i. Despite her payments, her balance due to Allied increased by $1,157.66 from $1,500.00 to $2,756.92 in the approximately 5.5 months between the date the loan was funding and the date Plaintiff filed bankruptcy.

70. On October 3, 2017, Cerastes filed the Second Transfer of Claim, again claiming to be the transferee of the Original Claim. A copy of the Second Transfer of Claim is attached as Exhibit 6.

71. The Second Transfer of Claim identifies “Allied Cash Advance” as the transferor of Claim No. 8-1. However, where the Original Transfer of Claim identified “Allied Cash Advance” under the heading “Seller Information”, the Second Transfer of Claim omits any “Seller Information”.

72. Where the Original Transfer of Claim attached is a document entitled “Exhibit 3 Bill of Sale and Assignment” (the “Erios Bill of Sale and Assignment”) purporting to evidence a transfer of accounts from Erios, LLC, to Cerastes, the Second Transfer of Claim has no attachments and makes it appear like the claim was transferred directly from Allied to Cerastes with no involvement of Erios, LLC.

73. The truthful information about each transfer is important to determine what was transferred, when, and to whom, including whether the accounts being transferred had a charge-off date that must be disclosed under Rule 3001(c)(3)(v) for open-end credit.

COUNT 1
INDIVIDUAL OBJECTION TO CLAIM 8-1 AND 8-2

74. Plaintiff realleges and incorporates all of the preceding paragraphs in this complaint.

75. Pursuant to 11 U.S.C. § 502(a), a claim is "deemed allowed, unless a party in interest . . . objects."

76. Pursuant to 11 U.S.C. § 502(b)(1), where an objection is made to a claim, the Court "shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that . . . [ ] such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . . "

77. Plaintiff objects to the Claim 8-1 and 8-2 because, on each claim, interest and fees were assessed after Plaintiff filed for bankruptcy in violation of 11 U.S.C. § 502(b)(2), neither claim properly identifies the purported basis as open-end credit, and Claim 8-2 falsely asserts that no interest or fees are added.

COUNT II
CLASS OBJECTION TO CLAIMS

78. Plaintiff realleges and incorporates all of the preceding paragraphs in this complaint.

79. Pursuant to Rules 23(a), and (b)(2) of the Federal Rules of Civil Procedure, Plaintiff brings this class action on behalf of herself and all others similarly situated. Specifically,

Plaintiff seeks to represent the following persons ("the Claim Objection Class" or "Claim Objection Class Members"):

> All debtors in the Bankruptcy Court for the Eastern District of Virginia who, before filing bankruptcy, entered into a credit agreement with Allied based upon a purportedly open-end credit basis, and a claim was filed regarding that agreement.

80. Members of the above-defined Claim Objection Class can be easily identified through Allied's records and the records of this Court.

A. Numerosity

81. The proposed Claim Objection Class is so numerous that individual joinder of all Members is impracticable.

82. While the identities of the Claim Objection Class Members are unknown to Plaintiff at this time, their identifying information is readily ascertainable through appropriate investigation and discovery. The disposition of the claims of the Claim Objection Class Members in a single action will provide substantial benefits to all class members and to the Court.

B. Predominance of Common Questions of Law and Fact

83. Common questions of law and fact exist as to all Members of the Claim Objection Class and predominate over any questions affecting only individual Claim Objection Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether Allied extended credit pursuant to Va. Code § 6.2-312 and, thus, was exempt from the licensing requirements of Va. Code § 6.2-1501(A);

(b) Whether Allied's imposition of an "origination fee" in its credit agreement excludes those loans from the open-end credit exception under Va. Code § 6.2-312 to the licensing requirements of Va. Code § 6.2-1501(A);

(c) Whether Allied's origination fee is a "finance charge" within the meaning of the

open-end credit statute of Va. Code § 6.2-312;

(d) Whether Allied imposed the origination fee before the minimum twenty-five (25) day grace period of Va. Code § 6.2-312;

(e) Whether Allied imposed interest at a rate in excess of the twelve percent (12%) limit of Va. Code § 6.2-303(B);

(f) Whether Allied extended credit in violation of Virginia's open-end credit plan statute in that it failed to comply with the requirement that it provide a grace period of at least twenty-five (25) days before imposing a finance charge;

(g) Whether Allied's loans are null and void pursuant to Va. Code § 6.2-1541;

(h) Whether Allied offered small loans disguised as open-end credit plans;

(i) Whether Allied's credit was usurious such that the statutory usury remedy must be assessed against the credit agreement;

(j) Whether the disgorgement of all payments made by the Claim Objection Class and the usury remedy are to be distributed to the Claim Objection Class members as part of Rule 23(b)(2) class;

(k) Whether, as a result of Allied's activities, Plaintiff and the Claim Objection Class Members are entitled to declaratory and injunctive relief, or other relief; and, if so, the nature of that relief;

C. Typicality

84. Plaintiff's claims are typical of the claims of the Members of the Claim Objection Class. Plaintiff and Claim Objection Class Members share the facts and legal claims or questions in this complaint, and Plaintiff and all Claim Objection Class Members have been similarly affected by Allied's common course of conduct: extending credit and charging interest in excess

of the legal limit

D. Adequacy

85. Plaintiff will fairly and adequately represent and protect the interests of the Claim Objection Class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

86. Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the Claim Objection Class. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

E. Injunctive and Declaratory Relief

87. Allied, its agents or assigns, and Cerastes, knowingly filed Proofs of Claim on null and void loans, or loans on which interest cannot be charged, and are attempting to collect debts that cannot be enforced against debtors in bankruptcy pursuant to 11 U.S.C. § 502(b)(1), resulting in uniform damage to Plaintiff and Claim Objection Class Members. As a result, Allied and Cerastes have acted on grounds generally applicable to each Claim Objection Class Member, which makes final injunctive relief or corresponding declaratory relief appropriate with respect to the Claim Objection Class as a whole. Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

88. Because Plaintiff seeks injunctive and corresponding declaratory and equitable relief for the entire Claim Objection Class, the prosecution of separate actions by individual Claim Objection Class Members would create a risk of inconsistent or varying adjudications

with respect to individual Claim Objection Class Members, and would establish incompatible standards of conduct for Allied and Cerastes. Further, bringing individual claims would overburden the courts and would be an inefficient method of resolving the dispute at the center of this litigation

89. Absent an exception, Virginia Code § 6.2-1541 prohibits any person from making loans such as the one between Allied and Plaintiff in excess of 12% APR unless the lender has obtained a consumer finance license from the Commission. See Va. Code § 6.2-1501.

90. Allied did not have a consumer finance license when it made the loan to Plaintiff, nor has it ever attempted to obtain such a license.

91. Under Va. Code § 6.2-1541(A), if a lender was not exempt from the prohibitions that otherwise exist and had not obtained a consumer finance license, yet nonetheless contracted to make a consumer loan, and charged, contracted for, or received, interest or other compensation in excess of 12% per year, then the loan is null and void, and the lender is not able to collect, obtain, or receive any principal, interest, or charges on the loan.

92. Allied charged Plaintiff 273.75% interest, plus the Origination Fee of $100.00.

93. Va. Code § 6.2-303(A) provides that, "[e]xcept as otherwise permitted by law, no contract shall be made for the payment of interest on a loan at a rate that exceeds 12 percent per year." Va. Code § 6.2-303(A).

94. Article 4 of Title 6.1 creates several exceptions for certain loans made in excess of 12% per year, including permitting lenders to offer open-end credit plans "if under the plan a finance charge is imposed upon the obligor if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date, which shall be at least 25 days later than the prior billing date." Va. Code § 6.2-312(A).

95. Under Va. Code § 6.2-312(A), a creditor offering open-end credit plans in excess of 12% interest must provide the borrower with a 25-day grace period to repay the balance without imposing any finance charges.

96. Because the Origination Fee is a finance charge, Virginia law prohibited it from being charged until Plaintiff had an opportunity to pay the full amount due during a grace period.

97. The Agreement violates the requirements of Va. Code § 6.2-312(A) because the Agreement imposed an immediate finance charge upon Plaintiff in the form of the $100.00 Origination Fee, which she would have had to pay even if she paid the loan in full within the first 25 days.

98. Alternatively, because Allied describes itself as a small loan provider, and has successfully obtained judicial relief on the assertion that it provides small loans to borrowers, the credit was actually a loan of money rather than a true open-end credit plan, and thus, Allied was engaged in lending money without obtaining a Consumer Finance Act license.

99. Under Va. Code § 6.2-1541(A), the loan was void and is uncollectible against the Plaintiff or her estate in any amount.

100. In addition to the debt being unenforceable as void, Plaintiff objects to the claim on the basis that Virginia usury law bars Allied from collecting any interest on the credit when it did not meet any exception to charge more than 12% interest.

101. Because it is unenforceable against Ms. Taylor under non-bankruptcy law, it should be disallowed pursuant to 11 U.S.C. §502(b)(1).

102. Additionally, Plaintiff objects to the claim because it fails to comply with the requirements under Rule 3001 because it neither provides the writing underlying the claim nor provides all the information required for a claim based on open-end credit.

103. To the extent Cerastes was a valid assignee of Plaintiff's account that originated with Allied, Cerastes has no greater rights than Allied possessed to collect this debt against Plaintiff. See, e.g., *Brannon v. Brymer (In re Brannon)*, Case No. 06-32392-DOT, Adv. No. 06-03125-DOT, 2008 WL 1752206 at *14, n.12 (Bankr. E.D. Va. Apr. 14, 2008) ("Under the general principle 'nemo dat quod non habet' (one cannot give what one does not have), a purported transfer of personal property is ineffective to transfer anything other than void title."). Any entity to whom it transfers the claim, even back to Allied, also obtains no greater rights than what Cerastes obtained.

104. Therefore, the claims against Plaintiff and those of similarly situated people should be disallowed and, pursuant to the Court's determination of that claim, corresponding monetary relief should be provided to each member of the Claim Objection Class.

COUNT III
CLASS CLAIM SEEKING JUDGMENT AGAINST ALLIED
FOR VIOLATION OF VIRGINIA CREDIT LAWS

105. Plaintiff realleges and incorporates all of the preceding paragraphs in this complaint.

106. Pursuant to Rules 23(a), (b)(2), (b)(3) and (c)(4) of the Federal Rules of Civil Procedure, Plaintiff brings this class action on behalf of herself and all others similarly situated. Specifically, Plaintiff seeks to represent the following persons ("the Usury Class" or "Usury Class Members"):

> All debtors in the Bankruptcy Court for the Eastern District of Virginia who, before filing bankruptcy, entered into a credit agreement with Allied based upon a purportedly open-end credit basis.

107. Members of the above-defined Usury Class can be easily identified through Allied's records.

A. Numerosity

108. The proposed Usury Class is so numerous that individual joinder of all Members is impracticable.

109. While the identities of Usury Class Members are unknown to Plaintiff at this time, their identifying information is readily ascertainable through appropriate investigation and discovery. The disposition of the claims of the Usury Class Members in a single action will provide substantial benefits to all class members and to the Court. The Usury Class Members may be notified through the Bankruptcy Noticing Center.

B. Predominance of Common Questions of Law and Fact

110. Common questions of law and fact exist as to all Members of the Usury Class and predominate over any questions affecting only individual Usury Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether Allied extended credit pursuant to Va. Code § 6.2-312 and, thus, was exempt from the licensing requirements of Va. Code § 6.2-1501(A);

(b) Whether Allied's imposition of an "origination fee" in its credit agreement excludes those loans from the open-end credit exception under Va. Code § 6.2-312 to the licensing requirements of Va. Code § 6.2-1501(A);

(c) Whether Allied's origination fee is a "finance charge" within the meaning of the open-end credit statute of Va. Code § 6.2-312;

(d) Whether Allied imposed the origination fee before the minimum twenty-five (25) day grace period of Va. Code § 6.2-312;

(e) Whether Allied imposed interest at a rate in excess of the twelve percent (12%) limit of Va. Code § 6.2-303(B);

(f) Whether Allied extended credit in violation of Virginia's open-end credit plan statute

in that it failed to comply with the requirement that it provide a grace period of at least twenty-five (25) days before imposing a finance charge;

(g) Whether Allied's loans are null and void pursuant to Va. Code § 6.2-1541;

(h) Whether Allied offered small loans disguised as open-end credit plans;

(i) Whether Allied's credit was usurious such that it is not entitled to any interest pursuant to Va. Code § 6.2-304;

(j) Whether the disgorgement of all payments made by the Usury Class and the usury remedy are to be distributed to the Usury Class; and

(n) Whether, as a result of Allied's activities, Plaintiff and Usury Class Members are entitled to declaratory and injunctive relief, or other relief; and, if so, the nature of that relief.

C. Typicality

111. Plaintiff's claims are typical of the claims of the Members of the Usury Class. Plaintiff and Usury Class Members share the facts and legal claims or questions in this complaint, and Plaintiff and all Usury Class Members have been similarly affected by Allied's common course of conduct: extending credit charging interest in excess of the legal limit by disguising the loans as open-end credit plan loans and then collecting on those loans.

D. Adequacy

112. Plaintiff will fairly and adequately represent and protect the interests of the Usury Class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

113. Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff and her counsel will fairly and adequately protect the interests of the members of

the Usury Class. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

E. Superiority

114. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) The claims presented in this case predominate over any questions of law or fact affecting individual Usury Class Members;

(b) Individual joinder of all Usury Class Members is impracticable;

(c) Absent a Class, Plaintiff and Usury Class Members will continue to suffer harm as a result of Allied's unlawful conduct;

(d) Given the amount of individual Usury Class Members' claims, few, if any, Usury Class Members have the resources to, or would choose to, seek legal redress for the wrongs Allied committed against them, and absent Usury Class Members have no substantial interest in individually controlling the prosecution of individual actions;

(e) Even if individual Usury Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

(f) Adjudications of Usury Class Members' claims against Allied on an individual basis would, as a practical matter, be dispositive of the interests of other Usury Class Members who are not parties to the adjudication, and may substantially impair or impede the ability of other Usury Class Members to protect their interests; and,

(g) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Usury Class Members can

seek redress for the harm caused by Allied.

F. Injunctive Relief

115. Allied knowingly filed Proofs of Claim on null and void loans, attempting to collect debts that cannot be enforced against debtors in bankruptcy pursuant to 11 U.S.C. § 502(b)(1), resulting in uniform damage to Plaintiff and Usury Class Members. As a result, Allied has acted on grounds generally applicable to each Usury Class Member, which makes final injunctive relief or corresponding declaratory relief appropriate with respect to the Usury Class as a whole. Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

116. Because Plaintiff seeks injunctive and corresponding declaratory and equitable relief for the entire Usury Class, the prosecution of separate actions by individual Usury Class Members would create a risk of inconsistent or varying adjudications with respect to individual Usury Class Members, and would establish incompatible standards of conduct for Allied. Further, bringing individual claims would overburden the courts and would be an inefficient method of resolving the dispute at the center of this litigation.

COUNT IV

CLAIM AGAINST CERASTES FOR USING FALSE, MISLEADING, AND DECEPTIVE REPRESENTATIONS IN THE COLLECTION OF A DEBT IN VIOLATION OF THE FDCPA – 15 U.S.C. § 1692e

117. Plaintiff realleges and incorporates all of the preceding paragraphs in this complaint.

118. Pursuant to Rules 23(a), (b)(2), (b)(3) and (c)(4) of the Federal Rules of Civil Procedure, Plaintiff brings this class action on behalf of herself and all others similarly situated.

Specifically, Plaintiff seeks to represent the following persons ("the FDCPA Class" or "FDCPA Class Members"):

All debtors in the Bankruptcy Court for the Eastern District of Virginia in whose bankruptcy cases Cerastes appeared and asserted it was the assignee of a claim based on an Allied extension of credit.

119. Members of the above-defined FDCPA Class can be easily identified through Defendants' records, the records of this Court, and the records of this Court's Chapter 13 trustees.

A. Numerosity

120. The proposed FDCPA Class is so numerous that individual joinder of all Members is impracticable.

121. While the identities of FDCPA Class Members are unknown to Plaintiff at this time, their identifying information is readily ascertainable through appropriate investigation and discovery. The disposition of the claims of the FDCPA Class Members in a single action will provide substantial benefits to all class members and to the Court. The FDCPA Class Members may be notified through the Bankruptcy Noticing Center.

B. Predominance of Common Questions of Law and Fact

122. Common questions of law and fact exist as to all Members of the FDCPA Class and predominate over any questions affecting only individual FDCPA Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether the Proofs of Claim are premised on an unenforceable loan;

(b) Whether Cerastes violated the Fair Debt Collection Practices Act;

(c) Whether Cerastes used false, misleading, or deceptive representations in connection with the Proofs of Claim;

(d) Whether, as a result of Cerastes's activities, Plaintiff and FDCPA Class Members

have suffered damages and, if so, the appropriate valuation of those damages; and,

(f) Whether, as a result of Cerastes's activities, Plaintiff and FDCPA Class Members are entitled to declaratory and injunctive relief, or other relief; and, if so, the nature of that relief.

C. Typicality

123. Plaintiff's claims are typical of the claims of the Members of the FDCPA Class. Plaintiff and FDCPA Class Members share the facts and legal claims or questions in this complaint, and Plaintiff and all FDCPA Class Members have been similarly affected by Cerastes's common course of conduct: acting to collect on improper claims with false representations in this District.

D. Adequacy

124. Plaintiff will fairly and adequately represent and protect the interests of the FDCPA Class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

125. Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the FDCPA Class. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

E. Superiority

126. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) The claims presented in this case predominate over any questions of law or fact affecting individual FDCPA Class Members;

(b) Individual joinder of all FDCPA Class Members is impracticable;

(c) Absent a Class, Plaintiff and FDCPA Class Members will continue to suffer harm as a result of Cerastes's unlawful conduct;

(d) Given the amount of individual FDCPA Class Members' claims, few, if any, FDCPA Class Members have the resources to, or would choose to, seek legal redress for the wrongs Defendants committed against them, and absent FDCPA Class Members have no substantial interest in individually controlling the prosecution of individual actions;

(e) Even if individual FDCPA Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

(f) Adjudications of FDCPA Class Members' claims against Cerastes on an individual basis would, as a practical matter, be dispositive of the interests of other FDCPA Class Members who are not parties to the adjudication, and may substantially impair or impede the ability of other FDCPA Class Members to protect their interests; and,

(g) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and FDCPA Class Members can seek redress for the harm caused by Defendants.

F. Injunctive Relief

127. Cerastes knowingly attempted to collect, through Proofs of Claim filed in this Court, on loans that are null and void in violation of Va. Code §6.2-1541, resulting in uniform damage to Plaintiff and FDCPA Class Members. As a result, Cerastes has acted on grounds generally applicable to each FDCPA Class Member, which makes final injunctive relief or corresponding declaratory relief appropriate with respect to the FDCPA Class as a whole.

Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

128. Because Plaintiff seeks injunctive and corresponding declaratory and equitable relief for the entire FDCPA Class, the prosecution of separate actions by individual FDCPA Class Members would create a risk of inconsistent or varying adjudications with respect to individual FDCPA Class Members, and would establish incompatible standards of conduct for Defendants. Further, bringing individual claims would overburden the courts and would be an inefficient method of resolving the dispute at the center of this litigation.

G. The FDCPA Violations

129. Cerastes violated 15 U.S.C. §1692e by using false, deceptive, and/or misleading representations or means in connection with the collection of a debt. Specifically, Cerastes asserted it was an assignee of Proofs of Claim filed in this Court that were based on extensions of credit that violate Virginia's credit law, falsely asserting that those claims are enforceable even though it knew the claims were based on extensions of credit made in violation of Virginia law.

130. Cerastes violated 15 U.S.C. § 1692e also by using false, deceptive, and/or misleading representations that such credit had no charge-off date.

131. Cerastes violated 15 U.S.C. § 1692e also by using false, deceptive, and/or misleading representations regarding the entity from whom it purchased rights to collect debts.

132. The violations caused concrete harm because they were efforts to conceal material facts and intended to result in Chapter 13 trustees paying Cerastes on a Proof of Claim based entirely on a loans that are null and void under Virginia law.

133. As a result of the violations of the FDCPA, Cerastes is liable to Plaintiff and the putative FDCPA Class Members for actual and statutory damages, plus costs and attorneys' fees.

134. Section 1692e of the FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt . . . ." and identifies the following actions, among other things, as being actions that debt collectors are prohibited from taking:

"(2) The false representation of—

(A) the character, amount, or legal status of any debt . . .

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

135. Filing documents in this bankruptcy case, including the Original Transfer of Claim, the Proof of Claim designated as Claim 8-2, and the Second Transfer of Claim were actions to collect a debt. Cerastes' representations regarding the seller and transferor of the Allied debt, and Cerastes' efforts to conceal the identity of the seller and transferor of the Allied debt, were false, misleading, and deceptive representations in violation of § 1692e of the FDCPA.

136. Additionally, seeking to collect interest and fees that were assessed by the creditor after the Debtor's bankruptcy filing falsely represented the legal status of the amount owed, and therefore used a false representation or deceptive means in an effort collect the debt in violation of § 1692e of the FDCPA.

137. Cerastes' violations of § 1692e of the FDCPA render it liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

COUNT V
INDIVIDUAL REQUEST FOR EQUITABLE RELIEF
PURSUANT TO 11 U.S.C. § 105 AND RULE 3001

138. Plaintiff realleges and incorporates all of the preceding paragraphs in this

complaint.

139. Both Allied and Cerastes knowingly filed or knowingly authorized the filing of a Proof of Claim that contains false statements, for an improper purpose, resulting in damage to Plaintiff. As a result, Allied and Cerastes have acted or refused to act on grounds which make final injunctive relief or corresponding declaratory relief appropriate. Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

140. Pursuant to Rule 3001 of the Federal Rules of Bankruptcy Procedure, this Court is specifically empowered to order appropriate relief for violations of Rule 3001.

141. Pursuant to 11 U.S.C. § 105(a), "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

142. "[Section] 105 may be used to sanction the filing of a proof of claim violative of the Bankruptcy Code and abusive of the bankruptcy process, that is, as the federal criminal code aptly describes, a claim that is false or fraudulent." *In re Varona*, 388 B.R. 705, 717 (Bankr. E.D.Va. 2008).

143. Pursuant to Federal Rule of Bankruptcy Procedure 3001(e)(2), "If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee."

144. "Prior to the 2012 amendments to Bankruptcy Rule 3001, a transferee had 'an obligation under Rule 3001 to document its ownership of a claim' by attaching a copy of the assignment to its proof of claim." *Maddux v. Midland Credit Management, Inc. (In re Maddux)*, 567 B.R. 489, 496 (Bankr. E.D.Va. 2016), citing *In re Armstrong*, 320 B.R. 97, 106 (Bankr. N.D.

Tex. 2005) and *In re Hughes*, 313 B.R. 205, 212 (Bankr. E.D. Mich. 2004). "The 2012 amendments to 'Rule 3001(c)(3)(A) *replaced* the requirement of attaching [any writing on which the debt is based] *unless* the documents are requested from the claimant pursuant to Rule (c)(3)(B).'" *Id*. citing *In re Hill*, No. 13-50707, 2014 WL 801517, at *6 (Bankr. E.D. Ky. Feb. 28, 2014).

145. By stating in the Original Transfer of Claim that Allied was the transferor, and by identifying Allied as the "Seller", Cerastes represented that Allied transferred the claim directly to Cerastes. Contrary to that representation, Cerastes attached the Erios Bill of Sale and Assignment to the Original Transfer of Claim and Claim 8-2. Cerastes then repeated in the Second Transfer of Claim the false statement that Allied transferred the claim directly to Cerastes, but it attempted to conceal Erios, LLC's involvement in the apparent chain of title by removing the Erios Bill of Sale and Assignment attachment and the description of Allied as "Seller".

146. Cerastes' actions in filing the Second Transfer of Claim were taken willfully in an effort to conceal Erios, LLC's role in the transfer of Allied accounts such as Plaintiff's to Cerastes, which it revealed when it filed the Original Transfer of Claim and Claim 8-2.

147. Cerastes's false statements regarding the transfer of the claim in the Original Transfer of Claim and Second Transfer of Claim are abuses of the requirements of Rule 3001(e) and have the effect of frustrating Plaintiff's right to pursue a core aspect of her objection to Claim 8-2, Cerastes' standing to collect the debt.

148. Upon information and belief, Cerastes' action in concealing Erios, LLC's status as an apparent transferor of an Allied claim is not an isolated event. Since September 2017, Cerastes has filed dozens of Transfers of Claim Other Than For Security in this Court, alleging

that Allied transferred its claim to Cerastes. See, for example, Cerastes' Transfers of Claim Other Than For Security filed in the cases of Geovan Alexander Booker, Case No. 17-31929-KRH, Darryl Emerson, Case No. 17-30557-KRH, Denise Nurmi, Case No. 17-31400-KRH, and Williemena Walker, Case No. 17-71373-FJS, attached together as Exhibit 7.

149. Thus, Cerastes' pattern of filing documents containing false claims throughout the Eastern District of Virginia is "violative of the Bankruptcy Code and abusive of the bankruptcy process" and is precisely the kind of misconduct against which *Varona* says the Court's § 105 powers may properly be employed.

DEMAND FOR RELIEF

Plaintiff therefore requests on behalf of herself and the proposed two classes, the following relief:

(i) An order striking Claim 8-1 and 8-2;

(ii) An order certifying the Claim Objection Class Members' claims pursuant to Fed. R. Civ. P. 23(b)(2);

(iii) An order certifying the Usury Class Members' claims pursuant to Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3), or certifying such issues as may be deemed appropriately treated on a class basis;

(iv) An order certifying the FDCPA Class Members' claims pursuant to Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3), or certifying such issues as may be deemed appropriately treated on a class basis;

(v) An order appointing named Plaintiff as representative of both classes and appointing undersigned counsel as Class counsel for each class;

(vi) An order that Allied issue a refund of amounts paid under Va. Code § 6.2-

1542(A);

(vii) An order that Allied pay to debtors the amounts determined under Va. Code § 6.2-305;

(viii) An award of damages under the FDCPA, including actual and statutory damages against Cerastes, in an amount to be proven at the time of trial;

(ix) An award of attorneys' fees;

(x) An award of litigation costs;

(xi) A Declaration that Defendants violated the law and an injunction against them filing any further Proofs of Claim to collect debts based on Allied extensions of credit made in violation of Virginia's open-end credit statutes; and

(xii) Other declaratory or injunctive relief as the Court deems fair and equitable.

Respectfully submitted,

Shirley Dean Taylor
By Counsel

/s/ Mark C. Leffler_____

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Elizabeth W. Hanes (VSB #75574**)**
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Newport News, VA 23601
Telephone (540) 442-7706
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2018, I served a copy of the foregoing electronically through the Court's CM/ECF system on counsel for the Defendants, who are listed below.

David R. Ruby, Esquire
William D. Prince, IV, Esquire
ThompsonMcMullan, P.C.
100 Shockoe Slip, Third Floor
Richmond, VA 23219
Counsel for Allied Title Lending, LLC, d/b/a
Allied Cash Advance

Daniel Ross, Esquire
Weinstein & Riley, P.S.
2001 Western Avenue, Suite 400
Seattle, WA 98121
Counsel for Cerastes, LLC

By: /s/ Mark C. Leffler
Mark C. Leffler
Counsel for Plaintiff

LINE OF CREDIT AGREEMENT AND PLAN

Exhibit 1

Account #: [redacted]3886 **Credit Limit: $ 1500.00**

COMPANY
Allied Title Lending LLC d/b/a Allied Cash Advance Store Address: 4380 South Laburnum Avenue Richmond, VA, 23231 Store Phone: 804 2228293
ACCOUNT HOLDER
Name: Shirley Taylor Address: [redacted]

Account-Opening Disclosures

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Cash Advances	**273.75%**
Grace Period to Avoid Paying Interest	If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, and if you paid in full the previous balance due, if applicable, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.
Fees	
Origination Fee	**$100 origination fee**
Penalty Fees: • **Late Fee**	If you fail to make a Minimum Payment on its Payment Date, then you will incur a late fee of $15.

How We Will Calculate Your Balance. We use a method called the "average daily principal balance (including current transactions)." See your account agreement for more details.

Billing Rights. Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

Notice of Arbitration Agreement; Right to Reject Arbitration Agreement

Before signing this Agreement, you should carefully review the Arbitration Agreement located on pages 5 and 6. The Arbitration Agreement provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have ever entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Thus, if the person or entity against whom you assert a Claim elects to arbitrate the Claim, then you will not have the following important rights:

- You may not file or maintain a lawsuit in any court except a small claims court.
- You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others.
- You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
- You give up your right to have a jury decide your Claim.
- You will not be afforded the procedural, pre-trial discovery, and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.

If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

LINE OF CREDIT AGREEMENT AND PLAN

Account #: [redacted]8634 **Credit Limit: $ 1500.00**

COMPANY
Allied Title Lending LLC d/b/a Allied Cash Advance Store Address: 4380 South Laburnum Avenue Richmond, VA, 23231 Store Phone: 804 2228293
ACCOUNT HOLDER
Name: Shirley Taylor Address: [redacted]

Account-Opening Disclosures

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Cash Advances	**273.75%**
Grace Period to Avoid Paying Interest	If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, and if you paid in full the previous balance due, if applicable, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.
Fees	
Origination Fee	**$100 origination fee**
Penalty Fees: • **Late Fee**	If you fail to make a Minimum Payment on its Payment Date, then you will incur a late fee of $15.

How We Will Calculate Your Balance. We use a method called the "average daily principal balance (including current transactions)." See your account agreement for more details.

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Notice of Arbitration Agreement; Right to Reject Arbitration Agreement

Before signing this Agreement, you should carefully review the Arbitration Agreement located on pages 5 and 6. The Arbitration Agreement provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have ever entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Thus, if the person or entity against whom you assert a Claim elects to arbitrate the Claim, then you will not have the following important rights:

- You may not file or maintain a lawsuit in any court except a small claims court.
- You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others.
- You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
- You give up your right to have a jury decide your Claim.
- You will not be afforded the procedural, pre-trial discovery, and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.

If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

Line of Credit Agreement

In this Line of Credit Agreement and Plan ("Agreement"), the words "you" and "your" mean each and every account holder who signs this Agreement. "Account" or "LOC" means your Line of Credit account with Allied Title Lending LLC d/b/a Allied Cash Advance ("Company"). The words "we," "our," and "us" mean Allied Title Lending LLC d/b/a Allied Cash Advance.

Account. You may take cash advances from this Account from time to time, up to the credit limit and subject to the terms of this Agreement, at the Company location listed above, provided that no portion of any minimum monthly payment is past due and you are not otherwise in default. You will be required to show proof of identification in order to obtain a cash advance from this Account. All cash advances must be at least $100.

Minimum Payment. You will receive a periodic billing statement showing your balance at the beginning of the billing cycle ("Previous Balance"), your balance at the end of the cycle ("New Balance"), the minimum payment due ("Minimum Payment"), and other Account Information. You agree to pay at the Company location listed above, in cash, money order, or certified funds, at least the Minimum Payment shown on your periodic billing statement by the indicated due date ("Payment Due Date"). If a Payment Due Date is scheduled for a Sunday, legal holiday, or any other date on which we are not open for business, then we will credit any payment received on our next business day, as if it were received on the scheduled Payment Due Date. The payment must be received by the close of business in order to be credited on that day. Your Minimum Payment due at the end of your first billing cycle ("Initial Minimum Payment") will equal 10% of the principal portion of your New Balance, plus your entire Origination Fee described below and any other accrued FINANCE CHARGES (if you did not pay your balance in full during the grace period) or other fees you owe. Thereafter, your Minimum Payment will equal 10% of the principal portion of your New Balance, plus any accrued FINANCE CHARGES (if you did not pay your balance in full during the grace period) or other fees you owe. You may pay more frequently, pay more than the Minimum Payment, or pay your balance in full. If you make extra payments or larger payments during any billing cycle, you are still required to make at least the Minimum Payment for subsequent billing cycles, unless you have paid your entire balance in full. Your available credit limit will be restored by the amount of the Outstanding Principal Balance you pay and will be available for future cash advances.

Daily Periodic Rate. The daily periodic rate for your Account is **0.75%** (corresponding **ANNUAL PERCENTAGE RATE** is **273.75%**).

Billing Date and Billing Cycle. The billing date ("Billing Date") is the first day of a billing cycle ("Billing Cycle"). Your first Billing Date is the date of the initial credit extension. If you receive regular income in bi-weekly or weekly intervals, as demonstrated by the latest income-verification information in our records, then your Billing Cycle will be every 28 days. If you receive regular income in semi-monthly or monthly intervals, as demonstrated by the latest income-verification information in our records, then your Billing cycle will be monthly. Your Payment Due Date is the date that you must pay at least the Minimum Payment in order to avoid late fees and to keep the account in good standing.

Balance Computation Method. We calculate the periodic FINANCE CHARGE for each Billing cycle of your Account by applying the daily periodic rate to the "average daily principal balance" of your Account (including current transactions) and multiplying the result by the number of days in the cycle. To get the "average daily principal balance," we take the Outstanding Principal Balance of your Account each day, adding any new advances and subtracting any payments and credits received that day. This gives us the daily principal balance. Then we add up the daily principal balances for the billing cycle and divide that total by the number of days in the Billing Cycle. This gives us the "average daily principal balance."

Origination Fee. You will be charged an origination fee in the amount listed on page 1 of this Line of Credit Agreement and Plan for the availability of credit under this plan (the "Origination Fee"), which will be billed to your account when you open this Line of Credit.

How to Avoid Paying Interest (Grace Period). If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.

Late Fee. If you fail to make a Minimum Payment on its Payment Due Date, then you will incur a late fee of $15.

Application of Payments. Payments are applied in the following order: (a) to pay late charges on your Account; (b) to pay outstanding fees on your Account; (c) to pay FINANCE CHARGES due and owing on your Account; (d) to pay the principal and reduce the balance on your Account.

Electronic Funds Transfer Authorization. You hereby authorize us or our agent to initiate one or more electronic debit entries to your bank account listed in your credit application to collect the amounts you owe us under this Agreement, plus any fees that may arise due to your default on this LOC, such as dishonored item fees or late fees. These electronic debit entries or transfers may include, but are not limited to, automated clearing house (ACH) entries, remotely created checks (RCCs), remotely created payment orders, demand drafts, bank checks, bank drafts, or similar payment devices. We may continue to initiate electronic debit entries or transfers to your bank account in amounts less than or equal to the full amount due until any past due amounts you owe are paid in full. Electronic debit entries or transfers initiated to your bank account will generally post on a Billing Cycle's Payment Due Date or, if the Minimum Payment thereafter remains unpaid, on the future date(s) on which you receive regular installments of income. This authorization shall remain in full force until all amounts you owe are paid in full or your revoke this authorization. You may revoke this authorization by providing your bank or us oral or written revocation notice in such a time and manner as will allow your bank or us an opportunity to act on your instruction.

Additional Representations and Warranties. You represent and warrant that: (a) you have the right to enter into this Agreement; (b) you are at least 18 years of age; (c) you understand that no credit insurance is offered with this Agreement; and (d) you will notify us immediately in writing of any change of your address or telephone number.

Default and Right to Cure. You will be in default under this Agreement: (a) if you fail to make a required Minimum Payment by its Payment Due Date; (b) if you fail to timely comply with or perform any other obligation under this Agreement; (c) if any representation or warranty made by you to use is false or misleading; or (d) if you begin, or if any other person puts you in, a bankruptcy, insolvency, or receivership proceeding. You may cure default by paying all past due Minimum Payments, late fees, and costs or fees, and any accrued interest, unless we declare your entire account immediately due and payable.

Our Rights in the Event of Default. If you are in default under this Agreement, we may, at our option and as permitted by law, do any one or more of the following: (a) declare your entire Account balance immediately due and payable, and proceed to collect that balance; (b) close your Account or lower your credit limit; (c) exercise all other rights, powers, and remedies given by law; and (d) recover from you all charges, costs, and expenses, including all collection costs and reasonable attorney's fees, incurred or paid by us in exercising any right, power, or remedy provided to us by law or by this Agreement.

Joint Liability. If more than one person signs this Agreement, each of you is jointly and severally liable. We may enforce our rights against one of you without affecting our rights as to the other. We may also release one of you without releasing the other.

Right to Adjust Amount of Credit, Close Account, Request Income Information, and Duty to Inform About Change in Circumstances. The credit limit established for your Account is primarily based upon your income as well as your payment history with Allied Title Lending LLC d/b/a Allied Cash Advance. You agree that we have the right to adjust your credit limit or close your Account at any time if we determine that your ability to repay has changed from the date you applied for this line of credit. You agree we have the right to demand proof of your current income from time to time. You understand and acknowledge that your credit limit may be affected by the current income information. You agree to immediately inform us of any significant change in circumstances regarding your income.

Cancellation. You may cancel your Account at any time and for any reason by both notifying us in writing that you wish to close your Account and paying your Account balance in full. If we in good faith believe that we are in jeopardy of not being repaid as agreed, then we may suspend making future cash advances on your Account at any time and in our sole discretion. If your Account is in default, we may decide to close it at any time. If there is no activity on your Account for 12 consecutive billing cycles, then your Account will automatically be closed.

Amendments. You agree that we may change any of the terms of this Agreement, including but not limited to the method of computing all FINANCE CHARGES, Minimum Payment due, and the applicable daily periodic rate, upon giving you 45 days notice. If we make a change to this Agreement and you do not agree with the change, then you must notify us in writing prior to the effective date of the change. If you do not take this action, then you will have agreed to the change described in the notice. Any change which becomes effective as to you may apply to all then outstanding unpaid indebtedness on your Account, including all cash advances obtained prior to the effective date of the change, as permitted by applicable law. Additional information will be provided in the notice regarding any change in terms.

General. You agree that if we grant any waiver, modification, or other indulgence of any kind at any time, it shall apply only to the specific instance involved and will not act as a waiver, modification, or indulgence for any other future act, event, or condition. We may delay enforcing any of our rights under this Agreement without losing them. Time is of the essence in the performance of this Agreement. This Agreement constitutes the entire Agreement between the parties, and no other agreements, representations, or warranties other than those stated herein shall be binding unless reduced to writing and signed by all parties.

Governing Law. This Agreement shall be construed, applied, and governed by the laws of the Commonwealth of Virginia, except that the Arbitration Agreement and the Notice of Grievance Agreement, both set forth below, shall be governed by the Federal Arbitration Act ("FAA")

Affirmative Consent to Receive Commercial E-Mails, Texts, and Phone Calls. By signing this Agreement, you authorize us to send you commercial e-mail messages to the following e-mail address: sheree62@comcast.net. You also authorize us to initiate commercial text messages, auto-dialed calls, pre-recorded calls, or live phone calls to the following phone number(s), including any mobile phone number(s): 804 8370814 . Finally, you acknowledge that we did not condition your eligibility for this transaction on your agreement to provide the consent described in this paragraph. To opt-out of providing the consent described in this paragraph, contact us at our customer service number set forth on page 1 of this Agreement.

Additional Acknowledgements. By signing this Agreement, you acknowledge and agree that it was completed before you signed it and that you were provided a completed copy of it.

CUSTOMER:

Customer Signature

Date: 07/25/2016

COMPANY:

Allied Title Lending LLC d/b/a Allied Cash Advance

By: _____
Authorized Representative

Arbitration Agreement

1. Definition of Claim. Claim means any claim, dispute, or controversy arising from or relating to this Agreement, this Transaction, any other agreement or transaction that you and we have ever entered into or completed, or any other conduct or dealing between you and us. A court or arbitrator interpreting the scope of this Arbitration Agreement should broadly construe the meaning of Claim so as to give effect to your and our intention to arbitrate any and all claims, disputes, or controversies that may arise between you and us. Consistent with this broad construction, Claim includes (but is not limited to) each of the claims, disputes, or controversies listed below.

- A Claim includes any dispute or controversy regarding the scope, validity, or enforceability of this Arbitration Agreement. For example, a Claim includes any assertion by you or us that this Arbitration Agreement is unenforceable because applicable usury, lending, or consumer protection laws render the underlying Transaction void or unenforceable. A Claim also includes any assertion by you or us that this Arbitration Agreement is unenforceable because it lacks fairness or mutuality of obligations, conflicts with bankruptcy or other federal laws, improperly limits your or our remedies for the other's violation of laws, or unduly restricts your or our access to the court system. Finally, a Claim includes any assertion by you or us that this Arbitration Agreement is unenforceable because you or we did not receive notice of or understand its provisions, you or we need to discover the filing fees or administrative costs associated with commencing an arbitration proceeding, or you or we believe the arbitration firm or the arbitrator will be unfair or biased.
- A Claim includes any claim that you assert against a person or entity related to us – including our parent company, affiliated companies, directors, officers, employees, agents, and representatives – and any claim that we assert against a person or entity related to you. For the purpose of this Arbitration Agreement, references to *we*, *our*, and *us* and references to *you* and *your* include such related persons or entities. You and we agree that these related persons and entities may elect to arbitrate any Claim asserted against them even though they have not signed this Arbitration Agreement.
- A Claim includes any statutory, tort, contractual, or equitable (i.e., non-monetary) claim. For example, a Claim includes any claim arising under the following: a federal or state statute, act, or legislative enactment; a federal or state administrative regulation or rule; common law (i.e., non-statutory law based on court cases); a local ordinance or zoning code; this Agreement or another contract; a judicial or regulatory decree, order, or consent agreement; or any other type of law.
- Claim includes (but is not limited to) any claim based on your or our conduct before you and we consummated this Transaction. For example, a Claim includes any dispute or controversy regarding our advertising, application processing, or underwriting practices, our communication of credit decisions, or our provision of cost-of-credit or other consumer protection disclosures.
- A Claim includes any request for monetary damages or equitable remedies, whether such request is asserted as a claim, counterclaim, or cross-claim.

2. Mandatory Arbitration Upon Election. Subject to your right to reject arbitration (explained on page 1 of this Agreement) and subject to the small claims court exception (explained below), you and we agree to arbitrate any Claim if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Consequently, if the person or entity against whom a Claim is asserted elects to arbitrate the Claim, then neither you nor we may file or maintain a lawsuit in any court except a small claims court and neither you nor we may join or participate in a class action, act as a class representative or a private attorney general, or consolidate a Claim with the claims of others. A person or entity against whom a Claim is asserted may elect to arbitrate the Claim by providing oral or written notice to the person asserting the Claim (i.e., the claimant). Such notice need not follow any particular format but must reasonably inform the claimant that arbitration has been elected. For example, if you or we file a lawsuit against the other, then the other provides sufficient notice if the other orally informs the claimant that the other elects to arbitrate the Claim or if the other files a pleading (i.e., a document filed in court) requesting the court to stay (i.e., freeze) the court case and refer the Claim to arbitration.

3. Small Claims Court Exception. You and we may ask a small claims court to decide a Claim so long as no party to the small claims court lawsuit seeks to certify a class, consolidate the claims of multiple persons, or recover damages beyond the jurisdiction of the small claims court. If you file a small claims court lawsuit against us, then we lose the right to elect arbitration of your Claim (but not of other persons' Claims). In contrast, if we file a small claims court lawsuit against you, then you retain the right to elect arbitration of our Claim.

4. Arbitration Firm. The American Arbitration Association ("AAA") (1-800-778-7879, www.adr.org) will administer the arbitration of Claims. The AAA will normally apply its Consumer Arbitration Rules then in effect to a Claim but may apply other types of procedural rules – such as the AAA's Commercial Arbitration Rules then in effect – if a party to the arbitration proceeding demonstrates that the application of such other procedural rules is appropriate. No matter what the arbitration firm's procedural rules provide, you and we agree that the arbitrator must issue a written decision and may award any type of remedy – including punitive damages and equitable relief – that a court or jury could award if the Claim were litigated. You and we also agree that an arbitration firm may not arbitrate a Claim as a class action or otherwise consolidate the Claims of multiple persons. You may request a copy of the AAA's Consumer Arbitration Rules and other procedural rules at the toll-free phone number or URL (universal resource locator) identified above. If you object to the AAA as the arbitration firm, then the parties may agree to select a local arbitrator who is a retired judge or a registered arbitrator in good standing with an arbitration firm, provided that such local arbitrator must enforce all the terms of this arbitration agreement, including the class-action waiver. The parties may not select a local arbitrator who refuses to enforce this arbitration agreement, including the class action waiver, because you and we waive any right to arbitrate a Claim on a class-action, representative-action, or

consolidated basis. When contacting AAA or another arbitration firm, recognize that phone numbers and URLs change frequently; you may need to update the contact information provided above with your own research.

5. Payment of Arbitration Fees; Selection of Forum. If you file a Claim with the AAA or another arbitration firm, the firm will usually ask you to pay a filing fee and may also ask you to pay in advance for some of the expenses the firm will incur when administering the arbitration proceeding. Upon your written request, we will pay to the arbitration firm any fees or advance administrative expenses that the arbitration firm requires you to pay as a condition to your filing a Claim with the firm. Additionally, we will pay any fees or expenses the arbitration firm charges for administering the arbitration proceeding, any fees or expenses the individual arbitrator or arbitrators charge for attending the arbitration hearing, and any fees a court charges you to file a lawsuit appealing the arbitration decision. We will pay these fees and expenses whether or not you prevail in the arbitration proceeding. Finally, we agree to hold the arbitration proceedings in the county of your residence or in any different location in the United States of your choice.

6. Governing Law. You and we acknowledge that this Transaction involves interstate commerce. Accordingly, you and we agree that both the procedural and the substantive provisions of the Federal Arbitration Act, 9 USC §§ 1-16, govern the enforcement, interpretation, and performance of this Arbitration Agreement. Any court with jurisdiction may enforce this Arbitration Agreement. Additionally, any court with jurisdiction may enforce an arbitration decision rendered under this Arbitration Agreement if that arbitration decision has been properly registered as a judgment.

7. Survival; Binding Effect; Severability. You and we retain the right to invoke this Arbitration Agreement and to compel the arbitration of Claims even after your and our respective obligations under this Agreement have been completed, defaulted, rescinded, or discharged in bankruptcy. This Arbitration Agreement binds the heirs, successors, and assigns – including any bankruptcy trustee – of both you and us. Finally, if a court or arbitrator determines that any part of this Arbitration Agreement is unenforceable, then you and we agree that the court or arbitrator must fully enforce the remaining provisions that have not been invalidated.

Notice-of-Grievance Agreement

If the person or entity against whom a Claim is asserted declines to arbitrate the Claim or if a court or arbitrator determines that the above Arbitration Agreement is unenforceable, then you and we agree that neither you nor we may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from or relates to a Claim until the claimant has provided the other party written notice of the asserted Claim and afforded the other party a reasonable period after the giving of the written notice to take corrective action. If applicable law provides a time period which must elapse before certain action can be taken, then that time period will be deemed reasonable for the purpose of the preceding sentence.

By signing below, you and we agree to the Arbitration Agreement and the Notice-of-Grievance Agreement, each of which is set forth above.

CUSTOMER:

Customer Signature

Date: 07/25/2016

COMPANY:
Allied Title Lending LLC d/b/a Allied Cash Advance

By: Authorized Representative

YOUR BILLING RIGHTS – KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us on a separate sheet and mail to: Allied Title Lending LLC d/b/a Allied Cash Advance, Attn: Legal Dept. P.O. Box 36381, Cincinnati, OH 45236-0381. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item or amount you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including FINANCE CHARGES, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any FINANCE CHARGES, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount that we think you owe, we may report you as delinquent and proceed to collect that amount. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that your matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

COVERED BORROWER IDENTIFICATION STATEMENT

COVERED BORROWER IDENTIFICATION STATEMENT. Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to check one of the following statements as applicable:

☐ **I AM** a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

☐ **I AM** a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

– OR –

☒ **I AM NOT** a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime.

Shirley Taylor

Shirley Taylor

Shirley Taylor

Consumer Signature

07/25/2016

Date

09/11/2017

Transaction History

Exhibit 2

Customer Name : Shirley Taylor **Customer Id :** [redacted] **Customer Status :** BANKRUPTCY

Transaction Code	Transaction Date	Effective Date	Description	Amount	Cycle	Principal	Interest	Late Fee	Over Fee	Return Fee	Ref#
55577713	03/16/2017	03/16/2017	ADJUSMENT NEGATIVE LATITUDE (COLL)	-$895.50	8		-$820.50	-$75.00			0
52376374	01/19/2017 23:20:12	01/19/2017 23:20:12	SENT TO COLLECTIONS	$0.00	8						0
52339058	01/19/2017 12:10:21	01/19/2017 12:10:21	BANKRUPTCY	$3652.42	8						1003894
52258558	01/17/2017 23:43:53	01/17/2017 23:43:53	STATEMENT	$0.00	7						0
52258550	01/17/2017 23:43:50	01/17/2017 23:43:50	INTEREST	$311.85	7		$311.85				0
52252834	01/17/2017 23:02:06	01/17/2017 23:02:06	LATE FEE	$15.00	7			$15.00			0
50585382	12/20/2016 23:21:34	12/20/2016 23:21:34	STATEMENT	$0.00	6						0
50585374	12/20/2016 23:21:31	12/20/2016 23:21:31	INTEREST	$289.57	6		$289.57				0
50584090	12/20/2016 23:13:38	12/20/2016 23:13:38	LATE FEE	$15.00	6			$15.00			0
50584082	12/20/2016 23:13:35	12/20/2016 23:13:35	LATE FEE	$15.00	6			$15.00			0
50506466	12/17/2016 22:40:21	12/17/2016 22:40:21	DELINQUENT	$0.00	6						
50486130	12/17/2016 06:12:46	12/17/2016 06:12:46	RETURN	$895.50	6	$135.00	$730.50	$30.00			0
50339834	12/15/2016 18:20:11	12/15/2016 18:20:11	CURRENT	$0.00	6						1003590
50339830	12/15/2016 18:20:06	12/15/2016 18:20:06	PAYMENT	-$895.50	6	-$135.00	-$730.50	-$30.00			1003590
48921886	11/22/2016 23:19:13	11/22/2016 23:19:13	STATEMENT	$0.00	5						0
48921882	11/22/2016 23:19:11	11/22/2016 23:19:11	INTEREST	$283.50	5		$283.50				0
48919990	11/22/2016 23:02:52	11/22/2016 23:02:52	LATE FEE	$15.00	5			$15.00			0
47244310	10/25/2016 23:05:08	10/24/2016 23:05:08	STATEMENT	$0.00	4						0
47244302	10/25/2016 23:05:05	10/24/2016 23:05:05	INTEREST	$283.50	4		$283.50				0
47237166	10/25/2016 22:08:32	10/25/2016 22:08:32	LATE FEE	$15.00	4			$15.00			0
47144746	10/21/2016 21:43:56	10/21/2016 21:43:56	DELINQUENT	$0.00	4						
46395458	10/07/2016 16:21:01	10/07/2016 16:21:01	CURRENT	$0.00	4						1002998
46395446	10/07/2016 16:20:57	10/07/2016 16:20:57	PAYMENT	-$545.62	4		-$530.62	-$15.00			1002998

Customer Name : Shirley Taylor **Customer Id :** [redacted] **Customer Status :** BANKRUPTCY

Transaction Code	Transaction Number	Effective Date	Description	Amount	Cycle	Principal	Interest	Late Fee	Other Fee	Returned Fee	User
45516422	09/27/2016 22:23:55	09/27/2016 22:23:55	STATEMENT	$0.00	3						0
45516414	09/27/2016 22:23:51	09/27/2016 22:23:51	INTEREST	$283.50	3		$283.50				0
45514234	09/27/2016 22:05:00	09/27/2016 22:05:00	LATE FEE	$15.00	3			$15.00			0
45424346	09/23/2016 21:40:28	09/23/2016 21:40:28	DELINQUENT	$0.00	3						
44393918	09/05/2016 22:43:25	09/05/2016 22:43:25	CLEAR ACH PAYMENT		3						0
43834102	08/30/2016 22:44:49	08/30/2016 22:44:49	STATEMENT	$0.00	2						0
43834094	08/30/2016 22:44:46	08/30/2016 22:44:46	INTEREST	$410.62	2		$410.62				0
43719962	08/26/2016 17:56:56	08/26/2016 17:56:56	PAYMENT	-$250.00	2	-$150.00			-$100.00		1001893
41763678	07/25/2016 16:26:48	07/25/2016 16:26:48	STATEMENT	$0.00	1						1001893
41763674	07/25/2016 16:26:46	07/25/2016 16:26:46	ORIGINATION FEE	$100.00	1				$100.00		1001893
41763670	07/25/2016 16:26:43	07/25/2016 16:26:43	DRAW	$1500.00	1	$1500.00					1001893
41763666	07/25/2016 16:26:40	07/25/2016 16:26:40	OPEN		1						1001893

Exhibit 3

Fill in this information to identify the case:

Debtor 1 SHIRLEY DEAN TAYLOR

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: EASTERN District of VIRGINIA

Case number 17-30142

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Allied Cash Advance
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☒ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Allied Cash Advance Name	Allied Cash Advance Name
C/O Real Time Resolutions, Inc. PO Box 566027 Number Street	C/O Real Time Resolutions, Inc. PO Box 567749 Number Street
Dallas, TX 75356-6027 City State ZIP Code	Dallas, TX 75356-7749 City State ZIP Code
Contact phone 1-800-719-5484	Contact phone 1-800-719-5484
Contact email bankruptcy@rtresolutions.com	Contact email bankruptcy@rtresolutions.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☒ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☒ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
- ☐ No
- ☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 8634 ____ ____ ____

7. **How much is the claim?** $ 2756.92 . **Does this amount include interest or other charges?**
- ☐ No
- ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Money loaned

9. **Is all or part of the claim secured?**
- ☑ No
- ☐ Yes. The claim is secured by a lien on property.

Nature of property:
- ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
- ☐ Motor vehicle
- ☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
- ☐ Fixed
- ☐ Variable

10. **Is this claim based on a lease?**
- ☑ No
- ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
- ☑ No
- ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 03/21/2017
MM / DD / YYYY

/s/Veronica Gutierrez
Signature

Print the name of the person who is completing and signing this claim:

Name: Veronica Gutierrez
First name Middle name Last name

Title: Department Manager

Company: Real Time Resolutions, Inc
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: C/O Real Time Resolutions, Inc. PO Box 566027
Number Street

Dallas, TX 75356-6027
City State ZIP Code

Contact phone: 1-800-719-5484 Email: bankruptcy@rtresolutions.com

STATEMENT OF ACCOUNTS

STATEMENT DATE: 03/21/2017

CASE NUMBER: 17-30142

DEBTOR: SHIRLEY D TAYLOR

DEBTOR'S REDACTED ACCOUNT NUMBER: XXXXXXXXXXXX8634

CREDITOR AT LAST TRANSACTION:

CURRENT CREDITOR: Allied Cash Advance
C/O Real Time Resolutions, Inc.
PO Box 566027
Dallas, TX 75356-6027

ACCOUNT PURCHASED FROM:

DATE OF LAST TRANSACTION: 07/25/2016
DATE OF LAST PAYMENT: N/A
DATE ACCOUNT CHARGED-OFF: N/A

BALANCE CLAIMED: $2756.92

PRINCIPAL OWED:	$1350.00
INTEREST:	$1331.92
FEES:	$75.00
EXPENSES:	$0.00
OTHER CHARGES:	$0.00
	$2756.92

DOCUMENT ID: RTR0000000000754461F

POWER OF ATTORNEY

Axcess Financial Services, Inc., and its affiliates (collectively, "**Axcess**"), d/b/a Check 'n Go, Allied Cash Advance, Why Not Lease It, Tempoe and such other aliases as may be established by Axcess from time to time, hereby grants to Real Time Resolutions, Inc. ("**RTR**"), whose principal office is located at 1349 Empire Central Drive, Suite 150, Dallas, TX 75247, this limited Power of Attorney for the following purposes pursuant to the Master Agreement dated as of September 30, 2014 by and between Axcess and RTR (the "**Services Agreement**"):

1. Servicing certain claims Axcess may have in consumer debtor cases being administered pursuant to title 11 of the United States Code (the "Bankruptcy Code");
2. The preparation, execution and filing of proofs of claim pursuant to the Bankruptcy Code;
3. Functioning as successor agent to American InfoSource, LLP. ("**AIS**") with respect to such matters previously handled by AIS for Axcess; and
4. Endorsing checks and other payments made payable to Axcess or one of the aliases used by Axcess from time to time.

This Power of Attorney shall remain in effect throughout the life of the Services Agreement unless written notice is otherwise provided to RTR by Axcess. This Power of Attorney is being given to RTR and may be attached to claims filed on our behalf as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any Official Forms thereto.

AXCESS FINANCIAL SERVICES, INC.

By: _____

Name: Doug Clark

Title: COO

State of Ohio
County of Hamilton

Sworn to and subscribed before me this 14th day of April, 2015,
by Douglas Clark.
X Personally known or ___ Produced _____ as identification.

_____

Andrew Pugh
Notary Public, State of Ohio

{NOTARY SEAL}

Andrew Wesley Pugh
Notary Public, State of Ohio
My Commission Expires 05-14-2019

Exhibit 5

Fill in this information to identify the case:

Debtor 1 Shirley Dean Taylor

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of Virginia (Richmond) (State)

Case number 17-30142

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Cerastes, LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☐ No
☒ Yes. From whom? Erios, LLC

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
CERASTES, LLC C O WEINSTEIN & RILEY, PS Name	CERASTES, LLC C O WEINSTEIN & RILEY, PS Name
2001 WESTERN AVENUE, STE 400 Number Street	PO BOX 3978 Number Street
SEATTLE, WA 98121 City State ZIP Code	SEATTLE, WA 98124-3978 City State ZIP Code
Contact phone (877) 332-3543 Contact email bncmail@w-legal.com	Contact phone (877) 332-3543 Contact email bncmail@w-legal.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☐ No
☒ Yes. Claim number on court claims registry (if known) 8 Filed on 03/21/2017 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☒ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☐ No
   - ☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 8634

7. **How much is the claim?** $2,756.92 . **Does this amount include interest or other charges?**
   - ☒ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.

9. **Is all or part of the claim secured?**
   - ☒ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☒ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☒ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 09/28/2017
MM / DD / YYYY

/s/ Devon Gray
Signature

Print the name of the person who is completing and signing this claim:

Name: Devon Gray, Supervisor
First name Middle name Last name

Title: Representative for Cerastes, LLC

Company: Weinstein & Riley, P.S.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2001 Western Ave, Suite 400, Seattle, WA 98121
Number Street
City State ZIP Code

Contact phone (877) 332-3543 Email bncmail@w-legal.com

Account Summary

Debtor Name:	Shirley Taylor		
Debtor SSN:	XXX-XX-1182		
Debtor Address:	[redacted]		
Balance at Time of Filing:	$2,756.92	Principal Balance:	$1,350.00
Interest:	$1,331.92	Fees, Expenses or Other Charges:	$75.00
Last Payment Date:	12/15/2016	Last Payment Amount:	
Last Purchase Date:		Last Purchase Amount:	
Merchant:			
Entity to whom the debt was owed at the time of the accountholder's last transaction on the account:	Allied Cash Advance	Entity from whom creditor purchased account:	Erios, LLC
Creditor Name:	Cerastes, LLC		
Account Number:	XXX8634	Alternate Account Number:	
Open Date:	07/25/2016	Charge Off Date:	NA
Case Number:	17-30142	Chapter:	Chapter 13

[redacted]

SHIRLEY (SHEREE) D. TAYLOR

[redacted]

20 ____

Pay to the order of VOID $

Dollars

SAVYI

[redacted]

RICHMOND, VIRGINIA

for VOID MP

[redacted]

LINE OF CREDIT AGREEMENT AND PLAN

Account #: [redacted]3886 **Credit Limit: $ 1500.00**

COMPANY Allied Title Lending LLC d/b/a Allied Cash Advance Store Address: 4380 South Laburnum Avenue Richmond, VA, 23231 Store Phone: 804 2228293
ACCOUNT HOLDER Name: Shirley Taylor Address: [redacted]

Account-Opening Disclosures

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Cash Advances	**273.75%**
Grace Period to Avoid Paying Interest	If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, and if you paid in full the previous balance due, if applicable, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.
Fees	
Origination Fee	**$100 origination fee**
Penalty Fees: • **Late Fee**	If you fail to make a Minimum Payment on its Payment Date, then you will incur a late fee of $15.

How We Will Calculate Your Balance. We use a method called the "average daily principal balance (including current transactions)." See your account agreement for more details.

Billing Rights. Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

Notice of Arbitration Agreement; Right to Reject Arbitration Agreement

Before signing this Agreement, you should carefully review the Arbitration Agreement located on pages 5 and 6. The Arbitration Agreement provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have ever entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Thus, if the person or entity against whom you assert a Claim elects to arbitrate the Claim, then you will not have the following important rights:

- You may not file or maintain a lawsuit in any court except a small claims court.
- You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others.
- You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
- You give up your right to have a jury decide your Claim.
- You will not be afforded the procedural, pre-trial discovery, and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.

If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

LINE OF CREDIT AGREEMENT AND PLAN

Account #: [redacted]8634 **Credit Limit: $ 1500.00**

COMPANY
Allied Title Lending LLC d/b/a Allied Cash Advance Store Address: 4380 South Laburnum Avenue Richmond, VA, 23231 Store Phone: 804 2228293
ACCOUNT HOLDER
Name: Shirley Taylor Address: [redacted]

Account-Opening Disclosures

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Cash Advances	**273.75%**
Grace Period to Avoid Paying Interest	If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, and if you paid in full the previous balance due, if applicable, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.
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- You may not file or maintain a lawsuit in any court except a small claims court.
- You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others.
- You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
- You give up your right to have a jury decide your Claim.
- You will not be afforded the procedural, pre-trial discovery, and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.

If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

Line of Credit Agreement

In this Line of Credit Agreement and Plan ("Agreement"), the words "you" and "your" mean each and every account holder who signs this Agreement. "Account" or "LOC" means your Line of Credit account with Allied Title Lending LLC d/b/a Allied Cash Advance ("Company"). The words "we," "our," and "us" mean Allied Title Lending LLC d/b/a Allied Cash Advance.

Account. You may take cash advances from this Account from time to time, up to the credit limit and subject to the terms of this Agreement, at the Company location listed above, provided that no portion of any minimum monthly payment is past due and you are not otherwise in default. You will be required to show proof of identification in order to obtain a cash advance from this Account. All cash advances must be at least $100.

Minimum Payment. You will receive a periodic billing statement showing your balance at the beginning of the billing cycle ("Previous Balance"), your balance at the end of the cycle ("New Balance"), the minimum payment due ("Minimum Payment"), and other Account Information. You agree to pay at the Company location listed above, in cash, money order, or certified funds, at least the Minimum Payment shown on your periodic billing statement by the indicated due date ("Payment Due Date"). If a Payment Due Date is scheduled for a Sunday, legal holiday, or any other date on which we are not open for business, then we will credit any payment received on our next business day, as if it were received on the scheduled Payment Due Date. The payment must be received by the close of business in order to be credited on that day. Your Minimum Payment due at the end of your first billing cycle ("Initial Minimum Payment") will equal 10% of the principal portion of your New Balance, plus your entire Origination Fee described below and any other accrued FINANCE CHARGES (if you did not pay your balance in full during the grace period) or other fees you owe. Thereafter, your Minimum Payment will equal 10% of the principal portion of your New Balance, plus any accrued FINANCE CHARGES (if you did not pay your balance in full during the grace period) or other fees you owe. You may pay more frequently, pay more than the Minimum Payment, or pay your balance in full. If you make extra payments or larger payments during any billing cycle, you are still required to make at least the Minimum Payment for subsequent billing cycles, unless you have paid your entire balance in full. Your available credit limit will be restored by the amount of the Outstanding Principal Balance you pay and will be available for future cash advances.

Daily Periodic Rate. The daily periodic rate for your Account is **0.75%** (corresponding **ANNUAL PERCENTAGE RATE** is **273.75%**).

Billing Date and Billing Cycle. The billing date ("Billing Date") is the first day of a billing cycle ("Billing Cycle"). Your first Billing Date is the date of the initial credit extension. If you receive regular income in bi-weekly or weekly intervals, as demonstrated by the latest income-verification information in our records, then your Billing Cycle will be every 28 days. If you receive regular income in semi-monthly or monthly intervals, as demonstrated by the latest income-verification information in our records, then your Billing cycle will be monthly. Your Payment Due Date is the date that you must pay at least the Minimum Payment in order to avoid late fees and to keep the account in good standing.

Balance Computation Method. We calculate the periodic FINANCE CHARGE for each Billing cycle of your Account by applying the daily periodic rate to the "average daily principal balance" of your Account (including current transactions) and multiplying the result by the number of days in the cycle. To get the "average daily principal balance," we take the Outstanding Principal Balance of your Account each day, adding any new advances and subtracting any payments and credits received that day. This gives us the daily principal balance. Then we add up the daily principal balances for the billing cycle and divide that total by the number of days in the Billing Cycle. This gives us the "average daily principal balance."

Origination Fee. You will be charged an origination fee in the amount listed on page 1 of this Line of Credit Agreement and Plan for the availability of credit under this plan (the "Origination Fee"), which will be billed to your account when you open this Line of Credit.

How to Avoid Paying Interest (Grace Period). If you pay in full the new Balance reflected on your periodic billing statement on or prior to the Payment Due Date, then no additional FINANCE CHARGES (Contingent Finance Charges) will be imposed for the Billing Cycle that begins the day after the Closing Date for the periodic billing statement. If you do not pay in full the new Balance on or prior to the Payment Due Date, then the Contingent FINANCE CHARGES will be imposed on your Account and reflected on your next periodic billing statement.

Late Fee. If you fail to make a Minimum Payment on its Payment Due Date, then you will incur a late fee of $15.

Application of Payments. Payments are applied in the following order: (a) to pay late charges on your Account; (b) to pay outstanding fees on your Account; (c) to pay FINANCE CHARGES due and owing on your Account; (d) to pay the principal and reduce the balance on your Account.

Electronic Funds Transfer Authorization. You hereby authorize us or our agent to initiate one or more electronic debit entries to your bank account listed in your credit application to collect the amounts you owe us under this Agreement, plus any fees that may arise due to your default on this LOC, such as dishonored item fees or late fees. These electronic debit entries or transfers may include, but are not limited to, automated clearing house (ACH) entries, remotely created checks (RCCs), remotely created payment orders, demand drafts, bank checks, bank drafts, or similar payment devices. We may continue to initiate electronic debit entries or transfers to your bank account in amounts less than or equal to the full amount due until any past due amounts you owe are paid in full. Electronic debit entries or transfers initiated to your bank account will generally post on a Billing Cycle's Payment Due Date or, if the Minimum Payment thereafter remains unpaid, on the future date(s) on which you receive regular installments of income. This authorization shall remain in full force until all amounts you owe are paid in full or your revoke this authorization. You may revoke this authorization by providing your bank or us oral or written revocation notice in such a time and manner as will allow your bank or us an opportunity to act on your instruction.

Additional Representations and Warranties. You represent and warrant that: (a) you have the right to enter into this Agreement; (b) you are at least 18 years of age; (c) you understand that no credit insurance is offered with this Agreement; and (d) you will notify us immediately in writing of any change of your address or telephone number.

Default and Right to Cure. You will be in default under this Agreement: (a) if you fail to make a required Minimum Payment by its Payment Due Date; (b) if you fail to timely comply with or perform any other obligation under this Agreement; (c) if any representation or warranty made by you to use is false or misleading; or (d) if you begin, or if any other person puts you in, a bankruptcy, insolvency, or receivership proceeding. You may cure default by paying all past due Minimum Payments, late fees, and costs or fees, and any accrued interest, unless we declare your entire account immediately due and payable.

Our Rights in the Event of Default. If you are in default under this Agreement, we may, at our option and as permitted by law, do any one or more of the following: (a) declare your entire Account balance immediately due and payable, and proceed to collect that balance; (b) close your Account or lower your credit limit; (c) exercise all other rights, powers, and remedies given by law; and (d) recover from you all charges, costs, and expenses, including all collection costs and reasonable attorney's fees, incurred or paid by us in exercising any right, power, or remedy provided to us by law or by this Agreement.

Joint Liability. If more than one person signs this Agreement, each of you is jointly and severally liable. We may enforce our rights against one of you without affecting our rights as to the other. We may also release one of you without releasing the other.

Right to Adjust Amount of Credit, Close Account, Request Income Information, and Duty to Inform About Change in Circumstances. The credit limit established for your Account is primarily based upon your income as well as your payment history with Allied Title Lending LLC d/b/a Allied Cash Advance. You agree that we have the right to adjust your credit limit or close your Account at any time if we determine that your ability to repay has changed from the date you applied for this line of credit. You agree we have the right to demand proof of your current income from time to time. You understand and acknowledge that your credit limit may be affected by the current income information. You agree to immediately inform us of any significant change in circumstances regarding your income.

Cancellation. You may cancel your Account at any time and for any reason by both notifying us in writing that you wish to close your Account and paying your Account balance in full. If we in good faith believe that we are in jeopardy of not being repaid as agreed, then we may suspend making future cash advances on your Account at any time and in our sole discretion. If your Account is in default, we may decide to close it at any time. If there is no activity on your Account for 12 consecutive billing cycles, then your Account will automatically be closed.

Amendments. You agree that we may change any of the terms of this Agreement, including but not limited to the method of computing all FINANCE CHARGES, Minimum Payment due, and the applicable daily periodic rate, upon giving you 45 days notice. If we make a change to this Agreement and you do not agree with the change, then you must notify us in writing prior to the effective date of the change. If you do not take this action, then you will have agreed to the change described in the notice. Any change which becomes effective as to you may apply to all then outstanding unpaid indebtedness on your Account, including all cash advances obtained prior to the effective date of the change, as permitted by applicable law. Additional information will be provided in the notice regarding any change in terms.

General. You agree that if we grant any waiver, modification, or other indulgence of any kind at any time, it shall apply only to the specific instance involved and will not act as a waiver, modification, or indulgence for any other future act, event, or condition. We may delay enforcing any of our rights under this Agreement without losing them. Time is of the essence in the performance of this Agreement. This Agreement constitutes the entire Agreement between the parties, and no other agreements, representations, or warranties other than those stated herein shall be binding unless reduced to writing and signed by all parties.

Governing Law. This Agreement shall be construed, applied, and governed by the laws of the Commonwealth of Virginia, except that the Arbitration Agreement and the Notice of Grievance Agreement, both set forth below, shall be governed by the Federal Arbitration Act ("FAA")

Affirmative Consent to Receive Commercial E-Mails, Texts, and Phone Calls. By signing this Agreement, you authorize us to send you commercial e-mail messages to the following e-mail address: sheree62@comcast.net. You also authorize us to initiate commercial text messages, auto-dialed calls, pre-recorded calls, or live phone calls to the following phone number(s), including any mobile phone number(s): 804 8370814 . Finally, you acknowledge that we did not condition your eligibility for this transaction on your agreement to provide the consent described in this paragraph. To opt-out of providing the consent described in this paragraph, contact us at our customer service number set forth on page 1 of this Agreement.

Additional Acknowledgements. By signing this Agreement, you acknowledge and agree that it was completed before you signed it and that you were provided a completed copy of it.

CUSTOMER:

Customer Signature

Date: 07/25/2016

COMPANY:

Allied Title Lending LLC d/b/a Allied Cash Advance

By: _____
Authorized Representative

Arbitration Agreement

1. Definition of Claim. Claim means any claim, dispute, or controversy arising from or relating to this Agreement, this Transaction, any other agreement or transaction that you and we have ever entered into or completed, or any other conduct or dealing between you and us. A court or arbitrator interpreting the scope of this Arbitration Agreement should broadly construe the meaning of Claim so as to give effect to your and our intention to arbitrate any and all claims, disputes, or controversies that may arise between you and us. Consistent with this broad construction, Claim includes (but is not limited to) each of the claims, disputes, or controversies listed below.

- A Claim includes any dispute or controversy regarding the scope, validity, or enforceability of this Arbitration Agreement. For example, a Claim includes any assertion by you or us that this Arbitration Agreement is unenforceable because applicable usury, lending, or consumer protection laws render the underlying Transaction void or unenforceable. A Claim also includes any assertion by you or us that this Arbitration Agreement is unenforceable because it lacks fairness or mutuality of obligations, conflicts with bankruptcy or other federal laws, improperly limits your or our remedies for the other's violation of laws, or unduly restricts your or our access to the court system. Finally, a Claim includes any assertion by you or us that this Arbitration Agreement is unenforceable because you or we did not receive notice of or understand its provisions, you or we need to discover the filing fees or administrative costs associated with commencing an arbitration proceeding, or you or we believe the arbitration firm or the arbitrator will be unfair or biased.
- A Claim includes any claim that you assert against a person or entity related to us – including our parent company, affiliated companies, directors, officers, employees, agents, and representatives – and any claim that we assert against a person or entity related to you. For the purpose of this Arbitration Agreement, references to *we*, *our*, and *us* and references to *you* and *your* include such related persons or entities. You and we agree that these related persons and entities may elect to arbitrate any Claim asserted against them even though they have not signed this Arbitration Agreement.
- A Claim includes any statutory, tort, contractual, or equitable (i.e., non-monetary) claim. For example, a Claim includes any claim arising under the following: a federal or state statute, act, or legislative enactment; a federal or state administrative regulation or rule; common law (i.e., non-statutory law based on court cases); a local ordinance or zoning code; this Agreement or another contract; a judicial or regulatory decree, order, or consent agreement; or any other type of law.
- Claim includes (but is not limited to) any claim based on your or our conduct before you and we consummated this Transaction. For example, a Claim includes any dispute or controversy regarding our advertising, application processing, or underwriting practices, our communication of credit decisions, or our provision of cost-of-credit or other consumer protection disclosures.
- A Claim includes any request for monetary damages or equitable remedies, whether such request is asserted as a claim, counterclaim, or cross-claim.

2. Mandatory Arbitration Upon Election. Subject to your right to reject arbitration (explained on page 1 of this Agreement) and subject to the small claims court exception (explained below), you and we agree to arbitrate any Claim if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Consequently, if the person or entity against whom a Claim is asserted elects to arbitrate the Claim, then neither you nor we may file or maintain a lawsuit in any court except a small claims court and neither you nor we may join or participate in a class action, act as a class representative or a private attorney general, or consolidate a Claim with the claims of others. A person or entity against whom a Claim is asserted may elect to arbitrate the Claim by providing oral or written notice to the person asserting the Claim (i.e., the claimant). Such notice need not follow any particular format but must reasonably inform the claimant that arbitration has been elected. For example, if you or we file a lawsuit against the other, then the other provides sufficient notice if the other orally informs the claimant that the other elects to arbitrate the Claim or if the other files a pleading (i.e., a document filed in court) requesting the court to stay (i.e., freeze) the court case and refer the Claim to arbitration.

3. Small Claims Court Exception. You and we may ask a small claims court to decide a Claim so long as no party to the small claims court lawsuit seeks to certify a class, consolidate the claims of multiple persons, or recover damages beyond the jurisdiction of the small claims court. If you file a small claims court lawsuit against us, then we lose the right to elect arbitration of your Claim (but not of other persons' Claims). In contrast, if we file a small claims court lawsuit against you, then you retain the right to elect arbitration of our Claim.

4. Arbitration Firm. The American Arbitration Association ("AAA") (1-800-778-7879, www.adr.org) will administer the arbitration of Claims. The AAA will normally apply its Consumer Arbitration Rules then in effect to a Claim but may apply other types of procedural rules – such as the AAA's Commercial Arbitration Rules then in effect – if a party to the arbitration proceeding demonstrates that the application of such other procedural rules is appropriate. No matter what the arbitration firm's procedural rules provide, you and we agree that the arbitrator must issue a written decision and may award any type of remedy – including punitive damages and equitable relief – that a court or jury could award if the Claim were litigated. You and we also agree that an arbitration firm may not arbitrate a Claim as a class action or otherwise consolidate the Claims of multiple persons. You may request a copy of the AAA's Consumer Arbitration Rules and other procedural rules at the toll-free phone number or URL (universal resource locator) identified above. If you object to the AAA as the arbitration firm, then the parties may agree to select a local arbitrator who is a retired judge or a registered arbitrator in good standing with an arbitration firm, provided that such local arbitrator must enforce all the terms of this arbitration agreement, including the class-action waiver. The parties may not select a local arbitrator who refuses to enforce this arbitration agreement, including the class action waiver, because you and we waive any right to arbitrate a Claim on a class-action, representative-action, or

consolidated basis. When contacting AAA or another arbitration firm, please recognize that phone numbers and URLs change frequently; you may need to update the contact information provided above with your own research.

5. Payment of Arbitration Fees; Selection of Forum. If you file a Claim with the AAA or another arbitration firm, the firm will usually ask you to pay a filing fee and may also ask you to pay in advance for some of the expenses the firm will incur when administering the arbitration proceeding. Upon your written request, we will pay to the arbitration firm any fees or advance administrative expenses that the arbitration firm requires you to pay as a condition to your filing a Claim with the firm. Additionally, we will pay any fees or expenses the arbitration firm charges for administering the arbitration proceeding, any fees or expenses the individual arbitrator or arbitrators charge for attending the arbitration hearing, and any fees a court charges you to file a lawsuit appealing the arbitration decision. We will pay these fees and expenses whether or not you prevail in the arbitration proceeding. Finally, we agree to hold the arbitration proceedings in the county of your residence or in any different location in the United States of your choice.

6. Governing Law. You and we acknowledge that this Transaction involves interstate commerce. Accordingly, you and we agree that both the procedural and the substantive provisions of the Federal Arbitration Act, 9 USC §§ 1-16, govern the enforcement, interpretation, and performance of this Arbitration Agreement. Any court with jurisdiction may enforce this Arbitration Agreement. Additionally, any court with jurisdiction may enforce an arbitration decision rendered under this Arbitration Agreement if that arbitration decision has been properly registered as a judgment.

7. Survival; Binding Effect; Severability. You and we retain the right to invoke this Arbitration Agreement and to compel the arbitration of Claims even after your and our respective obligations under this Agreement have been completed, defaulted, rescinded, or discharged in bankruptcy. This Arbitration Agreement binds the heirs, successors, and assigns – including any bankruptcy trustee – of both you and us. Finally, if a court or arbitrator determines that any part of this Arbitration Agreement is unenforceable, then you and we agree that the court or arbitrator must fully enforce the remaining provisions that have not been invalidated.

Notice-of-Grievance Agreement

If the person or entity against whom a Claim is asserted declines to arbitrate the Claim or if a court or arbitrator determines that the above Arbitration Agreement is unenforceable, then you and we agree that neither you nor we may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from or relates to a Claim until the claimant has provided the other party written notice of the asserted Claim and afforded the other party a reasonable period after the giving of the written notice to take corrective action. If applicable law provides a time period which must elapse before certain action can be taken, then that time period will be deemed reasonable for the purpose of the preceding sentence.

By signing below, you and we agree to the Arbitration Agreement and the Notice-of-Grievance Agreement, each of which is set forth above.

CUSTOMER:

Customer Signature

Date: 07/25/2016

COMPANY:
Allied Title Lending LLC d/b/a Allied Cash Advance

By: Authorized Representative

YOUR BILLING RIGHTS – KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us on a separate sheet and mail to: Allied Title Lending LLC d/b/a Allied Cash Advance, Attn: Legal Dept. P.O. Box 36381, Cincinnati, OH 45236-0381. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item or amount you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including FINANCE CHARGES, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any FINANCE CHARGES, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount that we think you owe, we may report you as delinquent and proceed to collect that amount. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that your matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

COVERED BORROWER IDENTIFICATION STATEMENT

COVERED BORROWER IDENTIFICATION STATEMENT. Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to check one of the following statements as applicable:

☐ **I AM** a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

☐ **I AM** a dependent of a member of the Armed Forces on active duty as described above, because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

– OR –

☒ **I AM NOT** a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime.

Shirley Taylor

Shirley Taylor

Shirley Taylor

Consumer Signature

07/25/2016

Date

Allied Cash Advance Store Nbr: 4226
Address: 4380 SOUTH LABURNUM AVENUE
City: RICHMOND
State: VA
Zip Code: 23231
License Nbr: [redacted]

Date: Jul 25, 2016
Time: 05:26 PM
Customer Name: Taylor, Shirley
Address: [redacted]
City: [redacted]
State: VA
Zip Code: [redacted]

Draw Receipt
Account Number: [redacted]

This Transaction:
Transaction Date: 07/25/2016

Total Draw Amount: $1,500.00
Amount disbursed to customer in the form of:
Check $1,500.00

Signature: _____
Employee Name: King, Michelle

Signature: _____
Customer Name: Taylor, Shirley

Drawer Nbr: [redacted] Employee Nbr: [redacted] Tran Nbr: [redacted]

09/11/2017

Transaction History

Customer Name : Shirley Taylor **Customer Id :** [redacted] **Customer Status :** BANKRUPTCY

Transaction Code	Transaction Date	Effective Date	Description	Amount	Cycle	Principal	Interest	Late Fee	Over Fee	Return Fee	Due
55577713	03/16/2017	03/16/2017	ADJUSMENT NEGATIVE LATITUDE (COLL)	-$895.50	8		-$820.50	-$75.00			0
52376374	01/19/2017 23:20:12	01/19/2017 23:20:12	SENT TO COLLECTIONS	$0.00	8						0
52339058	01/19/2017 12:10:21	01/19/2017 12:10:21	BANKRUPTCY	$3652.42	8						1003894
52258558	01/17/2017 23:43:53	01/17/2017 23:43:53	STATEMENT	$0.00	7						0
52258550	01/17/2017 23:43:50	01/17/2017 23:43:50	INTEREST	$311.85	7		$311.85				0
52252834	01/17/2017 23:02:06	01/17/2017 23:02:06	LATE FEE	$15.00	7			$15.00			0
50585382	12/20/2016 23:21:34	12/20/2016 23:21:34	STATEMENT	$0.00	6						0
50585374	12/20/2016 23:21:31	12/20/2016 23:21:31	INTEREST	$289.57	6		$289.57				0
50584090	12/20/2016 23:13:38	12/20/2016 23:13:38	LATE FEE	$15.00	6			$15.00			0
50584082	12/20/2016 23:13:35	12/20/2016 23:13:35	LATE FEE	$15.00	6			$15.00			0
50506466	12/17/2016 22:40:21	12/17/2016 22:40:21	DELINQUENT	$0.00	6						
50486130	12/17/2016 06:12:46	12/17/2016 06:12:46	RETURN	$895.50	6	$135.00	$730.50	$30.00			0
50339834	12/15/2016 18:20:11	12/15/2016 18:20:11	CURRENT	$0.00	6						1003590
50339830	12/15/2016 18:20:06	12/15/2016 18:20:06	PAYMENT	-$895.50	6	-$135.00	-$730.50	-$30.00			1003590
48921886	11/22/2016 23:19:13	11/22/2016 23:19:13	STATEMENT	$0.00	5						0
48921882	11/22/2016 23:19:11	11/22/2016 23:19:11	INTEREST	$283.50	5		$283.50				0
48919990	11/22/2016 23:02:52	11/22/2016 23:02:52	LATE FEE	$15.00	5			$15.00			0
47244310	10/25/2016 23:05:08	10/24/2016 23:05:08	STATEMENT	$0.00	4						0
47244302	10/25/2016 23:05:05	10/24/2016 23:05:05	INTEREST	$283.50	4		$283.50				0
47237166	10/25/2016 22:08:32	10/25/2016 22:08:32	LATE FEE	$15.00	4			$15.00			0
47144746	10/21/2016 21:43:56	10/21/2016 21:43:56	DELINQUENT	$0.00	4						
46395458	10/07/2016 16:21:01	10/07/2016 16:21:01	CURRENT	$0.00	4						1002998
46395446	10/07/2016 16:20:57	10/07/2016 16:20:57	PAYMENT	-$545.62	4		-$530.62	-$15.00			1002998

Customer Name : Shirley Taylor **Customer Id :** [redacted] **Customer Status :** BANKRUPTCY

Transaction Code	Transaction Date	Effective Date	Description	Amount	Cycle	Principal	Interest	Late Fee	Other Fee	Returned Fee	User
45516422	09/27/2016 22:23:55	09/27/2016 22:23:55	STATEMENT	$0.00	3						0
45516414	09/27/2016 22:23:51	09/27/2016 22:23:51	INTEREST	$283.50	3		$283.50				0
45514234	09/27/2016 22:05:00	09/27/2016 22:05:00	LATE FEE	$15.00	3			$15.00			0
45424346	09/23/2016 21:40:28	09/23/2016 21:40:28	DELINQUENT	$0.00	3						
44393918	09/05/2016 22:43:25	09/05/2016 22:43:25	CLEAR ACH PAYMENT		3						0
43834102	08/30/2016 22:44:49	08/30/2016 22:44:49	STATEMENT	$0.00	2						0
43834094	08/30/2016 22:44:46	08/30/2016 22:44:46	INTEREST	$410.62	2		$410.62				0
43719962	08/26/2016 17:56:56	08/26/2016 17:56:56	PAYMENT	-$250.00	2	-$150.00			-$100.00		1001893
41763678	07/25/2016 16:26:48	07/25/2016 16:26:48	STATEMENT	$0.00	1						1001893
41763674	07/25/2016 16:26:46	07/25/2016 16:26:46	ORIGINATION FEE	$100.00	1				$100.00		1001893
41763670	07/25/2016 16:26:43	07/25/2016 16:26:43	DRAW	$1500.00	1	$1500.00					1001893
41763666	07/25/2016 16:26:40	07/25/2016 16:26:40	OPEN		1						1001893

EXHIBIT 3

BILL OF SALE AND ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Erios, LLC ("Seller"), for good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to Cerastes, LLC ("Buyer"), its successors and assigns, all rights, title and interest in and to certain receivables (the " Accounts"), related documents evidencing a security interest, liens or other security instruments or encumbrances executed, filed and/or created in conjunction with collateral securing the Accounts. Such Accounts are described in the attached Appendix A and referred to as the Accounts in the Purchase and Sale Agreement between Assignor and Assignee and dated May 8, 2017.

This Assignment is made without recourse or warranty except as otherwise provided in the Agreement executed by Assignor and Assignee with regard to the Accounts and other rights, privileges and documentation referred to herein.

Dated this 8th day of May, 2017

Erios, LLC

By: _____

Name: Jonathan Koop
Title: Manager

APPENDIX A
TO
BILL OF SALE AND ASSIGNMENT

Assets which are the subject of the Bill of Sale and Assignment to which this Annex A is attached are as listed in the Excel files named the following:

The individual Accounts transferred are described in the final electronic files named

Axcess BK File

With respect to those Assets in the Excel files named in this Annex A, the Purchase and Sale Agreement dated May 8, 2017.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	)	Chapter 13
SHIRLEY DEAN TAYLOR,	)	Case No. 17-30142-KRH
Debtor.	)	
SHIRLEY DEAN TAYLOR,	)	
Plaintiff,	)	Adv. Proc. No. 18-03003-KRH
v.	)	
ALLIED TITLE LENDING, LLC d/b/a ALLIED CASH ADVANCE, *et al.*,	)	
Defendants.	)	

MOTION FOR ENTRY OF ORDERS (I) STAYING THIS ADVERSARY PROCEEDING AND COMPELLING ARBITRATION AND (II) DETERMINING THE CLASS ACTION CLAIMS IN THIS PROCEEDING ARE NON-CORE PURSUANT TO 28 U.S.C. § 157(b)(3)

Allied Title Lending, LLC d/b/a Allied Cash Advance ("Allied"), by counsel, and pursuant to 28 U.S.C. § 157, Rule 9013 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Bankruptcy Rule 9013-1, respectfully moves this Court for entry of an order, substantially in the form of **Exhibit A** attached hereto, (i) staying this adversary proceeding and

David R. Ruby (VSB #22703)
William D. Prince IV (VSB #77209)
Michael G. Matheson (VSB #82391)
*Thompson*McMullan, P.C.
100 Shockoe Slip, Third Floor
Richmond, Virginia 23219
Telephone: (804) 698-6220
Fax: (804) 780-1813
Email: druby@t-mlaw.com
Email: wprince@t-mlaw.com
Email: mmatheson@t-mlaw.com

Counsel for Allied Title Lending, LLC

compelling arbitration and (ii) determining the Class Action Claims are non-core pursuant to 28 U.S.C. § 157(b)(3) (the "Motion"). In support of the Motion, Allied states as follows:

Preliminary Statement

1. On January 15, 2018, Shirley Dean Taylor ("Plaintiff" or "Debtor") filed a *Complaint Objecting to Claim No. 8-1 and 8-2, for Damages, Costs and Attorneys' Fees Pursuant to the Fair Debt Collection Practices Act of 15 U.S.C. § 1692, ("FDCPA"), for Declaratory Relief, for Injunctive Relief, and for Equitable Relief Pursuant to 11 U.S.C. § 105* against Allied and Cerastes (Doc. 1) (the "Original Complaint").

2. On March 1, 2018, Allied filed a Motion to Dismiss the Original Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6); or in the alternative, Motion to Abstain from Adjudication of the Original Complaint or Motion to Stay (Doc. 12) (the "Motion to Dismiss").

3. On March 15, 2018, Plaintiff filed an Amended Complaint against Allied and Cerastes objecting to Claim 8-1 and 8-2, for damages, costs and attorneys' fees pursuant to the FDCPA, for class wide relief, declaratory relief, injunctive relief and for equitable relief pursuant to 11 U.S.C § 105 (the "Amended Complaint") (Doc. 23). The Amended Complaint essentially includes an individual claim objection to Claim No. 8-1 and 8-2. The Amended Complaint significantly differs, however, from the Original Complaint because Counts Two and Three seek entry of an order certifying a purported class action based on purported violations of Virginia consumer lending statutes (the "Class Action Claims"). Specifically, Plaintiff seeks class certification on behalf of two sets of individuals defined as follows:

(a) All debtors in the Bankruptcy Court for the Eastern District of Virginia who, before filing bankruptcy, entered into a credit agreement with Allied based upon an open-end line of credit, and a claim was filed regarding that agreement; and

(b) All debtors in the Bankruptcy Court for the Eastern District of Virginia who, before filing bankruptcy, entered into a credit agreement with Allied based upon an open-end line of credit.

(Am. Compl. ¶¶ 79, 106.)

4. Allied brings this Motion contemporaneously with a Motion to Dismiss the Amended Complaint. The Court's need to address this Motion is contingent upon the Court's resolution of the Motion to Dismiss.

5. Allied brings this Motion because the purported class claimants and the newly-brought Class Action Claims in the Amended Complaint are subject to an arbitration agreement. Moreover, the Class Action Claims are non-core proceedings that are otherwise related to a case under title 11.

Factual Background

6. On or about July 25, 2016, Plaintiff Shirley Dean Taylor ("Plaintiff") applied for and obtained an open-end line of credit with Allied in the amount of $1,500. To consummate the transaction, Plaintiff signed a Line of Credit Agreement and Plan (the "Line of Credit") and Arbitration Agreement (the "Arbitration Agreement") (collectively, the "Agreement"), dated July 25, 2016. (Am. Compl. ¶ 22, Ex. 1.) A true and accurate copy of the Agreement, which includes the Arbitration Agreement, is attached hereto as **Exhibit B**, and is also attached to the Amended Complaint as Exhibit 1.

7. The Arbitration Agreement is conspicuous and is separately signed by Allied and the Plaintiff. The Agreement contains a notice setting forth on the first page with a bold heading: "Notice of Arbitration Agreement: Right to Reject Arbitration Agreement" (the "Notice"). (*See*

Agreement, at 1.) The terms of the agreement to arbitrate are then set forth in a separate section of the Agreement, beneath the bold heading "Arbitration Agreement." (*See* Agreement, at 4.)

8. The Plaintiff had an option of whether to accept or reject the arbitration provision as part of the Agreement. The Notice provides: "Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement." (*See* Agreement, at 1.)

9. Under the terms of the Agreement, Plaintiff was allowed 30-days after executing the Agreement to reject the Arbitration Agreement. (*See* Agreement, at 1.) Plaintiff did not reject the agreement to arbitrate, and it is fully binding on the parties.

10. Specifically, the Notice states that the agreement to arbitrate "provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. (*See* Agreement, at 1.) Furthermore, the Notice specifically provides that "*You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others*." (*See id.* (emphasis added)).

11. The claims covered by the Arbitration Agreement include "any and all claims, disputes, or controversies that may arise between you [Plaintiff] and us [Allied]. (*See* Agreement, at 4, ¶ 1.) The Arbitration Agreement includes a list of non-exhaustive examples of claims that must be arbitrated, including "any claim arising under . . . a federal or state statute, act, or legislative enactment; . . . a federal or state administrative regulation or rule; [or] common law." (*See* Agreement, at 4, ¶ 1.)

12. The Class Action Claims in the Amended Complaint, specifically, Counts II and III, fall within the broad scope of claims subject to arbitration, and should be arbitrated pursuant to the Arbitration Agreement.

Relief Requested

13. Allied moves the Court for entry of an order staying this adversary proceeding and compelling arbitration pursuant to the agreement to arbitrate set forth in the Agreement.

14. Additionally, Allied seeks a determination that the Class Action Claims are non-core proceedings that are otherwise related to a case under title 11.

Basis for Relief

A. The Court Should Compel Arbitration and Stay this Adversary Proceeding Pending the Outcome of Arbitration.

15. When determining whether to enforce an arbitration provision, the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 1-307, provides that written contracts to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. This strong language manifests a "liberal federal policy favoring arbitration agreements." *Moses J. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24 (1983); *see also DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015) (quoting *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989)). Moreover, the "fundamental principle that arbitration is a matter of contract" and that arbitration provisions should be enforced according to their terms is well established. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Thus, courts are directed to "rigorously enforce agreements to arbitrate." *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (internal quotation marks omitted) (citation omitted).

16. In addition, as the Supreme Court has explained: "The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved *in favor of arbitration*, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.

17. The strong public policy in favor of arbitration applies in bankruptcy cases. In *Moses v. CashCall, Inc.*, 781 F.3d 63 (4th Cir. 2015), the Fourth Circuit stated that "[t]o be sure, the arbitration policies implemented by the Federal Arbitration Act are to be robustly followed." *Id.* at 71 (citation omitted); *see, e.g.*, *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) ("The preeminent concern of Congress in passing the [FAA] was to enforce private agreements into which parties had entered, and that concern requires that we rigorously enforce agreements to arbitrate....").

18. In *Moses*, the Fourth Circuit further stated that "in cases where tension arises between the FAA and another statute, the Supreme Court has provided a framework for resolving it, holding that the party seeking to prevent enforcement of an applicable arbitration agreement must show that 'Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.'" *Moses*, 781 F.3d at 71 (quoting *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 90 (2000)).

19. Recently, Judge Phillips of this Court addressed the enforceability of arbitration provisions in bankruptcy matters. In *Matson v. Rescue Rangers, LLC (In re Rescue Rangers, LLC)*, Judge Phillips cited to the Fourth Circuit's *Moses v. CashCall* decision and held:

> In *Moses v. CashCall*, the Fourth Circuit found that "forcing [a debtor] to arbitrate her constitutionally core claim would inherently conflict with the purposes of the Bankruptcy Code." [citing *Moses*, 781 F.3d at 73.] However, it further held that the refusal to send a non-core claim to arbitration requires more than a finding that

> arbitration would potentially conflict with the purposes of the Bankruptcy Code. Rather, *the conflict must be inherent and "sufficient to override by implication the presumption in favor of arbitration*." [citing *Moses*, 781 F.3d at 88] (quoting *U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re U.S. Lines)*, 197 F.3d 631, 640 (2d Cir. 1999)).

Matson v. Rescue Rangers, LLC (In re Rescue Rangers, LLC), Nos. 16-32930-KLP, 17-03652-KLP, 2018 Bankr. LEXIS 829, at *21-22 (Bankr. E.D. Va. Mar. 22, 2018) (emphasis added) (enforcing arbitration provision in case involving non-bankruptcy state law claims using the analysis of *Moses v. CashCall*).

20. The Class Action Claims are not statutorily or constitutionally core claims. The Plaintiff is seeking an award of money damages and class action certification as a remedy for Allied's alleged violations of Virginia consumer finance statutes. The true nature of the Class Action Claims is a non-bankruptcy state law cause of action. There is no conflict between the purposes of the FAA and the Bankruptcy Code in this adversary proceeding.

21. In *Moses*, the Fourth Circuit set forth a three-part test to determine whether there is a congressional intent that would "preclude a waiver of judicial remedies for the statutory rights at issue." 781 F.3d at 71. That intent must be discernable from "(1) the statute's text; (2) its legislative history; or (3) 'an inherent conflict between arbitration and the statute's underlying purposes.'" *Id.* at 71 (quoting *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987)); *see Matson v. Rescue Rangers, LLC (In re Rescue Rangers, LLC)*, Nos. 16-32930-KLP, 17-03652-KLP, 2018 Bankr. LEXIS 829, at *23 (Bankr. E.D. Va. Mar. 22, 2018).

22. Here, there is no irreconcilable conflict between the provisions of the Bankruptcy Code and the Arbitration Agreement. There is certainly no conflict that is inherent and "sufficient to override by implication the presumption in favor of arbitration." *Moses*, 781 F.3d at 88. Rather, the Class Action Claims are in the nature of a "claim, dispute, or controversy arising from or

relating to [the] Agreement, this Transaction, any other agreement or transaction that [Plaintiff] or [Allied] have ever entered into or completed" (Agreement, at 4, ¶ 1), which is exactly what the Arbitration Agreement was meant to address.

23. Compelling arbitration will not substantially interfere with the Plaintiff's efforts to reorganize under Chapter 13. At their heart, the Class Action Claims are non-bankruptcy claims seeking money damages and attorneys' fees for alleged violations of Virginia consumer lending statutes. Although the success or failure of the Class Action Claims could conceivably have an ancillary effect on the Plaintiff's bankruptcy – primarily thorough enlargement of the underlying estate due to any damages received – any such results are simply too attenuated and extrinsic to the bankruptcy to constitute an "inherent conflict" with the Bankruptcy Code's purpose of facilitating an efficient reorganization.

24. Therefore, the arbitration provision in the Agreement must govern. As required by *Moses v. CashCall*, the Court must defer to the Arbitration Agreement unless it finds an inherent conflict with the Bankruptcy Code sufficient to override by implication the presumption in favor of arbitration. There is no congressional intent to override the FAA in these circumstances. This adversary proceeding must be stayed pending the outcome of arbitration.

B. The Class Action Claims are Non-Core Proceedings Otherwise Related to a Case Under Title 11.

25. Should the Court determine it has jurisdiction over the Class Action Claims, it must issue an order determining the Class Action Claims are non-core proceedings otherwise related to a case under title 11.[1]

[1] On March 29, 2018, Allied filed a Motion to Dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), incorporated by Bankruptcy Rule 7012(b). By filing this Motion, Allied is not waiving any of its arguments or rights regarding the Court's lack of jurisdiction to hear the Class Action Claims. Allied is requesting that the Court determine the Class Action Claims are non-core proceedings pursuant to 28 U.S.C. § 157(b)(3) in the event the Court declines to dismiss the Class Action Claims for lack of jurisdiction.

26. Under 28 U.S.C. § 157(b)(1), bankruptcy judges have the authority to hear and determine, and to enter final orders and judgments, in all cases under Title 11 of the United States Code and all "core" proceedings arising under Title 11 or arising in a case under Title 11 which have been referred to them by the district court. Under the statutory scheme, the bankruptcy court's authority to enter a final order depends on whether the issue at hand is a "core" proceeding. *See In re Connelly*, Case No. 08-31777-KRH, 2012 Bankr. LEXIS 1349, at *8-9 (Bankr. E.D. Va. Mar. 30, 2012).

27. In 28 U.S.C. § 157(b)(2), Congress set forth a non-exhaustive list of examples of core proceedings. In general, "a proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re U.S. Airways Group, Inc.*, 296 B.R. at 682. "[A]ny proceeding dependent on bankruptcy for its existence is a core bankruptcy proceeding." *C.F. Trust, Inc. v. Tyler (In re Peterson)*, 318 B.R. 795, 803 (E.D. Va. 2004). A "non-core" proceeding, by contrast, does not depend on bankruptcy law for its existence and "could proceed in another court." *Security Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997).

28. Other proceedings not listed in 28 U.S.C. § 157(b)(2) may be "core" if they pertain to matters that "[arise] under title 11, or [arise] in a case under title 11 and which would have no existence outside of the bankruptcy case." *J.T. Moran Fin. Corp. v. Am. Consol. Fin. Corp. (In re J.T. Moran Fin. Corp.)*, 124 B.R. 931, 937 (Bankr. S.D.N.Y 1991).

29. Bankruptcy judges may also hear "non-core" proceedings that are "otherwise related to a case under Title 11," but they may not decide them. *See* 28 U.S.C. § 157(c)(1). A proceeding is "related to" a case under Title 11 if the outcome in the civil case could conceivably affect the estate being administered in bankruptcy, or if the outcome could alter the debtor's rights,

liabilities, options, or freedom of action and which in any way impacts upon the handling and administration of the bankrupt estate. *See New Horizon of N.Y. LLC v. Jacobs*, 231 F.3d 143, 151 (4th Cir. 2000) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)). Bankruptcy judges hearing non-core proceedings submit proposed findings of fact and conclusions of law to the district court. 28 U.S.C. § 157(c)(1). Following a *de novo* review, the district court may enter final orders or judgments. *Id.*

30. Assuming this Court has jurisdiction to hear the Class Action Claims, the Class Action Claims fall within the category of cases that do not depend on bankruptcy law for their existence and could proceed in another court. *See In re Peanut Corp. of Am.*, 407 B.R. 862, 865 (W.D. Va. 2009) (holding that an interpleader action brought pursuant to federal statute and rule is a non-core proceeding). The Class Action Claims do not invoke a substantive right provided by Title 11, nor are they proceedings that could arise only in the context of a bankruptcy case. Moreover, they do not involve issues uniquely related to bankruptcy law. The Amended Complaint seeks class certification for two proposed classes of individuals based on Allied's alleged violations of Virginia's open-end credit statutes. These claims could clearly proceed in a forum outside Bankruptcy Court.

31. The Class Action Claims do not arise under Title 11, do not arise in a case under Title 11 and do not invoke a substantive right provided by Title 11. The Class Action Claims do not qualify under any of the sixteen core proceedings listed in 28 U.S.C. § 157(b)(2). These claims do not depend on bankruptcy law for their existence. The Class Action Claims are "non-core" proceedings otherwise related to a case under Title 11.

32. Count Two requests certification of a class action for damages suffered by persons who, before filing bankruptcy, entered into a credit agreement with Allied based upon an open-

end line of credit, and a claim was filed regarding that agreement. This claim is ancillary to the Debtor's underlying bankruptcy, and any damages purportedly suffered by this proposed class are ancillary to the underlying bankruptcy cases of such persons and would have no conceivable effect on the administration of the Debtor's bankruptcy estate. In substance, this claim seeks damages and attorneys' fees for a class of individuals for Allied's alleged violation of Virginia open-end credit laws. The true nature of this claim does not arise under title 11, or arise in a case under title 11. *See In re Connelly*, Case No. 08-31777-KRH, 2012 Bankr. LEXIS 1349, at *8-9 (Bankr. E.D. Va. Mar. 30, 2012) (stating that a proceeding is "related to" a case under Title 11 if the "outcome in the civil case could conceivable have any effect on the estate being administered in bankruptcy" or if the outcome could alter the debtor's rights, liabilities, options, or freedom of action and which in any way impacts upon the handling and administration of the bankrupt estate).

33. Similarly, Count Three, requests certification of a class action for damages suffered by persons who, before filing bankruptcy, entered into a credit agreement with Allied based upon an open-end line of credit. This proposed class definition does not require that a proof of claim was filed regarding the open-end line of credit. This action is not statutorily core, nor does it arise under title 11 or arise in a case under title 11. Count Three is not dependent on bankruptcy for its existence and could proceed in another court. If the Plaintiff prevails on Count Three, the Plaintiff's bankruptcy estate could potentially benefit from any damages received. But, this alone does not make it a core proceeding. Count Three is "related to" the Plaintiff's chapter 13 bankruptcy and should be recognized as a non-core proceeding.

34. The Class Action Claims are not constitutionally core. In *Stern v Marshall*, the Supreme Court modified the statutory assignments of responsibility in 28 U.S.C. § 157, holding that Article III of the Constitution prohibits bankruptcy courts from issuing final orders regarding

statutorily core claims unless they "stem[] from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern v Marshall*, 131 S. Ct. 2594, 2618 (2011). And the Court has subsequently held that when a bankruptcy court is faced with a claim that is statutorily core but constitutionally non-core -- a so-called "*Stern* claim" -- it must treat the claim as if it were statutorily non-core, submitting proposed findings of fact and conclusions of law to the district court for *de novo* review. *Exec. Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2173 (2014).

35. In *Moses v. CashCall, Inc.*, 781 F.3d 63 (4th Cir. 2015), the Fourth Circuit ruled that a claim seeking damages for a lender's alleged violation of the North Carolina Debt Collection Act was constitutionally non-core. *Moses*, 781 F.3d at 70-71. The Fourth Circuit found that the debtor's claim for monetary damages would not necessarily be resolved in the claims allowance process.

36. The same is true regarding the Class Action Claims. The Class Action Claims, which seek monetary damages, statutory damages, attorneys' fees, and certification of a class action, are unrelated to Allied's proof of claim in the Debtor's bankruptcy case. The Class Action Claims are based on state law and only "related to" the Debtor's bankruptcy case if any recovery by the Debtor on an individual basis could conceivably augment her individual bankruptcy estate. Even if this Court were to determine that the underlying Line of Credit violates Virginia law, which it does not, it would still need to determine whether an effort to collect the debt violates Virginia's consumer lending statutes, as well as the appropriate statutory remedy for such violations. These claims would not necessarily be resolved in the claims allowance process. Here, the Class Action Claims must be treated as if they are non-core.

37. Therefore, to the extent this Court has jurisdiction to hear the Class Action Claims, the Court should enter an order determining these claims are non-core proceedings pursuant to 28 U.S.C. § 157(b)(3).

WHEREFORE, for the reasons set forth above, Allied respectfully requests that the Court enter an Order, in the form attached hereto, (i) staying this adversary proceeding and compelling arbitration pursuant to the Agreement, (ii) determining the Class Action Claims are non-core proceedings that are otherwise related to a case under title 11, and (iii) award any other relief that the Court deems just and proper.

Respectfully submitted,

ALLIED TITLE LENDING, LLC, D/B/A ALLIED CASH ADVANCE

By: */s/ William D. Prince IV*

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March, 2018, a true and accurate copy of the foregoing Motion was served via First Class U.S. Mail (postage prepaid), via e-mail and/or via the Electronic Case Filing (ECF) system on the following:

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Positive

As of: April 5, 2022 9:02 PM Z

Taylor v. Allied Title Lending, LLC (In re Taylor)

United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division

November 20, 2018, Decided; November 20, 2018, Entered on Docket

Case No. 17-30142-KRH, Chapter 13, Adv. Pro. No. 18-03003-KRH

Reporter

594 B.R. 643 *; 2018 Bankr. LEXIS 3634 **; 2018 WL 6131473

IN RE: SHIRLEY DEAN TAYLOR, Debtor.SHIRLEY DEAN TAYLOR, Plaintiff, v. ALLIED TITLE LENDING, LLC d/b/a ALLIED CASH ADVANCE, and CERASTES, LLC, Defendants.

Subsequent History: Motion granted by *In re Taylor, 2019 Bankr. LEXIS 18 (Bankr. E.D. Va., Jan. 3, 2019)*

Affirmed by, Motion denied by, As moot *Allied Title Lending, LLC v. Taylor, 2019 U.S. Dist. LEXIS 183729 (E.D. Va., Oct. 22, 2019)*

Core Terms

arbitration, adversary proceedings, counterclaim, proof of claim, allowance, non-core, Counts, bankruptcy code, arbitration agreement, motion to dismiss, attorney general, void, disallowance, similarly situated, bankruptcy court, Intervene, loans, certification, consumer, damages, bankruptcy case, unenforceable, declaratory, finance, bankruptcy proceedings, arbitration provision, motion to intervene, compel arbitration, loan agreement, deny a motion

Case Summary

Overview

HOLDINGS: [1]-The creditor was not entitled to compel arbitration under the FAA of debtor's adversary action alleging that the credit agreement underlying creditor's claim was invalid because debtor's allegations presented constitutionally core claims and referring those claims to arbitration would inherently conflict with purposes of Bankruptcy Code in contravention of Fourth Circuit precedent; [2]-Debtor's allegation that the creditor's terms were usurious such that it was not entitled to any interest under Virginia law attacked the loans the creditor made to the debtor as null and void, and the court would make that determination in its consideration of the validity of the creditor's proof of claim pursuant to its constitutionally mandated duties. Thus, it would conflict with Congress's vision of the bankruptcy process to refer this allegation to arbitration.

Outcome

Motion to compel arbitration denied.

LexisNexis® Headnotes

Bankruptcy Law > ... > Bankruptcy > Claims > Allowance of Claims

HN1[] **Claims, Allowance of Claims**

Claims against the estate are allowed except to the

extent they are unenforceable against the debtor and property of the debtor, under any agreement or applicable law. *11 U.S.C.S. § 502(b)(1)*.

Business & Corporate
Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

HN2[] **Federal Arbitration Act, Arbitration Agreements**

The Federal Arbitration Act (FAA) provides that written contracts to arbitrate shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or equity for the revocation of any contract. *9 U.S.C.S. § 2*. The FAA establishes a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. Arbitration policies implemented under the FAA are to be robustly followed. This stems from the fundamental principle that arbitration is a matter of contract, and contracts should be enforced according to their terms.

Business & Corporate
Compliance > ... > Arbitration > Federal Arbitration Act > Arbitration Agreements

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Business & Corporate Compliance > ... > Pretrial Matters > Alternative Dispute Resolution > Judicial Review

HN3[] **Federal Arbitration Act, Arbitration Agreements**

Arbitration agreements, though on an equal footing with other contracts, are not inviolate. A party seeking to prevent enforcement of an arbitration agreement must show that Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue. A court may deduce such congressional intent from (1) the statute's text; (2) its legislative history; or (3) an inherent conflict between arbitration and the statute's underlying purposes. Upon discovery of congressional intent to preserve judicial remedies for the statutory rights at issue, the court has the discretion to withhold arbitration, a decision subject to an abuse of discretion standard of review at the appellate level.

Bankruptcy Law > Procedural Matters > Jurisdiction > Core Proceedings

Business & Corporate
Compliance > ... > Arbitration > Federal Arbitration Act > Orders to Compel Arbitration

HN4[] **Jurisdiction, Core Proceedings**

Sending a constitutionally core claim to arbitration pursuant to an arbitration agreement would inherently conflict with the purposes of the Bankruptcy Code.

Bankruptcy Law > Procedural Matters > Jurisdiction > Core Proceedings

Bankruptcy Law > Procedural Matters > Jurisdiction > Noncore Proceedings

HN5[] **Jurisdiction, Core Proceedings**

28 U.S.C.S. § 157(b)(1) categorizes bankruptcy proceedings as either core or non-core proceedings. A bankruptcy court can hear and determine core bankruptcy proceedings arising under Title 11 or arising in a case under Title 11. These include the allowance or disallowance of claims against the estate and counterclaims by the estate against persons filing claims against the estate. A bankruptcy court may also hear

related non-core claims, but it cannot finally resolve them and must instead submit proposed findings of fact and conclusions of law to the district court.

Bankruptcy Law > Procedural Matters > Jurisdiction > Core Proceedings

Constitutional Law > The Judiciary > Jurisdiction

Bankruptcy Law > Procedural Matters > Jurisdiction > Noncore Proceedings

HN6[] **Jurisdiction, Core Proceedings**

Article III of the United States Constitution prohibits bankruptcy courts from issuing final orders concerning counterclaims that are not constitutionally core. The counterclaim must stem from the bankruptcy itself or would necessarily be resolved in the claims allowance process in order to be considered constitutionally core. In the wake of Stern, a statutorily core but constitutionally non-core counterclaim—a so-called "Stern Claim"—must be treated as if it were statutorily non-core.

Bankruptcy Law > Procedural Matters > Jurisdiction > Core Proceedings

HN7[] **Jurisdiction, Core Proceedings**

Constitutionally core claims strike at the heart of the bankruptcy process Congress has established through the Bankruptcy Code, which is designed to provide debtors and creditors with the prompt and effectual administration and settlement of the estate and centralize disputes over the debtor's assets and obligations in one forum.

Business & Corporate Compliance > ... > Arbitration > Federal Arbitration Act > Orders to Compel Arbitration

HN8[] **Federal Arbitration Act, Orders to Compel Arbitration**

A court should not compel arbitration in scenarios where it would hinder the ability of an agency to pursue the relief it is statutorily charged with seeking.

Business & Corporate Compliance > ... > Alternative Dispute Resolution > Arbitration > Federal Arbitration Act

Contracts Law > Contract Interpretation

HN9[] **Arbitration, Federal Arbitration Act**

It goes without saying that a contract cannot bind a nonparty. The pro-arbitration goals of the *Federal Arbitration Act* do not require an agency to relinquish its statutory authority if it has not agreed to do so.

Business & Corporate Compliance > ... > Arbitration > Federal Arbitration Act > Scope

HN10[] **Arbitration, Federal Arbitration Act**

The Federal Arbitration Act (FAA) directs courts to place arbitration agreements on equal footing with other contracts, but it does not require parties to arbitrate when they have not agreed to do so.

Counsel: [1]** For Shirley Dean Taylor, Plaintiff (18-03003-KRH): Thomas D. Domonoske, Consumer Litigation Associates, Newport News, VA; Elizabeth Wilson Hanes, Consumer Litigation Associates, P.C., Newport News, VA; Emily Connor Kennedy, Mark C.

Leffler, Boleman Law Firm, P.C., Richmond, VA; Dale W. Pittman, The Law Office of Dale W. Pittman, P.C., Petersburg, VA.

For Allied Title Lending LLC D/B/A Allied Cash Advance, Defendant (18-03003-KRH): Michael Gordon Matheson, William Daniel Prince, IV, ThompsonMcMullan, P.C., Richmond, VA.

For Cerastes, LLC, Defendant (18-03003-KRH): Michael B. Ballato, Ballato Law Firm, P.C., Richmond, VA; Daniel Alan Ross, Weinstein & Riley, P.S., Seattle, WA.

For Office of the Attorney General, Intervenor Plaintiff (18-03003-KRH): Erin Elizabeth Witte, Office of the Attorney General, Fairfax, VA.

For Shirley Dean Taylor, Debtor (17-30142-KRH): Veronica D. Brown-Moseley, Emily Connor Kennedy, Mark C. Leffler, Boleman Law Firm, P.C., Richmond, VA; Christopher John Flynn, Boleman Law Firm, Richmond, VA; Patrick Thomas Keith, Boleman Law Firm, PC, Richmond, VA; Dale W. Pittman, The Law Office of Dale W. Pittman, P.C., Petersburg, VA.

For Carl M. Bates, Trustee (17-30142-KRH): **[**2]** Susan Hope Call, Chapter 13 Trustee's Office, Richmond, VA.

Judges: Kevin R. Huennekens, UNITED STATES BANKRUPTCY JUDGE.

Opinion by: Kevin R. Huennekens

Opinion

[*644] MEMORANDUM OPINION

Before the Court in this adversary proceeding (the "Adversary Proceeding") is a Motion to Compel[1] pursuant to the *Federal Arbitration Act (the "FAA")*[2] filed by Allied Title Lending, LLC d/b/a Allied Cash Advance ("Allied") in response to the Amended Complaint[3] filed by the plaintiff, Shirley Dean Taylor (the "Debtor"). The issue presented by the Motion to Compel is whether the Court should stay this Adversary Proceeding and compel arbitration of the Amended Complaint. A hearing on the Motion to Compel took place on November 15, 2018 (the "Hearing"). The Court ruled at the Hearing that it would deny the Motion to Compel. This memorandum sets forth the reasons for the Court's ruling.

Jurisdiction and Venue

The United States Bankruptcy Court for the Eastern District of Virginia (the **[*645]** "Court") has subject matter jurisdiction over this Adversary Proceeding pursuant to *28 U.S.C. §§ 157* and *1334* and the General Order of Reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding[4] under *28 U.S.C. §*

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[1] Mot. Entry Orders (I) Staying Adv. Pro. & Compelling Arb. & (II) Determining Class Action Claims this Pro. Are Non-Core Pursuant *28 U.S.C. § 157(b)(3)*, ECF No. 39 ("Motion to Compel").

[2] *9 U.S.C. §§ 1-307 (2018)*.

[3] Am. Compl. Objecting Claim No. 8-1 & No. 8-2, Damages, Costs, & Att'y Fees Pursuant FDCPA *15 U.S.C. § 1692*, Classwide Rel., Declaratory Rel., Injunctive Rel., & Equit. Rel. Pursuant *11 U.S.C. § 105*, ECF No. 23 ("Amended Complaint").

[4] A distinction is drawn here between statutorily core and constitutionally core proceedings as it affects the jurisdictional analysis for bankruptcy courts for reasons stated *infra*.

157(b)(2)(A) [**3] , (B), (C), and (O), as the Adversary Proceeding concerns "the administration of the estate," the "allowance or disallowance of claims against the estate," "counterclaims by the estate against persons filing claims against the estate," and "other proceedings affecting the liquidation of the assets of the estate."

Count II of the Amended Complaint wholly implicates the allowance and disallowance of claims against the estate as it objects to Allied's claim on the grounds that it arises out of a null and void contract, which would disallow the claim under section 502(b)(1) of Title 11 of the United States Code (the "Bankruptcy Code"). *See* 11 U.S.C. § 502(b)(1) (HN1[↑] Claims against the estate are allowed except to the extent they are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law."). Count III involves not only the allowance or disallowance of claims against the estate but also counterclaims under Virginia's usury laws against persons filing claims against the estate. Thus, Counts II and III are core proceedings under 28 U.S.C. § 157(b)(2) such that the Court retains jurisdiction to hear and decide these claims.[5]

Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. A substantial part of the events or omissions giving rise to the claims asserted in [**4] the Amended Complaint against Allied took place in this judicial district.

Background and Procedural History

Background

The Debtor is a salaried employee of the U.S. Probation Office. Am. Compl. ¶ 21. Allied, a Delaware limited liability company, offers "short-term, small-dollar loans to Virginians that mimic payday loans but are in the form of open-end credit plans." *Id.* ¶¶ 10, 15. Cerastes, LLC ("Cerastes") is a co-defendant in this action and a Delaware limited liability company that "buy[s] defaulted consumer accounts from debt sellers where the debtor has filed for Chapter 13 bankruptcy protection" and then "prosecute[s] Proofs of Claims on those accounts." *Id.* ¶¶ 17-18.

In July 2016, the Debtor submitted an application to Allied requesting a loan in the amount of $1500. Mot. to Compel ¶ 6. On July 25, 2016, the Debtor executed a line of credit agreement with Allied (the "Credit Agreement"). Am. Compl. ¶ 22. Under the terms of the Credit Agreement, Allied agreed to loan the Debtor $1500 in cash, and the Debtor agreed to repay the $1500 along with interest accruing at a rate of 0.75% per day, which equates to an [*646] annualized interest rate of 273.75%. *Id.* ¶¶ 22-23. The Credit Agreement [**5] provided that interest would not begin accruing on the Debtor's account until twenty-eight days after she opened her account (the "Grace Period"). *Id.* ¶ 30 Ex. 1, at 3. Allied also assessed a $100 origination fee (the "Origination Fee") on the Debtor's account. *Id.* ¶ 24. Unlike the $1500 the Debtor initially borrowed, the Origination Fee "was not subject to the Grace Period." *Id.* ¶ 30. The Credit Agreement contained the following

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[5] Allied challenges this position in its Motion to Compel, arguing that "the Class Action Claims are non-core proceedings otherwise related to a case under title 11" and "do not qualify under any of the sixteen core proceedings listed in 28 U.S.C. § 157(b)(2)." Mot. to Compel ¶¶ 5, 31.

While the Debtor objects to Allied's claim and requests relief on behalf of her herself in Counts II and III of the Amended Complaint, she also requests class certification on the grounds that other debtors in the Eastern District of Virginia have been similarly affected by Allied's common course of conducting business by allegedly charging interest in excess of the legal limit. The Court has not yet addressed the issue of class certification on either Count II or Count III.

arbitration provision (the "Arbitration Provision"):

> Before signing this Agreement, you should carefully review the Arbitration Agreement located on pages 5 and 6. The Arbitration Agreement provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have ever entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Thus, if the person or entity against whom you assert a Claim elects to arbitrate the Claim, then you will not have the following important rights:
>
> □You may not file or maintain a lawsuit in any court except a small claims court.
>
> □You may not join or participate in a class action, act as a class representative or a private **[**6]** attorney general, or consolidate your Claim with the claims of others.
>
> □You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
>
> □You give up your right to have a jury decide your Claim.
>
> □You will not be afforded the procedural, pre-trial discovery and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.
>
> If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

Mot. to Compel Ex. B, at 2.

Bankruptcy Proceeding

On January 11, 2017, (the "Petition **[**7]** Date") the Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code in this Court (the "Bankruptcy Case"). On March 21, 2017, Allied filed proof of claim 8-1 in the Bankruptcy Case in the amount of $2756.92 for "Money loaned" ("Claim 8-1"). The Debtor filed her initial objection to Claim 8-1 on August 29, 2017, alleging that Allied had "neither attached a copy of the writing upon which the claim is based nor a statement of the circumstances of the loss or destruction of such writing" in contravention of *Rule 3001 of the Federal Rules of Bankruptcy Procedure* (the "Bankruptcy Rules"). Obj. Claim No. 8-1 & Mem. Supp. Thereof ¶ 13, *In re Taylor*, No. 17-30142-KRH (Bankr. E.D. Va.), ECF No. 29. On September 1, 2017, the Court entered an order confirming the Debtor's chapter 13 plan. Order Confirming Plan, *In re Taylor*, No. 17-30142-KRH **[*647]** (Bankr. E.D. Va.), ECF No. 31. On September 28, 2017, Cerastes filed a transfer of claim, indicating that Allied had transferred Claim 8-1 to Cerastes. Transfer Claim Other Than Security, *In re Taylor*, No. 17-30142-KRH (Bankr. E.D. Va.), ECF No. 38.[6] The same day, Cerastes filed an amended proof of claim 8-2 to include the writing upon which the claim was based ("Claim 8-2").[7] Cerastes also filed **[**8]** a response to

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[6] n

[7] The Debtor alleges that her transaction history on the account shows that in the five-and-one-half month period between the time her loan was funded and the Petition Date,

the Debtor's claim objection, explaining that the "Amended Claim in effect moots the Debtor's Objection." Resp. Obj. Claim No. 8-1 ¶ 11, *In re Taylor*, No. 17-30142-KRH (Bankr. E.D. Va. Sept. 28, 2017), ECF No. 40.

Adversary Proceeding

On January 15, 2018, the Debtor initiated this Adversary Proceeding by filing a complaint against Allied and Cerastes. Compl. Objecting Claim No. 8-1 & No. 8-2, Damages, Costs, & Att'y Fees Pursuant FDCPA *15 U.S.C. § 1692*, Classwide Rel., Declaratory Rel., Injunctive Rel., & Equit. Rel. Pursuant *11 U.S.C. § 105*, ECF No. 1 ("Original Complaint").[8] On January 25, 2018, Allied filed a transfer of claim, this time indicating that Claim 8-2 had been transferred from Cerastes back to Allied. Transfer Claim Other Than Security, *In re Taylor*, No. 17-30142-KRH (Bankr. E.D. Va.), ECF No. 57. In response to the Original Complaint, Allied and Cerastes both filed motions to dismiss or, in the alternative, to stay the proceeding. Mot. and Mem. Law Supp. Mot. Cerastes, (1) To Dismiss Compl. or (2) In Altern. Stay Adv. Proc. Pending Res. State Ct. Lawsuit, ECF No. 11; Mot. Dismiss Pursuant *Fed. R. Civ. P. 12(b)(1)* & *12(b)(6)*; In Altern., Mot. Abstain Adjud. Compl. or Mot. Stay & Mem. P. & A., ECF No. 12. On March 1, 2018, **[**9]** Allied also filed a motion to withdraw its proof of claim with respect to Claims 8-1 and 8-2, Mot. Leave Withdraw Proof of Claim No. 8 & Mem. P. & A., ECF No. 14, which was denied by order entered May 29, 2018, Order Den. Allied's Mot. Leave Withdraw Claim No. 8, ECF No. 63.

On March 15, 2018, the Debtor filed the Amended Complaint. The Amended Complaint contained five counts. Count I objects to Claims 8-1 and 8-2 on the grounds that fees and interest were assessed after the Petition Date, the claims were not properly identified as open-end credit, and Claim 8-2 falsely asserted that no interest or fees had been added. Count II seeks to disallow the claims pursuant to *section 502(b)(1) of the Bankruptcy Code* because they are unenforceable under Virginia Law governing consumer finance and because they neither provide the writing underlying the claims nor provide all information required for a claim based on open-end credit as required by *Bankruptcy Rule 3001*. Count II also seeks to assert a class claim objection against Allied on behalf of other similarly situated debtors in the Eastern District of Virginia.[9] Count III **[*648]** asserts claims against Allied for violation of Virginia law governing consumer finance, *Va. Code §§ 6.2-1500 to 6.2-1543*, and Virginia usury law. It also **[**10]** seeks declaratory relief, injunctive relief, and relief for the recovery of claims on behalf of other similarly situated debtors in the Eastern District of Virginia. Count IV is a class claim under the *Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 to 1692p*, against Cerastes.[10] Count V is a request for equitable

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she repaid Allied a total of $795.62. Am. Compl. ¶ 69.

[8] The Bankruptcy Rules require an objection to the allowance of a claim to be brought as part of an adversary proceeding when it includes a demand for the recovery of property, *Fed R. Bankr. P. 7001(1)*, equitable relief, *id. 7001(7)*, or declaratory relief, *id. 7001(9)*. *See id. 3007(b)*.

[9] The claim objection class members are defined as "[a]ll debtors in the Bankruptcy Court for the Eastern District of Virginia who, before filing bankruptcy, entered into a credit agreement with Allied based upon a purportedly openend credit basis, and a claim was filed regarding the agreement." Am. Compl. ¶ 79. The Court has not addressed the merits of the proposed class certification.

[10] Count IV of the Amended Complaint was dismissed without prejudice by consent order. Agreed Order Dismissing Without Prejudice Class Claim Against Cerastes, LLC Violations FDCPA (*15 U.S.C. § 1692e*), ECF No. 50.

relief under *section 105 of the Bankruptcy Code* and *Bankruptcy Rule 3001*. Am. Compl. ¶¶ 74-149.[11]

On March 29, 2018, the Court received, among other filings, (i) Allied's Motion to Dismiss the Amended Complaint, Mot. Dismiss Pursuant *Fed. R. Civ. P. 12(b)(1)* & *12(b)(6)*; & Mem. P. & A., ECF No. 35 ("Allied's Motion to Dismiss"),[12] and (ii) Allied's Motion to Compel. The Motion to Compel asserted that the Court need not address it until it had resolved Allied's Motion to Dismiss. Mot. to Compel ¶ 4. In the event the Court did not grant Allied's Motion to Dismiss, the Motion to Compel asked for entry of an order staying the Adversary Proceeding, "compelling arbitration pursuant to the agreement to arbitrate," and "determin[ing] that the Class Action Claims are non-core proceedings." *Id.* ¶¶ 13-14. Specifically, the Motion to Compel sought arbitration of the "Class Action Claims . . . in Counts II and III." *Id.* ¶ 12.

On April 12, 2018, the Debtor filed several responses, including a response **[**11]** to the Motion to Compel. Pls.' Mem. Opp'n Def. Allied's Mot. Compel Arb., ECF No. 47. Allied filed replies to the Debtor's responses on April 19, 2018. *See* Allied's Reply Supp. Mot. Entry Order Staying Adv. Pro. & Compelling Arb., ECF No. 53. The Court set a hearing on, among other motions, Allied's Motion to Dismiss and the Motion to Compel for July 24, 2018. Prior to the hearing on July 24, 2018, Allied submitted a new motion asking the Court to certify the questions of state law, pertinent to Counts II and III of the Amended Complaint, to the Supreme Court of Virginia. *See* Mot. Certif. Questions State Law; & Mem. P. & A., ECF No. 71 ("Motion for Certification").[13] At the hearing on July 24, 2018, the Court granted the Motion for Certification and stayed this Adversary Proceeding. The Court thereupon certified Allied's questions to the Supreme Court of Virginia by order entered August 20, 2018. **[*649]** *See* Order of Certif. to Supreme Court of Virginia, ECF No. 78.

On August 31, 2018, the Supreme Court of Virginia respectfully declined to accept the certified questions of state law that the Court had submitted to it. *See* Letter, ECF No. 81. On September 18, 2018, the Supreme Court of Virginia **[**12]** denied Allied's motion for reconsideration of the certification of questions of state law. *See* Letter, ECF No. 88.[14] The Court then scheduled a pre-trial conference on October 10, 2018 (the "Pre-trial Conference"). At the Pretrial Conference, the parties represented that the matters pertaining to the motions previously scheduled for July 24, 2018, were fully briefed and ripe for determination. The Court

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[11] At the Hearing, the Court ruled that it would dismiss Count V as to Cerastes.

[12] Allied's Motion to Dismiss asks the Court to determine whether the Debtor's credit agreement with Allied violated Virginia's consumer finance law and usury law. Specifically the Court must decide whether the credit agreement qualifies as an open-end credit facility. If the Court determines that the credit agreement is actually a closed-end facility, then the agreement between the Debtor and Allied would be void and unenforceable because Allied would not meet the exception provided by Virginia to its usury law.

[13] Allied brought the Motion for Certification under *section 105 of the Bankruptcy Code* and *Rule 5:40 of the Rules of the Supreme Court* of Virginia. The Motion for Certification asserted that the interpretation of Allied's credit agreement with the Debtor and the legal meaning of *section 6.2-312 of the Virginia Code* were questions of Virginia law for which there was no controlling state court precedent. The Motion for Certification also represented that the resolution of these state law questions was determinative of the relief sought by the Debtor in Counts II and III of the Amended Complaint.

[14] On September 6, 2018, Allied filed a "motion for reconsideration of denial of certified question" with the Supreme Court of Virginia. *See* Letter, ECF No. 88.

scheduled the November 15, 2018, Hearing to consider the Motion to Compel, Allied's Motion to Dismiss, and a motion to dismiss filed by Cerastes, Mot. & Mem. Law Supp. Mot. Cerastes, LLC, Dismiss Am. Compl., ECF No. 30 ("Cerastes's Motion to Dismiss"). The Court also announced at the Pre-trial Conference that it would hear any motions filed by the Office of the Attorney General of Virginia (the " Virginia Attorney General") at the Hearing.

On November 8, 2018, the Virginia Attorney General filed a motion to intervene and file pleadings in intervention in this Adversary Proceeding. Commonwealth's Mot. Leave File Pleadings Interven., ECF No. 108 ("Motion to Intervene"). The Virginia Attorney General alleged that it met the criteria for intervening in this Adversary Proceeding under *Federal Rule of Civil Procedure 24(b)* as **[**13]** incorporated by *Bankruptcy Rule 7024*. Mot. to Intervene 1. The Virginia Attorney General attached as an exhibit its proposed complaint in intervention, which seeks disallowance of Allied's claim against the Debtor for violation of Virginia consumer finance laws and Virginia usury law and seeks relief from Allied in the form of "restitution, civil penalties, attorney's fees and costs, as well as injunctive relief" arising out of Allied's "loans that the Commonwealth alleges are void." *Id.* Ex. A, at 2. Specifically, the Virginia Attorney General asserts that Allied extended loans to debtors that violated Virginia's consumer finance statutes and filed proofs of claim in bankruptcy proceedings based on those illegal lending arrangements. *Id.* On November 13, 2018, Allied filed an objection to the Virginia Attorney General's Motion to Intervene. Allied's Prelim. Obj. & Reserv. Rights Regarding Commonwealth's Mot. Leave File Pleadings Interven., ECF No. 109.

At the Hearing, after entertaining arguments from all parties, the Court granted the Motion to Intervene, permitting the Virginia Attorney General to intervene in this Adversary Proceeding. The Court also denied the Motion to Compel. The Court took Allied's **[**14]** Motion to Dismiss under advisement and granted Cerastes's Motion to Dismiss with respect to Count V of the Amended Complaint.

Analysis

In its Motion to Compel, Allied asks the Court to stay this Adversary Proceeding and refer Counts II and III of the Debtor's Amended Complaint to arbitration "pursuant to the agreement to arbitrate set forth in the [Credit] Agreement." Mot. to Compel ¶ 13. The Motion to Compel also asks the Court to determine that Counts II and III are "non-core proceedings that are otherwise related to a case under title 11." *Id.* ¶ 14. At the Hearing, the Court denied the Motion to Compel because Counts II and III are constitutionally core claims. As such, referring the claims to **[*650]** arbitration would conflict with the essential purpose of the bankruptcy process to quickly and efficiently resolve claims against the Debtor's estate and also would undermine the Virginia Attorney General's statutory prerogative to intervene in this Adversary Proceeding.

HN2[] The Federal Arbitration Act provides that written contracts to arbitrate "shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or equity for the revocation of any contract."[15] *9 U.S.C. § 2*. The FAA establishes "a **[**15]** liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary."

[15] While it was not argued by any party at the Hearing, the Court questioned whether legal grounds exist for revocation of the arbitration contract if the Credit Agreement was in fact void as the Virginia Attorney General maintains. Query whether there exists consideration to support the contract if the agreement containing the Arbitration Provision is void.

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). "[A]rbitration policies implemented under the [FAA] are to be robustly followed." *Moses v. CashCall, Inc., 781 F.3d 63, 71 (4th Cir. 2015)* (per curiam) (internal citation omitted). This stems from the "fundamental principle that arbitration is a matter of contract," and contracts should be enforced according to their terms. *AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339, 334, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)* (quoting *Rent-ACenter, W., Inc. v. Jackson, 561 U.S. 63, 66, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010)*).

HN3[↑] Arbitration agreements, though "on an equal footing with other contracts," are not inviolate. *Id. at 339*. A party seeking to prevent enforcement of an arbitration agreement must show that "Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 90, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000)*. A court may deduce such congressional intent from "(1) the statute's text; (2) its legislative history; or (3) 'an inherent conflict between arbitration and the statute's underlying purposes.'" *CashCall, 781 F.3d at 71* (quoting *Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 227, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987)*). Upon discovery of congressional intent to preserve judicial remedies for the statutory rights at issue, the court has the discretion to withhold arbitration, a decision subject to an abuse of discretion standard of review at the appellate level. *Id. at 71-72*.

In *Moses v. CashCall*, the United States **[**16]** Court of Appeals for the Fourth Circuit applied this framework in the bankruptcy context. The Fourth Circuit recognized that *HN4*[↑] sending a constitutionally core claim to arbitration pursuant to an arbitration agreement would "inherently conflict with the purposes of the Bankruptcy Code." *Id. at 72*. *See also Anderson v. CreditOne Bank, N.A. (In re Anderson), 884 F. 3d 382, 387 (2d Cir. 2018)* ("If the matter involves a core proceeding, the bankruptcy court is tasked with engaging in a 'particularized inquiry into the nature of the claim and the facts of the specific bankruptcy.'" (quoting *MBNA Am. Bank, N.A. v. Hill, 436 F. 3d 104, 108 (2d Cir. 2006)*)).

HN5[↑] *28 U.S.C. §§ 157(b)(1)* categorizes bankruptcy proceedings as either core or non-core proceedings. A bankruptcy court can hear and determine core bankruptcy proceedings arising under Title 11 or arising in a case under Title 11. These include the "allowance or disallowance of claims against the estate" and "counterclaims by the estate against persons filing claims against the estate." *CashCall, 781 **[*651]** F.3d at 70* (quoting *28 U.S.C. § 157(b)(2)(B)-(C)*). "A bankruptcy court may also hear related non-core claims, but it cannot finally resolve them and must instead submit proposed findings of fact and conclusions of law to the district court." *Id.* (citing *28 U.S.C. § 157(c)(1)*).

The Fourth Circuit recognized the distinction the Supreme Court had drawn in *Stern v. Marshall, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*, between constitutionally core and constitutionally **[**17]** non-core bankruptcy proceedings. *Id. at 69-70*. In *Stern v. Marshall*, the Supreme Court segmented counterclaims into two new categories: constitutionally core claims on the one hand and statutorily core but constitutionally non-core claims on the other. *564 U.S. at 499*. *HN6*[↑] Article III of the United States Constitution prohibits bankruptcy courts from issuing final orders concerning counterclaims that are not constitutionally core. *Id.* The counterclaim must "stem[ ] from the bankruptcy itself or would necessarily be resolved in the claims allowance process" in order to be considered constitutionally core. *Id.* In the wake of *Stern*, a statutorily core but constitutionally non-core

counterclaim—a so-called "Stern Claim"—must be treated "as if it were statutorily non-core." *CashCall, 781 F.3d at 70*; *see also Exec. Benefits Ins. Agency v. Arkison, 573 U.S. 25, 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014)*.[16]

In *CashCall*, on facts strikingly similar to those presented in the case at bar, a loan servicer filed a motion asking the bankruptcy court to compel arbitration for two of a debtor's claims: a claim to declare the loan between the loan servicer and debtor illegal and void under North Carolina law and a claim to obtain damages for the loan servicer's debt collection practices. *Id. at 68*. The Fourth Circuit held that the first claim was constitutionally core because "the validity of the **[**18]** Loan Agreement 'would necessarily be resolved' in adjudicating CashCall's proof of claim and Moses' objections thereto." *Id. at 70* (quoting *Stern, 564 U.S. at 499*). *HN7*[⬆] Constitutionally core claims strike at the heart of the bankruptcy process Congress has established through the Bankruptcy Code, which is designed to "provide debtors and creditors with 'the prompt and effectual administration and settlement of the . . . estate'" and "centralize disputes over the debtor's assets and obligations in one forum." *Id. at 72* (quoting *Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 15 L. Ed. 2d 391 (1966)*). Therefore, the bankruptcy court's refusal to refer the debtor's objection to the allowance of CashCall's claim to arbitration was proper because arbitration "would 'substantially interfere' with [the debtor's] efforts to reorganize" and would "inherently conflict" with the purposes of the Bankruptcy Code and with Congress's intent in enacting the Bankruptcy Code. *Id. at 73* (quoting *Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co.), 403 F.3d 164, 169-70 (4th Cir. 2005)*).

The Fourth Circuit held that the second claim in *CashCall*, a counterclaim seeking **[*652]** damages under the North Carolina Debt Collection Act, was constitutionally non-core, and it reversed the district court's decision to uphold the bankruptcy court's denial of arbitration. *Id. at 66*. While it was recognized that the success or failure of the counterclaim **[**19]** would have ancillary effects on the bankruptcy case, they were found to be "too attenuated . . . to constitute an 'inherent conflict' with the Bankruptcy Code's purpose of facilitating an efficient reorganization." *Id. at 82* (Gregory, J., concurring). The damages were found to be "unrelated to the Defendant's proof of claim" and were "only related to the bankruptcy case in that if successful, the bankruptcy estate will recover any non-exempt funds and disburse them to claims in accordance with the bankruptcy code." *Id. at 82* (internal quotations omitted).

Of importance to the Fourth Circuit was that the counterclaim was not related to the debtor's proof of claim. The counterclaim involved "an allegation that CashCall sought to collect on an invalid debt." *Id. at 85*. The constitutionally non-core litigation surrounding the counterclaim was "entirely peripheral to the core claim" dealing with the allowance of the proof of claim. *Id. at 86*. The counterclaim would not necessarily be resolved

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[16] The distinction between a constitutionally core claim and a "Stern claim" is whether the counterclaim arises out of the same nucleus of fact. *See Stern, 564 U.S. at 497-498*. For example, assume a proof of claim is filed based on amounts allegedly owed by the debtor to a claimant under the terms of a contract. A counterclaim by the debtor for breach of the contract would be a constitutionally core claim as a valid claim for first breach would have a direct effect on the validity of the creditor's proof of claim. A counterclaim by the debtor for allegedly defamatory statements made by the claimant about the debtor's performance under the contract, while potentially a compulsory counterclaim, would be a statutorily core but constitutionally non-core "Stern claim" as that claim arises from a different set of facts.

in the claims allowance process but would "require detailed and time-consuming findings regarding CashCall's conduct in trying to collect on the loan, other violations of the state statute, and damages like emotional distress." *Id. at 85*. Although **[**20]** tangentially related to the constitutionally core function of the bankruptcy court to administer the claims allowance process, the counterclaim primarily implicated the collection process, not "whether an individual was owed money by a debtor." *Id.* The Fourth Circuit concluded there was "no reason to believe that arbitration in these circumstances would substantially interfere with Moses's bankruptcy and present an inherent conflict with the purposes of the Bankruptcy Code." *Id. at 86*.

Based on this analysis of the Fourth Circuit's opinion in *CashCall*, the Court finds that Counts II and III of the Amended Complaint present constitutionally core claims and that referring those core claims to arbitration would inherently conflict with the purposes of the Bankruptcy Code in contravention of Fourth Circuit precedent. The Debtor asks the Court in Count II of her Amended Complaint to disallow Allied's claim because it is unenforceable under Virginia law. Am. Compl. ¶ 101. The Debtor alleges that Allied charged her 273.75% interest plus an origination fee of $100.00. *Id.* ¶ 92. The Debtor maintains that because Allied did not obtain a consumer finance license and does not otherwise qualify under the **[**21]** exception provided by *section 6.2-312(A) of the Virginia Code*, Allied's loan to her is null and void. *Id.* ¶¶ 89-91, 93-99. The Debtor also requests in Count II that the Court certify a class of similarly situated claimants under *Federal Rule of Civil Procedure 23(a)* as incorporated by *Bankruptcy Rule 7023*. *Id.* ¶¶ 79-88; *see also Fed. R. Bankr. P. 7023*.[17]

Upon certification, the Debtor asks the Court to "disallow" Allied's claims **[*653]** against those class members as well. Am. Compl. ¶ 104. In support of the requested relief, the Debtor alleges that the loans Allied made to the other similarly situated debtors violated *section 6.2-1541(A) of the Virginia Code* and were therefore void and unenforceable, such that any proofs of claim related thereto should be disallowed under *section 502(b)(1) of the Bankruptcy Code*. *Id.* ¶¶ 100-01.

The relief requested in Count II is substantially similar to that requested in the first claim in *CashCall*, which "sought a declaratory judgment that CashCall's loan was illegal and unenforceable, in violation of *N.C. Gen. Stat. § 24-1.1(c)* and *§ 53-166(a)*." *781 F.3d at 69* (per curiam); *see* Am. Compl. ¶ 99 ("Under *Va. Code § 6.2-1541(A)*, the loan was void and is uncollectible against the Plaintiff or her estate in any amount."). Like the first claim in *CashCall*, Count II is constitutionally core because this issue involves the claim allowance process and the Debtor's objection to Allied's proof of claim. Count II concerns **[**22]** the validity of the very Credit Agreement that undergirds Allied's claim in the Bankruptcy Case. "[R]esolution of [the Debtor's] claim that the Loan Agreement . . . was illegal could directly impact claims against her estate and her plan for financial reorganization . . . ." *CashCall, 781 F.3d at 72*. Accordingly, it would conflict with Congress's intent in enacting the Bankruptcy Code to refer this claim, which directly pertains to the Debtor's plan of reorganization

[17] *See supra* note 9. While class actions are unusual in the bankruptcy context, they may be permissible under certain circumstances. *See Gentry v. Siegel, 668 F.3d 83, 90 (4th Cir. 2012)* ("In the absence of some prohibiting rule or principle, the Bankruptcy Rules should be construed . . . to allow Civil *Rule 23* to be applied if doing so would result in a more practical and efficient process for the adjudication of claims."). The Court has not addressed the issue of class certification in this Adversary Proceeding, but notes that a favorable ruling on the declaratory and injunctive relief sought in the Amended Complaint may obviate any need for class certification.

and the claims allowance process of the bankruptcy court, to arbitration under the terms of Arbitration Provision.

In Count III, the Debtor asks the Court to determine that Allied's credit was usurious such that it is not entitled to any interest pursuant to *section 6.2-304 of the Virginia Code*. Am. Compl. ¶¶ 105-16. Like Count II, it also seeks to certify a class of claimants similarly situated to the Debtor under *Federal Rule of Civil Procedure 23(a)*. *Id.* Upon certification, the Debtor asks the Court for "injunctive relief or declaratory relief with respect to the Usury Class as a whole." *Id.* ¶ 115.

Count III attacks the loans Allied made to the Debtor and to other similarly situated debtors as null and void under *section 6.2-1541 of the Virginia Code*, which would invalidate the contract Allied is using as the basis for its claims. Count III also asks **[**23]** the Court to find that "Allied knowingly filed Proofs of Claim on null and void loans, attempting to collect debts that cannot be enforced against debtors in bankruptcy pursuant to *11 U.S.C. § 502(b)(1)*." *Id.* ¶ 115. Count III is readily distinguishable from the *CashCall* counterclaim. The *CashCall* counterclaim involved a completely separate cause of action arising out of the creditor's purported violation of applicable state consumer finance statute for improper collection efforts—over and above just filing the proof of claim. A determination on the first core count "that the underlying Loan Agreement was illegal" was not outcome determinative of whether CashCall's collection efforts "inherently violate[d] the North Carolina Debt Collection Act." *CashCall, 781 F.3d at 70-71*. Rather, the *CashCall* counterclaim "regarding CashCall's conduct in trying to collect on the loan, other violations of the state statute, and damages like emotional distress . . . [was] unrelated to the Defendant's proof of claim and [was] only related to the bankruptcy case in that if successful, the bankruptcy estate will recover any non-exempt funds and disburse them to claims in accordance with the bankruptcy code." *Id. at 85-86* (Gregory, J., concurring) (internal citations **[**24]** omitted).

Unlike the counterclaim in *CashCall*, which the Fourth Circuit deemed to be **[*654]** constitutionally non-core, Count III concerns "whether an individual is owed money by a debtor - a classic core claim." *Id. at 85*. Specifically, by Count III, the Court is to decide whether Allied has an allowable claim against the Debtor and similarly situated debtors, such that Allied is owed money by the Debtor. To the extent Allied does not have an allowable claim because the underlying loan agreement is void, Count III then asks for a declaratory judgment that Allied filed proofs of claim for unenforceable debts.

Count III would necessarily be resolved by the Court in the claims allowance process when considering Allied's proofs of claim.[18] On the one hand, if the Court concludes that the Credit Agreement is valid, then Allied's proof of claim would be allowed. On the other hand, if the Court concludes that the loan agreement Allied is using is void, then Allied was not entitled to

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[18] As stated by Allied in its Motion for Certification:

> [T]he legal meaning of *Virginia Code § 6.2-312* is determinative of the issues presented in Counts II and III of the Amended Complaint. . . . [T]he fulcrum of Taylor's class claims is a dispute over the legal meaning of *Virginia Code § 6.2-312*. She contends that the Origination Fee is a "finance charge under the statute, and that, as such, Allied did not qualify for the open-end credit exemption because, according to Taylor, finance charges can only be assessed on unpaid balances following a 25-day grace period. If Taylor is correct, then Allied does not qualify for the exemption; if Taylor is incorrect on either of these questions of law, then her claims must be dismissed.

Mot. for Certification ¶¶ 23-24.

collect the usurious interest that it charged and the proof of claim should be disallowed. The Court must make this determination in its consideration of the validity of Allied's proof of claim pursuant to its constitutionally mandated **[**25]** duties. Thus, it would conflict with Congress's vision of the bankruptcy process to refer Count III to arbitration under the terms of the Arbitration Provision.

The Court also denied the Motion to Compel for a second reason. HN8[] A court should not compel arbitration in scenarios where it would hinder the ability of an agency to pursue the relief it is statutorily charged with seeking. In light of the Court's decision to grant the Virginia Attorney General's Motion to Intervene in this Adversary Proceeding, referring Counts II and III to arbitration would violate the **[**26]** Supreme Court's explicit command in *EEOC v. Waffle House, Inc. 534 U.S. 279, 295-96, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002)*.[19] At the Hearing on November 15, 2018, this Court granted the Virginia Attorney General's Motion to Intervene as a plaintiff to object to Allied's proof of claim against the Debtor and to object to the proofs of claim filed by Allied against other similarly situated debtors on a class-wide basis. *See* Mot. to Intervene 2-3. Thus, to the extent Allied now asks the Court to refer Counts II and III to arbitration, it asks the Court to enforce the Arbitration Provision against the plaintiff-intervenor, the Virginia Attorney General. HN9[] "It goes without saying that a contract cannot bind a nonparty." *Waffle House, 534 U.S. at 294*. "[T]he proarbitration goals of the FAA do not require [an] agency to relinquish its statutory authority if it has not agreed to do so." *Id.* Compelling arbitration with respect to Counts II and III would require **[*655]** the Virginia Attorney General to either participate in or monitor ongoing actions in multiple fora, including an arbitration, which would undermine the Virginia Attorney General's statutory function and infringe upon the Virginia Attorney General's right to pursue the remedies afforded to it by law. Accordingly, the Court denies the Motion to Compel **[**27]** as to the Amended Complaint.

Conclusion

For the foregoing reasons, the Motion to Compel is denied. A separate order shall issue.

ENTERED: November 20, 2018

/s/ Kevin R. Huennekens

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: November 20, 2018

ORDER

This matter comes before the Court on the Motion for Entry of Orders (I) Staying this Adversary Proceeding and Compelling Arbitration and (II) Determining the Class Action Claims in This Proceeding Are Non-Core Pursuant to *28 U.S.C. § 157(b)(3)* [ECF No. 39] (the "Motion to Compel") filed by Allied Title Lending, LLC d/b/a Allied Cash Advance ("Allied") in response to the Amended Complaint Objecting to Claim No. 8-1 and No. 8-2, for Damages, Costs ,and Attorney Fees Pursuant to the *Fair Debt Collection Practices Act of 15 U.S.C. § 1692*, for Classwide Relief, Declaratory Relief, for Injunctive Relief, and for Equitable Relief Pursuant to *11 U.S.C. § 105* [ECF No. 23] (the "Amended Complaint") filed by the plaintiff, Shirley Dean Taylor (the "Debtor"),

[19] The Supreme Court explained that HN10[] the FAA directs courts "to place arbitration agreements on equal footing with other contracts, but it 'does not require parties to arbitrate when they have not agreed to do so.'" *Id. at 293* (quoting *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 478, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)*).

whereby Allied sought to compel arbitration of Counts II and III of the Amended Complaint. On April 12, 2018, the Debtor filed her Plaintiffs' Memorandum in Opposition to Defendant Allied's Motion to Compel Arbitration [ECF No. 47] (the "Response"). **[**28]** On April 19, 2018, Allied filed Allied's Reply in Support of Its Motion for Entry of An Order Staying This Adversary Proceeding and Compelling Arbitration [ECF No. 53] (the "Reply"). On November 15, 2018, the Court conducted a hearing (the "Hearing") on the Motion to Compel. Upon consideration of the applicable law, the Motion to Compel, the Response, the Reply, the other pleadings filed in this adversary proceeding, and the arguments of counsel at the Hearing, and for the reasons set forth in its Memorandum Opinion issued contemporaneously herewith, it is

ORDERED that the Motion to Compel is **DENIED**.

ENTERED: November 20, 2018

/s/ Kevin R. Huennekens

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: November 20, 2018

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Allied Title Lending, LLC v. Taylor

United States District Court for the Eastern District of Virginia, Richmond Division

October 22, 2019, Decided; October 22, 2019, Filed

Civil No. 3:18cv845 (DJN)

Reporter
420 F. Supp. 3d 436 *; 2019 U.S. Dist. LEXIS 183729 **; 2019 WL 5406039

ALLIED TITLE LENDING, LLC, d/b/a ALLIED CASH ADVANCE, Appellant, v. SHIRLEY DEAN TAYLOR, et al., Appellees.

Prior History: *Taylor v. Allied Title Lending, LLC (In re Taylor), 594 B.R. 643, 2018 Bankr. LEXIS 3634 (Bankr. E.D. Va., Nov. 20, 2018)*

Core Terms

bankruptcy court, arbitration, Counts, consumer, motion to intervene, intervene, attorney general, credit agreement, open-end, subject matter jurisdiction, adversary proceedings, finance, parties, loans, plans, void, non-core, arbitration agreement, bankrupt estate, putative class, state court, initiated, contends, rights, bankruptcy proceedings, reorganization, collecting, question of law, district court, proof of claim

Counsel: **[**1]** For Allied Title Lending, LLC, doing business as Allied Cash Advance, Appellant: Michael Gordon Matheson, William Daniel Prince, IV, LEAD ATTORNEYS, Thompson McMullan PC, Richmond, VA.

For Shirley Dean Taylor, Appellee: Mark Clifton Leffler, LEAD ATTORNEY, Boleman Law Firm, Richmond, VA; Dale Wood Pittman, The Law Office of Dale W. Pittman, P.C., Petersburg, VA; Elizabeth W. Hanes, Consumer Litigation Associates (Richmond), Richmond, VA; Emily Connor Kennedy, Boleman Law Firm (Richmond), Richmond, VA; Thomas Dean Domonoske, Consumer Litigation Associates, Newport News, VA.

For Commonwealth of Virginia, Appellee: David Benjamin Irvin, LEAD ATTORNEY, Office of the Attorney General (Richmond), Richmond, VA; Erin Elizabeth Witte, LEAD ATTORNEY, Office of the Attorney General (Fairfax), Fairfax, VA.

Judges: David J. Novak, United States District Judge.

Opinion by: David J. Novak

Opinion

[*441] MEMORANDUM OPINION

On January 15, 2018, Appellee Shirley Dean Taylor ("Taylor") initiated an adversary proceeding against Appellant Allied Title Lending, LLC ("Allied"), objecting to Allied's unsecured proof of claim against her bankruptcy estate. On March 29, 2018, Allied moved to compel arbitration of Counts II and III of Taylor's Amended **[**2]** Complaint, stay the adversary proceeding and declare Counts II and III as non-core claims pursuant to *28 U.S.C. § 157(b)(3)*. On November 20, 2018, the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court") issued an order denying Allied's Motion, which Allied now appeals. Allied further appeals the Bankruptcy Court's December 6, 2018 Order granting the Motion to Intervene filed by Appellee the Commonwealth of Virginia (the "Commonwealth"). On January 28, 2019, Senior United States District Judge Henry E. Hudson consolidated Allied's appeals into the present action. (ECF No. 8.) This matter now comes before the Court

on Allied's consolidated appeal and Taylor's Motion for Leave to File Supplemental Authority (ECF No. 18). For the reasons set forth below, the Court AFFIRMS the judgment of the Bankruptcy Court as to both Allied's Motion to Compel and the Commonwealth's Motion to Intervene and DENIES AS MOOT Taylor's Motion to File Supplemental Authority (ECF No. 18).[1]

I. BACKGROUND

The Court reviews the factual findings of the Bankruptcy Court for clear error. *Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs. US, LLC, 578 B.R. 325, 328 (E.D. Va. 2017)* (citations omitted). Based on this standard, the Court accepts the following facts.

A. Allied Line of Credit

In July **[**3]** 2016, Taylor applied for a $1,500.00 loan from Allied, an issuer of short-term, small-dollar, open-end credit plans that resemble payday loans. *Taylor v. Allied Title Lending, LLC (In re Taylor) (Allied I), 594 B.R. 643, 645 (Bankr. E.D. Va. 2018)*. Subsequently, on July 25, 2016, Taylor executed a line of credit agreement with Allied (the "Credit Agreement"), agreeing to repay a $1,500.00 line of credit with interest accruing at a rate of 0.75 percent per day, for an annualized interest rate of 273.75 percent. *Id. at 645-46*. **[*442]** The Credit Agreement provided an interest-free grace period of twenty-eight days and required a $100.00 origination fee, to which the grace period did not apply. *Id. at 646*.

Relevant here, the Credit Agreement also contained an arbitration provision (the "Arbitration Provision"), which provided that:

> Before signing this Agreement, you should carefully review the Arbitration Agreement located on pages 5 and 6. The Arbitration Agreement provides that all Claims arising from or relating to this Agreement or any other agreement that you and we have ever entered into must be resolved by binding arbitration if the person or entity against whom a Claim is asserted elects to arbitrate the Claim. Thus, if the person or entity against whom you assert **[**4]** a Claim elects to arbitrate the Claim, then you will not have the following important rights:
>
> • You may not file or maintain a lawsuit in any court except small claims court.
> • You may not join or participate in a class action, act as a class representative or a private attorney general, or consolidate your Claim with the claims of others.
> • You will have to pay the arbitration firm certain fees in order to commence an arbitration proceeding, unless you ask us to pay those fees to the arbitration firm for you.
> • You give up your right to have a jury decide your Claim.
> • You will not be afforded the procedural, pre-trial discovery and appellate rights in an arbitration proceeding.
>
> If you do not want to arbitrate all Claims as provided in the Arbitration Agreement, then you have the right to reject the Arbitration Agreement. To reject arbitration, you must deliver written notice to us at the following address within 30 days following the date of this Agreement: Allied Cash Advance, Attn: Arbitration Opt-Out, P.O. Box 36381, Cincinnati, Ohio 45236. Nobody else can reject arbitration for you; this method is the only way you can reject the Arbitration Agreement. Your rejection of the Arbitration **[**5]** Agreement will not affect your right to credit, how much credit you receive, or any contract term other than the Arbitration Agreement.

Id.

B. Bankruptcy Proceeding

On January 17, 2017 (the "Petition Date"), Taylor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code (the "Bankruptcy Case"). *Allied I, 594 B.R. at 646*. On March 21, 2017, Allied filed proof of claim 8-1 ("Claim 8-1") in the Bankruptcy Case, asserting an unsecured claim totaling $2,756.92 against Taylor's bankruptcy estate. *Id.* In response, on August 29, 2017, Taylor filed her initial objection to Claim 8-1,

[1] On September 4, 2019, Judge Hudson referred this case to the undersigned for a Report and Recommendation in the undersigned's capacity as a United States Magistrate Judge. (ECF No. 20.) Subsequently, on October 16, 2019, the United States Senate confirmed the undersigned as a United States District Judge, and the undersigned was sworn in to the position on October 18, 2019. Thereafter, Judge Hudson transferred this matter to the undersigned. (ECF No. 21.) Accordingly, the undersigned resolves Allied's consolidated appeal in his capacity as a United States District Judge.

alleging that Allied had "'neither attached a copy of the writing upon which the claim is based nor a statement of the circumstances of the loss or destruction of such writing' in contravention of Rule 3001 of the Federal Rules of Bankruptcy Procedure." Id. (quoting (Obj. to Claim No. 8-1 & Mem. in Supp. Thereof ¶ 13, *In re Taylor*, No. 17-30142-KRH, ECF No. 29)). Thereafter, on September 1, 2017, the Bankruptcy Court entered an order confirming Taylor's Chapter 13 plan. Id. (citing (Order Confirming Plan (No. 17-30142-KRH, ECF No. 31))).

On September 28, 2017, Cerastes, LLC ("Cerastes"), filed a transfer of claim, indicating that Allied had transferred Claim 8-1 to Cerastes. **[**6]** Id. at 647 (citing (Transfer **[*443]** of Claim Other Than Security (No. 17-30142-KRH, ECF No. 38))). Cerastes also filed both an amended proof of claim ("Claim 8-2"), which included the writing upon which Claim 8-1 was based, and a response to Taylor's initial objection, arguing that Claim 8-2 mooted Taylor's objection to Claim 8-1. Id. (citing (Resp. to Obj. to Claim No. 8-1 (No. 17-30142-KRH, ECF No. 40) ¶ 11)).

C. Adversary Proceeding

On January 15, 2018, Taylor filed a complaint against Allied and Cerastes. Allied I, 594 B.R. at 647 (citing (Compl. Objecting to Claim No. 8-1 & 8-2 *(Taylor v. Allied Title Lending, LLC*, Adv. Pro. No. 18-03003-KRH, ECF No. 1))). In response, on January 25, 2018, Allied filed notice that Cerastes had transferred Claim 8-2 back to Allied. Id. (citing (Transfer Claim Other Than Security (17-30142-KRH, ECF No. 57))). Allied and Cerastes also filed motions to dismiss or, in the alternative, to stay the adversary proceeding. Id. (citations omitted).

On March 15, 2018, Taylor filed her Amended Complaint, setting forth five counts for relief against Allied and Cerastes. Id.; (Am. Compl. Objecting to Claim No. 8-1 & No. 8-2 ("Am. Compl.") (Adv. Pro. No. 18-03003-KRH, ECF No. 23).) In Count I, Taylor objected **[**7]** to Claims 8-1 and 8-2 (the "Claims"), because: (1) Allied charged fees and interest on Taylor's credit line after the Petition Date; (2) Allied failed to identify the Claims as open-end credit lines; and, (3) Claim 8-2 falsely asserted that no interest or fees had been assessed on the credit line after the Petition Date. (Am. Compl. ¶ 77.)

In Count II, Taylor argued that the Claims should be disallowed pursuant to 11 U.S.C. § 502(b)(1), because Allied and Cerastes "knowingly filed Proofs of Claim on null and void loans, or loans on which interest cannot be charged." (Am. Compl. ¶ 87.) Specifically, Taylor alleged that the Credit Agreement violated Virginia's usury statute, voiding the Agreement and precluding Allied or Cerastes from collecting on the debt underlying their Claims. (Am. Compl. ¶¶ 89-101.) Taylor further alleged that the Claims violated Bankruptcy Rule 3001, because Allied failed to provide the writing or the information required for a claim based on open-end credit. (Am. Compl. ¶ 102.) Taylor raised her objection in Count II on behalf of herself and a putative class of "[a]ll debtors in the Bankruptcy Court ... who, before filing bankruptcy, entered into a credit agreement with Allied based upon a purportedly **[**8]** open-end credit basis, and a claim was filed regarding that agreement." (Am. Compl. ¶ 79.)

In Count III, Taylor brought a claim against Allied on behalf of herself and a putative class of debtors who, before filing for bankruptcy in the Bankruptcy Court, "entered into a credit agreement with Allied based upon a purportedly open-end basis," alleging that Allied's open-end credit plans violated Virginia's usury and consumer finance statutes. (Am. Compl. ¶ 105-16.) In Count IV, Taylor alleged that Cerastes violated the Fair Debt Collection Practices Act by using false, misleading and deceptive representations in the collection of a debt. (Am. Compl. ¶ 129.) Taylor raised Count IV on behalf of herself and a putative class of debtors in the Bankruptcy Court in whose bankruptcy case Cerastes asserted that "it was the assignee of a claim based on an Allied extension of credit." (Am. Compl. ¶ 118.) Finally, in Count V, Taylor requested equitable relief pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 3001. (Am. Compl. ¶ 138-49.)

Based on these Counts, Taylor asked the Bankruptcy Court to: (1) disallow the **[*444]** Claims; (2) certify the classes in her three class claims (Counts II, III and IV) and appoint her and her counsel as representatives **[**9]** of the classes; (3) disgorge any amounts paid to Allied by the classes in Counts II and III; (4) award monetary damages pursuant to Va. Code § 6.2-304 and the FDCPA; (5) award fees and costs; and, (5) grant declaratory and injunctive relief. (Am. Compl. at 31-32, Demand for Relief.)

In response to Taylor's Amended Complaint, on March 29, 2018, Allied filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Allied I, 594 B.R. at 647; (Mot. to Dismiss Pursuant to

Fed. R. Civ. P. 12(b)(1) & 12(b)(6) & Mem. of P. & A. (Adv. Pro. No. 18-03003-KRH, ECF No. 35).) The same day, Allied also filed its Motion to Compel, moving the Bankruptcy Court to compel arbitration pursuant to the Arbitration Provision of the Credit Agreement, stay the adversary proceeding and declare that Counts II and III of the Amended Complaint constitute non-core claims. Allied I, 594 B.R. at 647; (Mot. for Entry of Orders (I) Staying Adv. Pro. & Compelling Arb. & (II) Determining Class Action Claims in this Pro. Are Non-Core Pursuant to 28 U.S.C. § 157(b)(3) (Adv. Pro. No. 18-03003-KRH, ECF No. 35).) After receiving Taylor's filings in response, the Bankruptcy Court scheduled a hearing on Allied's Motions for July 24, 2018. *Id.*

Before the July 24, 2018 hearing, Allied filed a motion asking the Bankruptcy Court to certify the questions of state law **[**10]** raised in Counts II and III to the Supreme Court of Virginia. Id. During the July 24, 2018 hearing, the Bankruptcy Court granted Allied's Motion for Certification, entering an Order of Certification on August 20, 2018. Id. at 648-49 (citing (Order of Certif. to Supreme Ct. of Va. (Adv. Pro. No. 18-03003-KRH, ECF No. 78).) On August 31, 2018, the Supreme Court of Virginia declined to consider the certified questions; accordingly, the Bankruptcy Court scheduled a second hearing on Allied's Motions for November 15, 2018. Id. at 649.

In the meantime, on November 8, 2018, the Virginia Attorney General on behalf of the Commonwealth filed a motion to intervene in the adversary proceeding, alleging that the Commonwealth met the criteria for intervention under Federal Rule of Civil Procedure 24(b) as incorporated by Bankruptcy Rule 7024. Id. (citing (Commonwealth's Mot. for Leave to File Pleadings in Intervention ("Mot. to Intervene") (Adv. Pro. No. 18-03003-KRH, ECF No. 108))). In support of its Motion to Intervene, the Commonwealth filed its Proposed Complaint, seeking to prevent Allied from collecting on its open-end credit plans in bankruptcy court, because those plans violated Virginia's consumer finance and usury statutes. Id. (citing (Ex. A to Mot. to Intervene ("Proposed **[**11]** Compl.") (Adv. Pro. No. 18-03003-KRH, ECF No. 108-1) at 2)). The Commonwealth also sought restitution of any principal, interest or other costs paid to Allied from its allegedly unlawful credit plans. (Proposed Compl. at 12.) Allied filed a preliminary objection to the Commonwealth's Motion to Intervene on November 13, 2018. Id. (citing (Allied's Prelim. Obj. & Reserv. of Rights Regarding the Commonwealth's Mot. for Leave to File Pleadings in Intervention ("Prelim. Obj.") (Adv. Pro. No. 18-03003-KRH, ECF No. 109))).

During the November 15, 2018 hearing, after entertaining the arguments from all parties, the Bankruptcy Court granted the Commonwealth's Motion to Intervene and denied Allied's Motion to Compel, taking Allied's Motion to Dismiss under advisement and granting Cerastes's Motion to Dismiss as to Count V of the Amended Complaint. *Id.* The Bankruptcy Court **[*445]** thereafter issued two memorandum opinions explaining its decisions on Allied's Motion to Compel, Allied I, 594 B.R. at 649-55, and the Commonwealth's Motion to Intervene, Taylor v. Allied Title Lending, LLC (In re Taylor) (Allied II), 2019 Bankr. LEXIS 18, 2019 WL 103775, at *1-3 (Bankr. E.D. Va. Jan. 3, 2019), both of which Allied now appeals to this Court.

D. *Allied I*: Motion to Compel

In Allied I, the Bankruptcy Court denied Allied's Motion to Compel, because referring Counts II and III of **[**12]** Taylor's Amended Complaint to arbitration "would conflict with the essential purpose of the bankruptcy process to quickly and effectively resolve claims against [Taylor's] estate and also would undermine the Virginia Attorney General's statutory prerogative to intervene in this Adversary Proceeding." 594 B.R. at 649-50.

In support this conclusion, the Bankruptcy Court relied primarily on Moses v. CashCall, in which the Fourth Circuit recognized that sending a constitutionally core claim to arbitration would "'inherently conflict with the purposes of the Bankruptcy Code.'" Id. (quoting 781 F.3d 63, 72 (4th Cir. 2015)). The Bankruptcy Court found the facts in CashCall "strikingly similar" to Taylor's claims, noting that the debtor in CashCall also challenged the loan agreement underpinning the creditor's claim as illegal and void under state law. Id. at 651 (citing CashCall, 781 F.3d at 68). Based on the Fourth Circuit's holding that the *CashCall* debtor's challenge to the loan's validity under state law constituted a constitutionally core claim, the Bankruptcy Court held that Taylor's challenge in Counts II and III to the validity of the Credit Agreement under Virginia's consumer rights and usury statutes likewise constituted constitutionally core claims, the referral **[**13]** of which to arbitration would inherently conflict with the purposes of the Bankruptcy Code. Id. at 653-54.

The Bankruptcy Court further denied Allied's Motion to Compel, because referring Counts II and III to arbitration "would hinder the ability of [the Virginia Attorney General] to pursue the relief it is statutorily charged with seeking." Id. at 654. Specifically, because the

Bankruptcy Court granted the Commonwealth's Motion to Intervene, the Bankruptcy Court reasoned that referring Counts II and III to arbitration would "undermine the Virginia Attorney General's statutory function and infringe upon the Virginia Attorney General's right to pursue the remedies afforded to it by law." *Id. at 654-55*.

E. *Allied II*: Motion to Intervene

In support of its decision to grant the Commonwealth's Motion to Intervene, the Bankruptcy Court first found that the Commonwealth had timely filed its Motion and that the parties would not be prejudiced by the Commonwealth's intervention. *Allied II, 2019 Bankr. LEXIS 18, 2019 WL 103775, at *2*. The Bankruptcy Court noted that the Commonwealth filed its Motion early on in the adversary proceeding, before Allied or Cerastes had filed answers to the Amended Complaint and before the start of discovery. *Id.* The Bankruptcy Court further noted that **[**14]** the Virginia Attorney General had initiated "an almost identical state court lawsuit against Allied," which predated the adversary proceeding, meaning there would be no resulting delay from the Commonwealth's intervention. *Id.* The Bankruptcy Court added that permitting intervention would in fact reduce the risk of prejudice to the parties by avoiding inconsistent results in state and federal court. *Id.*

Having found the Commonwealth's Motion timely and nonprejudicial, the Bankruptcy Court turned to the question of **[*446]** whether the Commonwealth's proposed claims shared a common question of law or fact with Taylor's Amended Complaint. *2019 Bankr. LEXIS 18, [WL] at *3* (citing *Fed. R. Civ. P. 24(b)(1)(B)*). Because both the Commonwealth's Proposed Complaint and the Amended Complaint alleged that Allied's open-end credit plans violated Virginia's consumer finance statutes, the Bankruptcy Court found that the Commonwealth satisfied the requirements for permissive intervention under *Federal Rule of Civil Procedure 24(b)*. *Id.* Accordingly, the Bankruptcy Court granted the Commonwealth's Motion to Intervene. *Id.*

II. STANDARD OF REVIEW

"When reviewing a decision of the bankruptcy court [rendered in a core proceeding], a district court functions as an appellate court and applies the standard of review **[**15]** in federal courts of appeals." *Paramount Home Entm't Inc. v. Circuit City Stores, Inc., 445 B.R. 521, 526-27 (E.D. Va. 2010)* (citing *In re Webb, 954 F.2d 1102, 1103-04 (5th Cir. 1992)*). Specifically, "[t]he district court reviews the bankruptcy court's legal conclusions *de novo* and its factual findings for clear error." *Mar-Bow Value Partners, LLC, 578 B.R. at 328* (citing *In re Harford Sands Inc., 372 F.3d 637, 639 (4th Cir. 2004)*). Clear error exists when the district court "'is left with the definite and firm conviction that a mistake has been committed.'" *Id.* (quoting *Anderson v. Bessemer City, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985)*). In cases involving questions of law and fact, the Court reviews findings of fact under the clearly erroneous standard and reviews *de novo* the legal conclusions derived from those facts. *Gilbane Bldg. Co. v. Fed. Reserve Bank of Richmond, 80 F.3d 895, 905 (4th Cir. 1996)*.

Conversely, if the proceeding before the Bankruptcy Court constitutes a non-core proceeding and the parties did not consent to the Bankruptcy Court's jurisdiction, "the district court... undertake[s] de novo analysis of both the factual findings to which [the appellant] objected and the law." *Humboldt Express Inc. v. Wise Co. (In re Apex Express Corp.), 190 F.3d 624, 630 (4th Cir. 2015)*.

III. ANALYSIS

A. Motion to Compel

In support of its appeal, Allied first argues that the Bankruptcy Court erred in concluding that Counts II and III constitute constitutionally core claims. (Br. of Appellant ("Allied Br.") (ECF No. 12) at 19-20.) Specifically, because Taylor seeks monetary relief in both Counts II and III, including damages, restitution, disgorgement and attorneys' fees, **[**16]** Allied contends that "[resolution of these claims will have no bearing on the allowance or disallowance of Allied's Proof of Claim," rendering both Counts constitutionally non-core. (Allied Br. at 20, 30-32.) Because the resolution of constitutionally non-core claims in bankruptcy court rarely overcomes the strong presumption favoring the enforcement of arbitration agreements, Allied argues that the Court should reverse the Bankruptcy Court's denial of its Motion to Compel. (Allied Br. at 20, 32-33.) Ultimately, Allied avers that the Bankruptcy Court "focused too heavily on the Amended Complaint's language objecting to Allied's Proof of

Claim on the grounds that the Credit Agreement is void under Virginia law" and should have instead looked at "the relief Taylor seeks." (Allied Br. at 33.)

As for the Bankruptcy Court's additional reasoning that referral to arbitration would undermine the Virginia Attorney General's statutory prerogative to enforce Virginia's consumer finance laws, Allied **[*447]** contends that referring Counts II and III to arbitration would have no adverse impact, because the Attorney General "is actively exercising its authority against Allied in the Circuit Court for the **[**17]** City of Richmond, which is the designated forum for civil enforcement actions under *Va. Code § 6.2-1537*." (Allied Br. at 21, 39-41.)

Taylor responds that the Bankruptcy Court properly applied controlling precedent — namely, the Fourth Circuit's decision in *CashCall* — in finding that Counts II and III of her Amended Complaint constitute constitutionally core claims whose resolution in the Bankruptcy Court overrides any presumption favoring arbitration. (Br. of Appellee, Shirley Dean Taylor ("Taylor Br.") (ECF No. 16) at 11-12.) Taylor asserts that Allied asks the Court to apply a different standard to that espoused by the Fourth Circuit in *CashCall*, requesting that the Court look to the remedies sought and not whether "'once the bankruptcy judge ruled on the creditor's proof of claim, nothing remained for adjudication.'" (Taylor Br. at 12 (quoting *CashCall, 781 F.3d at 71*); *see also id.* at 18 (arguing that the core/non-core distinction "is important but not dispositive," with the efficient reorganization of the bankruptcy estate serving as the primary objective in deciding motions to compel (citing *CashCall, 781 F.3d at 83-84* (Gregory, J., concurring)).) Because Counts II and III concern the validity of the Credit Agreement, Taylor contends that the Bankruptcy **[**18]** Court correctly concluded that both claims would "necessarily be resolved by the [Bankruptcy] Court in the claims allowance process.'" (Taylor Br. at 13, 19-25.)

Taylor adds that Allied waived any right to compel arbitration by twice asking the Bankruptcy Court to dismiss Taylor's Amended Complaint and by moving to certify the questions of state law in the Amended Complaint to the Virginia Supreme Court. (Taylor Br. at 13, 27-34.) And Taylor maintains that the Bankruptcy Court appropriately used its discretion to permit the Commonwealth to intervene and likewise appropriately concluded that enforcing the Arbitration Provision would undermine the Attorney General's statutory prerogative to enforce Virginia's consumer finance statutes. (Taylor Br. at 14, 34-37.)

Separately, the Commonwealth responds that the Bankruptcy Court rightly decided that, as a non-party to the Credit Agreement, the Commonwealth could not be coerced into arbitrating Counts II and III, and, because the Bankruptcy Court rightly granted its Motion to Intervene, the Commonwealth reiterates that arbitration would undermine the Attorney General's statutory prerogative to enforce Virginia's consumer finance statutes. (Br. **[**19]** of Appellee, Commonwealth of Va. ("Commonwealth Br.") (ECF No. 15) at 14-16.)

The *Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-14*, "establishes 'a liberal federal policy favoring arbitration agreements.'" *CompuCredit Corp. v. Greenwood, 565 U.S. 95, 98, 132 S. Ct. 665, 181 L. Ed. 2d 586 (2012)* (quoting *Moses H. Cone Mem 7 Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)*). "At the same time, however, 'Congress intended to grant comprehensive jurisdiction to bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estates.'" *CashCall, 781 F.3d at 71* (quoting *Celotex Corp. v. Edwards, 514 U.S. 300, 308, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995)* (internal quotation marks and citations omitted)). When these two interests conflict, the Supreme Court has instructed "that the party seeking to prevent enforcement of an arbitration agreement must show that 'Congress has evinced an intention to preclude waiver **[*448]** of judicial remedies for the statutory rights at issue.'" *Id.* (quoting *Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 90, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000)*). A court of first impression has discretion to decide whether to compel arbitration in light of Congress's intent, with its decision reviewed for abuse of that discretion. *Id. at 71-72* (citations omitted).

Relevant here, the Bankruptcy Court serves as the court of first impression for constitutionally core claims; whereas, this Court serves as the court of first impression for non-core claims. *Id. at 72*. Arbitration of constitutionally core claims "inherently **[**20]** conflict[s] with the purposes of the Bankruptcy Code," and therefore a bankruptcy court is generally well within its discretion to refuse arbitration of constitutionally core claims. *Id. at 73*. That said, regardless of the core/non-core distinction, "what matters ... is whether compelling arbitration for a claim would inherently undermine the Bankruptcy Code's animating purpose of facilitating efficient reorganization of an estate through the '[c]entralization of disputes concerning a debtor's legal obligations.'" *Id. at 83* (Gregory, J., concurring) (quoting

Phillips v. Congelton, LLC, 403 F.3d 164, 170 (4th Cir. 2005)).

Based on this legal framework, the crux of the Court's inquiry becomes: (1) whether Counts II and III constitute constitutionally core claims, the arbitration of which falls within the Bankruptcy Court's discretion; and, (2) if the Counts are constitutionally core, whether the Bankruptcy Court abused its discretion in finding that arbitration of both Counts would inherently conflict with the Bankruptcy Code's "animating purpose;" or, (3) if the Counts are constitutionally non-core, whether, in this Court's discretion, arbitration of the Counts would inherently conflict with the Bankruptcy Code's "animating purpose."

I, Counts II and III of Taylor's [**21] Amended Complaint Constitute Constitutionally Core Claims.

Whether a claim is constitutionally core presents a question of law subject to *de novo* review. *Midland Funding LLC v. Thomas, 606 B.R. 687, 2019 WL 3806640, at *3 (W.D. Va. Aug. 13, 2019)* (citations omitted). A cause of action is constitutionally core when it "stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern v. Marshall, 564 U.S. 462, 499, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*. A bankruptcy estate's state-law counterclaim against a creditor "would necessarily be resolved in the claims allowance process" when it shares common questions of fact and law with the creditor's claim(s) and when it "seek] to directly reduce or recoup the amount claimed." *TP, Inc. v. Bank of Am., N.A. (In re TP, Inc.), 479 B.R. 373, 385 (Bankr. E.D.N.C. 2012)*; *see also Pulaski v. Dakota Fin., LLC (In re Pulaski), 475 B.R. 681, 688 (Bankr. W.D. Wis. 2012)* (noting that "if the debtor's claim can be resolved without considering the creditor's claim, then the bankruptcy court lacks the constitutional authority to hear the debtor's claim"). Consequently, "a counterclaim by the bankruptcy estate that seeks affirmative monetary relief to augment the estate but does not directly modify the amount claimed would not qualify as a claim to be resolved in ruling on the proof of claim." *TP, Inc., 479 B.R. at 385*.

Here, in Count II of her Amended Complaint, Taylor objects to Allied and Cerastes's Claims pursuant to *11 U.S.C. § 502(b)(1)*, because Allied and Cerastes "knowingly filed Proofs **[**22]** of Claim on null and void loans, or loans on which interest cannot be charged." (Am. Compl.¶87.) Specifically, Taylor alleges that the Credit Agreement violated Virginia's usury statute, **[*449]** voiding the Agreement and precluding Allied or Cerastes from collecting on the debt underlying their Claims. (Am. Compl. ¶¶ 89-101.) Taylor likewise asserts that the Claims violate *Bankruptcy Rule 3001*, because Allied failed to provide the writing or the information required for a claim based on open-end credit. (Am. Compl.¶102.) Taylor presents her objection in Count II on behalf of herself and a putative class of "[a]ll debtors in the Bankruptcy Court... who, before filing bankruptcy, entered into a credit agreement with Allied based upon a purportedly open-end credit basis, and a claim was filed regarding that agreement." (Am. Compl.¶79.)

In Count III, Taylor brings a claim against Allied on behalf of herself and a putative class of debtors who, before filing for bankruptcy in the Bankruptcy Court, "entered into a credit agreement with Allied based upon a purportedly open-end basis," alleging that Allied's open-end credit plans, like the one executed between Allied and Taylor, violated Virginia's usury and consumer **[**23]** finance statutes. (Am. Compl.¶105-16.)

The Court finds that Count II constitutes a constitutionally core claim. Indeed, in Count II, Taylor presents a direct objection to the Claims, arguing that they should be disallowed pursuant to *§ 502(b)(1)*, because the Credit Agreement underlying the Claims proves null and void under Virginia law. Thus, in deciding the validity of the Credit Agreement under Virginia law, the Bankruptcy Court will "directly modify the amount claimed" by Allied. *TP, Inc., 479 B.R. at 385*. And the fact that Taylor seeks monetary relief for herself and a class of similarly situated debtors in the Bankruptcy Court does not alter the Court's analysis. For one, Taylor brings Count II on behalf of herself and a putative class of debtors who have filed for bankruptcy relief in the Bankruptcy Court after entering a similar credit agreement with Allied and against whom Allied has also filed a proof of claim. Thus, assuming the Bankruptcy Court certifies the putative class, adjudication of the class claims will likewise directly modify the amount of the claims filed by Allied against similarly situated debtors. Moreover, that Taylor and the putative class that she wishes to represent seek monetary relief in **[**24]** addition to the disallowance of the claims filed against them by Allied proves inconsequential to the core/non-core analysis. *See In re Olde Prairie Block Owner, LLC, 457 B.R. 692, 699 (Bankr. N.D. 111. 2011)* (holding that claim for breach of good faith and fair dealing, though seeking monetary relief, constituted a constitutionally core proceeding,

because the claim "had to be resolved in order to rule on [the creditor's] claim and determine the amount due on the claim itself).

As for Count III, the core/non-core inquiry becomes more nuanced. Indeed, Taylor defined the putative class in Count III as all debtors in the Bankruptcy Court "who, before filing [for] bankruptcy, entered into a credit agreement with Allied based upon a purportedly open-end credit basis," excluding the requirement that Allied have filed a proof of claim against anyone in the class. (Am. Compl.¶106.) To bring Count III as a class claim, Taylor must show that she is "part of the class and 'possess[es] the same interest and suffer[s] the same injury' as the class members," requiring Taylor to ignore the fact of Allied's claim against her if she wishes to represent the putative class. *E. Tex. Motor Freight Sys., Inc. v. Rodriguez, 431 U.S. 395, 403, 97 S. Ct. 1891, 52 L. Ed. 2d 453 (1977)* (modifications added) (quoting *Schlesinger v. Reservists Comm. to Stop the War, **418** U.S. 208, 216, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974))*.

However, Count III nonetheless constitutes a constitutionally core claim, **[**25]** because resolution of Count III, as with Count II, **[*450]** will resolve the validity of the Credit Agreement, directly reducing the amount of Allied's Claims. *In re Olde Prairie Block Owner, LLC, 457 B.R. at 699*; *see also CashCall, 781 F.3d at 85* (Gregory, J., concurring) (characterizing whether an individual "was owed money by a debtor' as "a classic core claim"). Indeed, if the Bankruptcy Court finds that Allied's open-end credit plans in fact constitute usurious loans, Virginia law provides that such loans "shall be void" and that Allied shall be liable for "any principal or interest paid on the loan[s]." *Va. Code § 6.2-1541*. Thus, in resolving whether Virginia's consumer finance and usury statutes void the Credit Agreement giving rise to Allied's Claims, the Bankruptcy Court simultaneously resolves Taylor's right — and the right of the putative class that she seeks to represent — to monetary relief, and vice versa. In other words, Virginia law couples the avoidance of a usurious loan with a right to monetary relief.

Moreover, Taylor's assertion in Count III that if the Credit Agreement qualifies as an open-end credit plan under Virginia law, Allied's origination fee nonetheless violates Virginia's open-end credit statute, (Am. Compl.¶110(d)), would likewise constitute a constitutionally **[**26]** core claim, because resolution of it will affect the amount of Allied's Claims, *see Va. Code § 6.2-1542* (providing that the relief for excess or unauthorized charges shall be a refund of the charges and, in certain cases, payment of a penalty "of twice the amount of any unauthorized or excess charge actually received"). Therefore, Taylor's entire counterclaim in Count III qualifies as a constitutionally core claim.

2. The Bankruptcy Court Did Not Abuse Its Discretion in Refusing to Refer Counts II and III to Arbitration.

Because Counts II and III of the Amended Complaint constitute constitutionally core claims, whether to compel arbitration of those claims fell within the Bankruptcy Court's discretion. *CashCall, 781 F.3d at 71-72*. Accordingly, on appeal, the Court will review the Bankruptcy Court's refusal to refer both Counts to arbitration for abuse of discretion. *Id.* In exercising their discretion to compel arbitration of constitutionally core claims, bankruptcy courts must consider "whether compelling arbitration for a claim would inherently undermine the Bankruptcy Code's animating purpose of facilitating the efficient reorganization of an estate through the 'centralization of disputes concerning a debtor's legal obligations.'" **[**27]** *Id. at 83* (Gregory, J., concurring) (quoting *Phillips, 403 F.3d at 170*); *see also id. at 72* (noting that "a principal purpose of the Bankruptcy Code is to provide debtors and creditors with the prompt and effectual administration and settlement of the debtor's estate . . . and also to centralize disputes over the debtor's assets and obligations in one forum" (internal quotations, modifications and citations omitted)).

Here, the Bankruptcy Court found that referring Counts II and III to arbitration "would inherently conflict with the purposes of the Bankruptcy Code." *Allied I, 594 B.R. at 652*. In support of this conclusion, the Bankruptcy Court likened Count II to the debtor's first claim in *CashCall*, which sought to declare CashCall's loan to the debtor as void pursuant to North Carolina's usury statute. *Id. at 653* (citing *CashCall, 781 F.3d at 69* (per curiam)). Because "Count II concerns the validity of the very Credit Agreement that undergirds Allied's claim in the Bankruptcy Case," the Bankruptcy Court reasoned that resolution of Count II "'could directly impact claims against her estate and her plan for financial reorganization,'" thereby creating a conflict between arbitration of **[*451]** Count II and "Congress's intent in enacting the Bankruptcy Code.'" *Id.* (quoting *CashCall, 781 F.3d at 72*).

As for Count III, **[**28]** the Bankruptcy Court found that Taylor's claims, if proven, would also "invalidate the

contract Allied is using as the basis for its claims," thereby resolving "'whether an individual is owed money by the debtor — a classic core claim.'" *Id. at 654* (quoting *CashCall, 781 F.3d at 85* (Gregory, J., concurring)). Because the validity of the Credit Agreement determines whether Allied's Claims should be allowed, the Bankruptcy Court concluded that arbitration of Count III "would conflict with Congress's vision of the bankruptcy process." *Id.*

The Court finds that the Bankruptcy Court did not abuse its discretion in refusing to refer Counts II and III to arbitration. Indeed, because resolution of Counts II and III would determine the very validity of Allied's Claims against Taylor's bankruptcy estate, referral of those Counts to arbitration would defeat the "animating purpose" of the Bankruptcy Code to facilitate the efficient reorganization of Taylor's estate through a centralized claims allowance process. *CashCall, 781 F.3d at 83* (Gregory, J., concurring). By referring Counts II and III to arbitration, or by keeping one and referring the other, the Bankruptcy Court would risk inconsistent results — results that directly impact the reorganization **[**29]** of Taylor's bankruptcy estate. *See id. at 72-73* (noting that even if a creditor would receive nothing under an already approved reorganization plan, the resolution of the creditor's claim(s) against the bankruptcy estate could still substantially interfere with debtor's efforts to reorganize, because the creditor could subsequently move to modify the reorganization plan). Accordingly, the Bankruptcy Court acted well within its discretion in denying arbitration of Counts II and III.

3. The Commonwealth's Intervention, Alone, Does Not Preclude Arbitration of Taylor's Claims; However, the Bankruptcy Court Could Consider the Commonwealth's Interests in Deciding Whether to Compel Arbitration of the Constitutionally Core Claims.

In denying Allied's Motion to Compel, the Bankruptcy Court also found that compelling arbitration would "infringe upon the Virginia Attorney General's right to pursue the remedies afforded to it by law." *Allied I, 594 B.R. at 654-55*. Allied challenges the Bankruptcy Court's reasoning, arguing that referral of Counts II and III to arbitration would not prevent the Commonwealth from pursuing its claims against Allied in a separate action. (Allied Br. at 40-41.) Indeed, Allied notes that the Commonwealth has **[**30]** already initiated a civil enforcement action against it in state court. (Allied Br. at 41.)

In finding that arbitration would undermine the Attorney General's ability to exercise its statutory prerogatives, the Bankruptcy Court relied primarily on the Supreme Court's holding in *EEOC v. Waffle House, Inc., 534 U.S. 279, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002)*. *Allied I, 594 B.R. at 654-55*. In *Waffle House*, the Supreme Court addressed "whether an agreement between an employer and employee to arbitrate employment related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief... in an enforcement action." *534 U.S. at 282*. In ruling that arbitration agreements did not preclude the EEOC from seeking victim-specific judicial relief, the Supreme Court reasoned that the EEOC did not ascent to the arbitration agreement in question and therefore could not be bound by the agreement's terms. **[*452]** *Id. at 294*. The Supreme Court added that even seemingly victim-specific relief can vindicate a public interest charged to the EEOC's protection, which would be undermined by compelling arbitration. *Id. at 295-96*.

The Court agrees with the Bankruptcy Court that the holding in *Waffle House* prevents Allied from compelling the Virginia Attorney General to arbitrate Counts II and III; however, the Attorney **[**31]** General's intervention does not preclude arbitration of Taylor's claims. Indeed, *Waffle House* concerned the EEOC's statutory authority to bring enforcement actions on behalf of individual employees and whether in doing so the EEOC became bound to the individual employee's legal obligations. *Id. at 291*. The Supreme Court observed that when the EEOC brings an enforcement action on behalf of an employee, the employee "has no independent cause of action" and cannot prevent the EEOC from pursuing the employee's claims, making the EEOC "the master of its own case." *Id*; *see also 42 U.S.C. § 2000e-5(f)(1)* (providing that when the EEOC brings a civil enforcement action, aggrieved persons shall have only the right to intervene).

By comparison, the Virginia Attorney General sought and received the right to intervene *alongside* Taylor in pursuing her claims, and therefore did not become the "master of its own case." Indeed, Virginia's consumer finance statutes contemplate that the Virginia Attorney General and individual consumers may bring civil actions separately. *See Va. Code § 6.2-1537(E)* (providing that Attorney General's right to initiate enforcement actions in the name of the Commonwealth does not prevent individuals from maintaining "an action **[**32]** to recover damages or restitution"). Thus, by intervening in Taylor's case, the Attorney General's

interests did not replace Taylor's interests — they merely complemented each other — and Taylor remained bound to the Arbitration Provision.

That said, because the Commonwealth intervened, at least in part, to prevent Allied from collecting on allegedly unlawful debts in bankruptcy proceedings, the Bankruptcy Court was within its discretion to consider the Commonwealth's interests in deciding whether to arbitrate the constitutionally core claims presented in Counts II and III.[2] Accordingly, the Court affirms the Bankruptcy Court's judgment on Allied's Motion to Compel. Because the Court rules in favor of Taylor on Allied's Motion to Compel, it denies as moot Taylor's Motion for Leave to File Supplemental Authority (ECF No. 18).

B. Motion to Intervene

Allied also challenges the Bankruptcy Court's decision to grant the Commonwealth's Motion to Intervene. (Allied Br. at 41-48.) Allied lodges six assignments of error in support of its challenge. First, Allied raises a procedural issue with how the Bankruptcy Court disposed of the Commonwealth's Motion to Intervene, arguing that the Commonwealth **[**33]** filed its Motion to Intervene seven days before the November 15, 2018 hearing during which the Bankruptcy Court granted the Motion. (Allied Br. at 41.) Consequently, Allied **[*453]** contends that it had insufficient time to file a substantive objection, filing only a "preliminary" objection on November 13, 2018. (Allied Br. at 41 n.7.) Allied adds that the Commonwealth did not file a motion for an expedited hearing as required by *Local Bankruptcy Rule 9013-1(H)(3)(c)*. (Allied Br. at 42.)

Second, Allied contends that the Bankruptcy Court erred by granting the Motion to Intervene, because the Commonwealth has already initiated a civil enforcement action against Allied in the Circuit Court for the City of Richmond, rendering the Commonwealth's Complaint in the adversary proceeding duplicative. (Allied Br. at 42-43 (citing *Commonwealth v. Allied Title Lending, LLC*, Civil Action No. CL 17004286-00 (Va. Cir. Ct., Rich.)).) Because the Commonwealth has brought "virtually identical" claims against Allied in state court, Allied argues that the Bankruptcy Court should have denied the Commonwealth's Motion to Intervene in the interest of judicial economy, comity between the federal and state courts and the avoidance of inconsistent **[**34]** results. (Allied Br. at 43.)

Third, Allied asserts that the statutory provision authorizing the Virginia Attorney General to bring enforcement actions for violations of *Va. Code § 6.2-1500*, *el seq.*, requires that the Attorney General bring those actions in Richmond City Circuit Court. (Allied Br. at 43-44 (citing *Va. Code Ann. § 6.2-1537(A)*).) Allied avers that, in enacting *Va. Code § 6.2-1537*, the General Assembly "manifested an intention to strip the federal courts of jurisdiction to hear the claims now advanced by the Commonwealth," which alone warrants denial of the Commonwealth's motion. (Allied Br. at 44.)

Fourth, Allied contends that the Commonwealth lacks Article III standing to bring its claims in the adversary proceeding, because it lacks any interest in Taylor's bankruptcy estate. (Allied Br. at 44.) Allied maintains that parties seeking permissive intervention must also demonstrate standing, including standing independent of the original plaintiffs, for any additional relief sought. (Allied Br. at 44-45.) In its fifth assignment of error, Allied argues that, if the Court finds that Counts II and III should be arbitrated, the predicate for the Commonwealth's intervention "no longer exists." (Allied Br. at 45.) Of course, because the Court **[**35]** affirms the Bankruptcy Court's denial of Allied's Motion to Compel, the Court will not address this assignment of error.

Finally, Allied contends that the Commonwealth fails to establish an independent basis for subject matter jurisdiction, because the Commonwealth's claims do not arise under Title 11, arise in a case under Title 11 which would have no existence outside of Taylor's bankruptcy case, or present claims otherwise related to a case under Title 11. (Allied Br. at 46 (citing *28 U.S.C. §§ 157(b)(1)*, *(c)(1)*).) Allied notes that the Commonwealth seeks the award of monetary damages to be held by the Commonwealth in trust, which has no relation to Taylor's bankruptcy. (Allied Br. at 47-48.)

The Commonwealth responds that Allied ignores "the plain language of *Rule 24(b)*" of the Federal Rules of Civil Procedure, which applies to bankruptcy proceedings pursuant to *Bankruptcy Rule 7024*.

[2] Of course, the Bankruptcy Court's primary and dispositive consideration must be whether compelling Taylor to arbitrate Counts II and III conflicted with the purposes of the Bankruptcy Code. Because the Court affirms the Bankruptcy Court's conclusion on that point, the Court does not find error in the Bankruptcy Court also relying on the Commonwealth's statutory interests as an additional, though non-dispositive, reason to decline arbitration.

(Commonwealth Br. at 7.) The Commonwealth notes that Rule 24(b) allows for permissive intervention where the intervenor's proposed claims share a common question of law or fact with the main action and where intervention will not unduly delay or prejudice the adjudication of the original parties' rights. (Commonwealth Br. at 7.)

To that end, the Commonwealth highlights **[**36]** several common questions of law and fact between its Proposed Complaint **[*454]** and Taylor's Amended Complaint, arguing that any challenges to the relief sought by the Commonwealth are "better suited for a motion to dismiss the Commonwealth's Proposed Complaint once it has been filed." (Commonwealth Br. at 8-9.) The Commonwealth also contends that the Bankruptcy Court rightly decided that the Commonwealth filed a timely motion to intervene that would not cause undue delay or prejudice to the original parties. (Commonwealth Br. at 9-10.)

As for Allied's assertion that it lacks standing to intervene, the Commonwealth responds that it has standing as a "party in interest" pursuant to 11 U.S.C. § 502(a). (Commonwealth Br. at 10-11.) The Commonwealth maintains that it has an interest "in ensuring that Allied does not use the bankruptcy forum as a means to collect and retain the monetary proceeds of [its allegedly] illegal loans." (Commonwealth Br. at 11.) The Commonwealth further cites to Edmond v. Consumer Protection Division (In re Edmond), 934 F.2d 1304, 1306 (4th Cir. 1991), in which the Fourth Circuit "recognized an attorney general's unique *'parens patriae'* standing in a bankruptcy matter where creditors have violated state consumer protection acts." (Commonwealth Br. at 11 (emphasis supplied).) **[**37]**

The Commonwealth likewise refutes Allied's contention that Virginia Code § 6.2-1537 prohibits its intervention in a forum other than Richmond City Circuit Court, arguing that the crux of its Proposed Complaint seeks to prohibit the collection of void loans through bankruptcy proofs of claim. (Commonwealth Br. at 12.) As for Allied's arguments regarding subject matter jurisdiction, the Commonwealth notes that the Bankruptcy Court's jurisdiction over claims "arising in" a Title 11 case does not require that the claims be expressly created by the Bankruptcy Code and that the "related to" jurisdiction of bankruptcy courts enjoys a similarly broad interpretation. (Commonwealth Br. at 13.) Because the Commonwealth's Proposed Complaint seeks to preclude Allied from collecting on loans that are void under state law through bankruptcy proceedings, the Commonwealth contends that its claims fall within the Bankruptcy Court's subject matter jurisdiction. (Commonwealth Br. at 14.)

Separately, Taylor responds that the Bankruptcy Court appropriately granted the Commonwealth's Motion to Intervene, because the Commonwealth satisfied the requirements of Rule 24(b). (Taylor Br. at 34-35.) Taylor adds that Allied had sufficient time to **[**38]** object to the Commonwealth's Motion, noting that the Bankruptcy Court informed the parties on October 10, 2018 that if the Commonwealth moved to intervene, the Bankruptcy Court would hear such a motion during the November 15, 2018 hearing. (Taylor Br. at 35.) And Taylor notes that Allied in fact presented arguments against the Commonwealth's invention, including the arguments that Allied now raises on appeal, before the November 15, 2018 hearing. (Taylor Br. at 35-36.)

Pursuant to Bankruptcy Rule 7024, Federal Rule of Civil Procedure 24 governs the right to intervene in a bankruptcy proceeding. In relevant part, Rule 24 provides that any party may permissively intervene when: (1) the party files a "timely motion" to intervene; (2) the party "has a claim or defense that shares with the main action a common question of law or fact;" and, (3) "the intervention will [not] unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1)(B), (b)(3).[3] A court's **[*455]** decision to grant or deny permissive intervention "is particularly deferential," requiring an appellant challenging the court's decision to demonstrate "a *clear* abuse of discretion." McHenry v. Comm 'r of Internal Revenue, 677 F.3d 214, 219 (4th Cir. 2012) (emphasis supplied) (quotations and citations omitted); *see also* Alt v. U.S. E.P.A., 758 F.3d 588, 591 (4th Cir. 2014) ("[W]e have

[3] Notably, Rule 24(b)(2) provides that governmental officers and agencies may intervene in cases where a party's claim or defense "is based on ... a statute or executive order administered by the office or agency; or . . . any regulation, order, requirement, or agreement issued or made under the statute or executive order." Fed. R. Civ. P. 24(b)(2)(A)-(B). The Virginia Attorney General does not rely on this provision in arguing for permissive intervention. Indeed, Rule 24(b)(2) requires that the officer or agency seeking intervention "manage[], direct[], or supervise[] the application" of the statute or executive order on which an original party bases her claim or defense, and the Virginia Attorney General has not argued as such. McHenry, 677 F.3d at 220. Accordingly, the Commonwealth's Motion to Intervene falls under Rule 24(b)(1), which provides for the permissive intervention of "anyone."

emphasized that **[**39]** a court's discretion [in resolving motions to intervene] is 'wide.'" (citations omitted)).

In determining the timeliness of a motion to intervene, courts must consider "how far the suit has progressed," "the prejudice that delay might cause other parties," and "the reason for any tardiness in moving to intervene." *Scardelletti v. Debarr, 265 F.3d 195, 203 (4th Cir. 2001)*, *rev'd on other grounds sub nom. Devlin v. Scardelletti, 536 U.S. 1, 122 S. Ct. 2005, 153 L. Ed. 2d 27 (2002)*. Among these factors, "the most important... is the prejudice caused to the other parties by the delay." *Hill Phoenix, Inc. v. Systematic Refrigeration, Inc., 117 F. Supp. 2d 508, 514 (E.D. Va. 2000)* (citing *Spring Constr. Co. v. Harris, 614 F.2d 374, 377 (4th Cir. 1980)*).

As for the third factor — undue delay and prejudice to the original parties — because "[a]dding parties to a case almost always results in some delay,... delay alone does not mean that intervention should be denied." *Ohio Valley Envtl. Coal, Inc. v. McCarthy, 313 F.R.D. 10, 30 (S.D. W. Va. 2015)* (citations omitted). Instead, "*Rule 24(b)* requires *undue* delay." *Id.* (emphasis supplied). Ultimately, courts should balance any delay or prejudice threatened by intervention with "the advantages promised by it." *Id.* "Regardless of what a court concludes in considering [the undue delay or prejudice to the original parties], it may still either grant or deny intervention." *McHenry, 677 F.3d at 222*.

Relevant here, a party seeking intervention must also present "an independent ground of subject matter jurisdiction." *Shanghai Meihao Elec., Inc. v. Leviton Mfg. Co., 223 F.R.D. 386, 387 (D. Md. 2004)*. Because the existence of subject **[**40]** matter jurisdiction constitutes a question of law, the Court reviews the subject matter jurisdiction of the Bankruptcy Court *de novo*. *Owens-Ill., Inc. v. Rapid Am. Corp. (In re Celotex Corp.), 124 F.3d 619, 625 (4th Cir. 1997)*. Notably, subject matter jurisdiction includes determinations of standing. *In re Rivada Networks, 230 F. Supp. 3d 467, 471 (E.D. Va. 2017)*.

Because Allied does not challenge the Bankruptcy Court's finding that the Commonwealth filed a timely motion to intervene and that intervention would not unduly delay or prejudice the adjudication of the original parties' rights, the Court will focus its review on Allied's primary contention: that the Bankruptcy Court improperly granted the Commonwealth's Motion to Intervene, because the Commonwealth lacked standing to sue and because the Bankruptcy Court lacked subject **[*456]** matter jurisdiction over the Commonwealth's Proposed Complaint. (Allied Br. at 43-48.)

1. The Commonwealth Has Standing to Intervene.

As for the Commonwealth's standing to intervene, the Fourth Circuit's holding in *Edmond v. Consumer Protection Division (In re Edmond), 934 F.2d 1304 (4th Cir. 1991)*, proves instructive. In *Edmond*, the Fourth Circuit considered the standing of the Consumer Protection Division of Maryland's Office of the Attorney General (the "Division") in an adversary proceeding before the Bankruptcy Court for the District of Maryland. *934 F.2d at 1309*. Specifically, Edmond argued that because the Division failed to certify a specific class **[**41]** of consumers in its adversary proceeding to forestall discharge, the Division lacked standing to sue. *Id.* In rejecting Edmond's argument, the Fourth Circuit recognized that "[t]he concept of *parens patriae* (translated "father of the country") gives a state standing to sue when the state seeks to protect a quasi-sovereign interest." *Id. at 1310*. The Fourth Circuit noted that *parens patriae* standing requires that the state be "more than a 'nominal party without a real interest of its own'" and that the state "'articulate an interest apart from the interests of particular private parties.'" *Id.* (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel. Barez, 458 U.S. 592, 600, 607, 102 S. Ct. 3260, 73 L. Ed. 2d 995 (1982)*). Otherwise, states may vindicate their quasi-sovereign interests, including "'the health and well-being — both physical and economic — of [their] residents in general.'" *Id.* (quoting *Alfred L. Snapp & Son, 458 U.S. at 607*). And the Fourth Circuit instructed that although the injury from the activity challenged by the state "must affect more than an identifiable group of individual residents, indirect effects of the injury may be considered" to determine standing. *Id.* (internal quotations omitted).

Applying these principles, the Fourth Circuit found that the Division had standing to sue in the bankruptcy proceeding. *Id.* The Fourth Circuit **[**42]** highlighted two aspects of *Maryland's Consumer Protection Act* that made "explicit that the Division acts on behalf of the state's quasi-sovereign interest when it pursues actions under the Act." *Id.* First, *Maryland's Consumer Protection Act* authorized the Division to initiate administrative hearings to obtain cease and desist orders "'on its own initiative'" and "'in the absence of consumer complaints.'" *Id.* (quoting *Consumer Protection Div. v. Consumer Pub. Co., 304 Md. 731, 501 A.2d 48, 62 (Md. 1985)*). Second, the Act further

authorized the Division to disgorge any benefits from a violator without proving individual injury to Maryland consumers. *Id. at 1310-11* (citing *Consumer Pub. Co., 501 A.2d at 73-74*). The Fourth Circuit interpreted these provisions as embodying "a broad state interest in protecting all consumers, present and future," and the Fourth Circuit cited to other decisions finding that attorneys general could sue in bankruptcy proceedings pursuant to consumer protection statutes. *Id. at 1311* (citing *Kelley v. Sclater (In re Sclater), 40 B.R. 594, 597 (Bankr. E.D. Mich. 1984)* and *Abrams v. DeFelice (In re DeFelice), 77 B.R. 376, 380 (Bankr. D. Conn. 1987)*).

Here, in its Proposed Complaint, the Commonwealth sets forth one count for relief, alleging that Allied's open-end credit plans did not meet the requirements of Virginia's open-end credit statute, *Va. Code § 6.2-312*, and therefore constituted usurious loans issued without a consumer finance license in violation of *§ 6.2-1501*. (Proposed Compl. **[**43]** ¶¶ 60-69.) Based on Allied's alleged violations of Virginia's consumer finance statutes, the Virginia **[*457]** Attorney General, on behalf of the Commonwealth, seeks to: (1) nullify and void the open-end credit plans issued by Allied between July 28, 2013 and July 24, 2017; (2) enjoin Allied from attempting to collect on those plans or from further violating the relevant statutes; (3) disgorge Allied of the principal, interest and charges paid on such plans pursuant to *§§ 6.2-1537(C)* and *6.2-1541(B)*, with the funds paid to the Commonwealth as trustee; and, (4) award fees and costs to the Commonwealth. (Proposed Compl. ¶¶ 25, 70, Prayer for Relief.)

The Court finds that the Virginia Attorney General had standing to intervene on behalf of the Commonwealth, because it sought to vindicate quasi-sovereign interests entrusted to its charge. Indeed, like *Maryland's Consumer Protection Act* in *Edmond*, Virginia's Consumer Finance Act ("CFAs") authorizes the Virginia Attorney General to bring suit in the name of the Commonwealth on its own initiative and in the absence of any consumer complaints. *Va. Code § 6.2-1537(A)*. Although the provision refers to the Attorney General's duty to bring suit in the Circuit Court for the City of Richmond, the provision **[**44]** nonetheless evinces Virginia's "broad state interest in protecting all consumers, present and future." *Edmond, 934 F.2d at 1311*. *Section 6.2-1537* also provides that the Virginia Attorney General may, in the name of the Commonwealth, seek restitution from violators of the CFA, with no requirement that the amounts be paid to specific consumers. *§ 6.2-1537(C)*. And the CFA reserves the right of individual consumers to bring causes of action separate from the Commonwealth, further establishing that the General Assembly intended to provide the Attorney General with a broader interest in enforcing the CFA than the interest possessed by individual consumers. *§ 6.2 1537(E)*.

Moreover, the statutes establishing the Virginia Attorney General's Office provide that the Attorney General shall conduct all litigation in civil matters in which any "state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge . . . [is] interested." *Va. Code § 2.2-507*. To that end, the CFA establishes the interests of the State Corporation Commission ("CC") in preventing unlicensed and usurious lending to Virginia consumers. *See §§ 6.2-1501(A)* (requiring that any business making personal loans to consumers with interest exceeding the usury cap first obtain a **[**45]** license from the SCC), 6.2 1507(A) (empowering the SCC to investigate applicants for a consumer finance license and to deny applications that fail to meet the enumerated criteria, including that the applicant has the appropriate "financial responsibility, experience, character and general fitness . . to command the confidence of the public"), *6.2-1511* (empowering the SCC to revoke the license of any entity who knowingly or negligently violates the Consumer Finance Act), *6.2-1530* (empowering the SCC, in relevant part, to investigate "the loans, books and records of any person . . . engaged, or [who] appears to the Commission to be engaged, in a business for which the person is required to be licensed and supervised under this chapter . . . [or who] the Commission has reason to believe is violating any provision of this chapter"), *6.2-1531* (empowering the SCC to examine the books of any licensee under the Consumer Finance Act "as often as it deems to be in the public interest"), *6.2-1535* (empowering the SCC to adopt regulations "to effect the purposes of this chapter"), *6.2-1543* (empowering the SCC, on its own initiative, to impose a civil penalty upon any licensee found to knowingly **[**46]** or negligently violate the CFA). Thus, in moving to intervene on behalf of the Commonwealth, the Virginia Attorney General **[*458]** clearly sought to vindicate the quasi-sovereign interests of both the Attorney General's Office and the SCC in protecting the economic well-being of Virginia's consumers. Accordingly, the Commonwealth has standing to intervene.

2. The Bankruptcy Court Had Subject Matter Jurisdiction over the Commonwealth's Proposed Complaint.

Allied further contends that the Bankruptcy Court lacked subject matter jurisdiction over the Commonwealth's Proposed Complaint, because: (1) Virginia Code § 6.2-1537(A) provides that the Attorney General must bring enforcement actions under the CFA in the Richmond City Circuit Court; and, (2) the Bankruptcy Court lacked jurisdiction under 28 U.S.C. § 157. (Allied Br. 43-44, 46-48.) The Court finds both arguments inapposite.

For one, Virginia Code § 6.2-1537(A) requires only that the Virginia Attorney General "institute and prosecute" civil enforcement actions under the CFA in the Richmond City Circuit Court, which, by its terms, does not prevent the Attorney General from intervening in a legal action raising issues under the CFA. Indeed, to read § 6.2-1537(A) as preventing the Virginia Attorney General from intervening in **[**47]** any consumer finance lawsuit would conflict with the Attorney General's statutory duty to represent the Commonwealth and its agencies in "all civil litigation in which any of them are interested." Va. Code § 2.2-507(A); *see also* Cox v. Oakwood Mining, Inc., 16 Va. App. 965, 969, 434 S.E. 2d 904 (Va. Ct. App. 1993) ("It is well established that a statute should be construed with a view toward harmonizing it with other statutes and consistent with fundamental law, especially when no violence is done to the language of the statute and such interpretation satisfies its terms." (internal quotations omitted)). Intervention exists, at least in part, to allow parties to have a voice in litigation in which they have an interest, so the Court will not read § 6.2-1537(A) to be so limiting. *See* Am. Humanist Ass 'n v. Maryland-Nat'l Capital Park & Planning Comm 'n, 303 F.R.D. 266, 270 (D. Md. 2014) (noting that although permissive intervention does not require that the movant establish an interest in the litigation, a strong interest in the subject matter of the litigation weighs in favor of granting intervention). Furthermore, to the extent that Allied argues that, in enacting § 6.2-1537, the General Assembly "manifested an intention to strip the federal courts of jurisdiction to hear the claims now advanced by the Commonwealth," (Allied Br. at 44), the Court notes that Article III grants Congress — not Virginia's General **[**48]** Assembly — the power to establish the jurisdiction of the federal courts, U.S. Const. art. III, § 1.

The Court likewise finds that the Bankruptcy Court has subject matter jurisdiction over the Commonwealth's Proposed Complaint pursuant to 28 U.S.C. § 157. The jurisdiction of bankruptcy courts, "like that of other federal courts, is grounded in, and limited by, statute." Celotex Corp. v, Edwards, 514 U.S. 300, 307, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995). To that end, 28 U.S.C. § 1334(a) provides that "[e]xcept as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11," 28 U.S.C. § 1334(b) further provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11," Within these jurisdictional limits, pursuant to 28 U.S.C. § 157(a), "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or **[*459]** arising in or related to a case under title 11 shall be referred to the bankruptcy judges for this district." This District has utilized § 157(a) to confer jurisdiction on the Bankruptcy Court to the full extent permitted by law. (General Order of Reference from the United States District Court for the Eastern District of Virginia dated **[**49]** August 15, 1984.) Therefore, the Bankruptcy Court has subject matter jurisdiction over every civil proceeding "arising under" Title 11, "arising in" Title 11 or "related to" a case "arising under" Title 11.

"A claim 'aris[es] under Title 11' if it is a cause of action created by the Bankruptcy Code, and which lacks existence outside the context of bankruptcy." Educ, Credit Mgmt. Corp. v. Kirkland (In re Kirkland), 600 F.3d 310, 316 (4th Cir, 2010) (citing *Aheong v. Mellon Mortg. Co. (In re Aheong)*, 276 B.R, 233, 242-46 (B.A.P, 9th Cir. 2002)). By comparison, "[a] proceeding or claim 'arising in' Title 15 is one that is 'not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy Valley Historic Lid. P 'ship v. Bank of New York, 486 F.3d 831, 835 (4th Cir, 2007) (quoting Grausz v. Englander, 321 F.3d 467, 471 (4th Cir. 2003) (internal quotations omitted)). In other words, a claim "arises in" Title 11 when "'its would have no practical existence *but for* the bankruptcy Id. (quoting Grausz, 321 F.3d at 471 (emphasis supplied) (internal quotations omitted)).

Finally, a bankruptcy court may exercise subject matter jurisdiction over any claim "related to" a case under Title 11. To determine whether a claim relates to a case under Title 11, the Fourth Circuit "has adopted the test articulated by the Third Circuit in Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)." Id. at 836. Pursuant to that test, a bankruptcy court may exercise "related to" jurisdiction over proceedings, the outcome of which "*could conceivably have **[**50]** any effect on the estate being administered in bankruptcy."* Pacor, Inc., 743 F.2d at 994 (emphasis supplied). "Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if

the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* That said, "related to" jurisdiction does not extend to "controversies with third parties who are otherwise strangers to the civil proceeding and to the parent bankruptcy." *Id.* (internal quotations and citations omitted).

Here, the Bankruptcy Court made no direct findings regarding its jurisdiction over the Commonwealth's Proposed Complaint. However, the Bankruptcy Court may clearly exercise subject matter jurisdiction over the Commonwealth's claims, because they arose in Title 11 or relate to a case under Title 11. First, to the extent that the Commonwealth's Proposed Complaint seeks to enjoin Allied from collecting on its allegedly unlawful loans through proofs of claim against bankruptcy debtors, the Commonwealth's claims arise in Title 11, because they **[**51]** would have no possible existence outside of a bankruptcy proceeding.

Moreover, to the extent that the Commonwealth seeks to invalidate Allied's open-end credit plans beyond the bankruptcy claims process, those claims relate to Taylor's bankruptcy case, because the outcome of the Commonwealth's claims "could alter [Taylor's] rights, liabilities, options, or freedom of action (either positively or negatively)" and would impact "the handling and administration of [Taylor's] bankrupt estate" by affecting the Allied's right to claim against it. *Pacor, Inc., 743 F.2d at 994*. **[*460]** And the fact that the Commonwealth brings its claims in the interest of the public does not preclude the Bankruptcy Court from exercising jurisdiction, for the Fourth Circuit and other courts have confirmed the ability of states to bring similar claims in the bankruptcy context. *See, e.g., Edmond, 934 F.2d at 1309-13* (holding that consumer protection division of Maryland Attorney General's Office could bring adversary proceeding against debtor to forestall discharge in interest of public); *DeFelice, 77 B.R. at 377-81* (holding that New York Attorney General could bring claim for injunctive relief, restitution, damages and costs against debtor on behalf of public); *Sclater, 40 B.R. at 595-97* (holding that Michigan Attorney General **[**52]** could bring complaint against debtor under Michigan Consumer Protection Act to exempt certain claims from discharge).

In any case, should the Commonwealth's claims at some point exceed the jurisdiction of the Bankruptcy Court, Allied may move to dismiss those claims as improper. But such a possibility does not prevent the Bankruptcy Court from exercising jurisdiction over the Commonwealth's Proposed Complaint to the extent that it has the statutory ability to do so. Accordingly, the Court finds that the Commonwealth possessed an independent ground of subject matter jurisdiction that permitted the Commonwealth to intervene in the Bankruptcy Court.

3. The Bankruptcy Court Did Not Abuse Its Discretion in Granting the Commonwealth's Motion to Intervene.

Having resolved Allied's arguments concerning the jurisdictional barriers to the Commonwealth's intervention, the Court will review the Bankruptcy Court's decision to grant the Commonwealth's Motion to Intervene for a clear abuse of discretion. *McHenry, 677 F.3d at 219*. To that end, the Court finds no clear abuse of the Bankruptcy Court's discretion. For one, the Court agrees with the Bankruptcy Court that the Commonwealth timely filed its Motion to Intervene, in **[**53]** part, because the Commonwealth filed its Motion before Allied filed its Answer to the Amended Complaint, before the start of discovery and before the Bankruptcy Court scheduled a trial date. *Allied II, 2019 Bankr. LEXIS 18, 2019 WL 103775, at *2*. The Court also agrees that the Commonwealth's intervention would not cause a prejudicial delay, because the Commonwealth instituted "an almost identical state court lawsuit" against Allied before the initiation of the adversary proceeding, allowing the Commonwealth to intervene without requiring Allied to prepare a new defense. *Id.* Moreover, the Court finds that the Commonwealth's Proposed Complaint shared common questions of law and fact with Taylor's Amended Complaint, satisfying *Rule 24(b)(1)(B)*.

As for Allied's contention that, because the Commonwealth had instituted a nearly identical suit against Allied in state court, the Bankruptcy Court should have denied the Commonwealth's Motion to Intervene in the interest of judicial economy, comity between the federal and state courts and the avoidance of inconsistent results, the Court finds such an argument unpersuasive. (Allied Br. at 42-43.) Allied argument relies primarily on the Supreme Court's holding in *Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)*. (Allied Br. at 43.) In relevant part, the Supreme **[**54]** Court in *Colorado River* recognized that jurisprudential and federalism principles could

justify a federal court refusing to exercise jurisdiction when a state court has concurrently exercised its jurisdiction over parallel claims. *424 U.S. at 817-18*. However, the Supreme **[*461]** Court also noted that "the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention." *Id. at 818*. The Supreme Court instructed that such "limited" circumstances might exist when, for example, a state court has first assumed jurisdiction over a dispute involving property. *Id.* And the Supreme Court explained that courts should also consider the inconvenience of the federal forum, the avoidance of piecemeal litigation and the order in which the concurrent forums obtained jurisdiction, though "only the clearest of justifications will warrant dismissal." *Id. at 818-19*.

Considering these factors, the Court finds that the Bankruptcy Court did not abuse its discretion in granting the Commonwealth's Motion to Intervene. Indeed, the fact of the Commonwealth's concurrent enforcement action against **[**55]** Allied in state court does not present the "clearest of justifications" to warrant dismissal. Although the Commonwealth presents nearly identical claims against Allied in both fora, the Commonwealth's Proposed Complaint also seeks to prevent Allied from collecting on its allegedly unlawful loans in bankruptcy proceedings, which occur only in federal court. In so doing, as the Bankruptcy Court noted, the Commonwealth's intervention reduces the risk of inconsistent results between federal and state court by allowing the Commonwealth to present its arguments against the nature and validity of Allied's open-end credit plans in the context of bankruptcy cases, including Taylor's case, or to otherwise represent the Commonwealth's interests in both fora. *Allied II, 2019 Bankr. LEXIS 18, 2019 WL 103775, at *2*.

Ultimately, because the Bankruptcy Court has jurisdiction to resolve the Commonwealth's claims in intervention, and because the Bankruptcy Court did not clearly abuse its discretion in otherwise granting the Commonwealth's Motion to Intervene, the Court affirms the Bankruptcy Court's decision to grant the Motion.[4]

IV. CONCLUSION

For the reasons set forth above, the Court AFFIRMS the decisions of the Bankruptcy Court as to both Allied's Motion **[**56]** to Compel and the Commonwealth's Motion to Intervene and DENIES AS MOOT Taylor's Motion to File Supplemental Authority (ECF No. 18). An appropriate Order shall issue,

Let the Clerk file a copy of this Memorandum Opinion electronically and notify all counsel of record.

/s/ David J. Novak

United States District Judge

Richmond, Virginia

Date: October 22, 2019

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[4] The Court also rejects Allied's first assignment of error — that it had insufficient time to object to the Commonwealth's Motion to Intervene — because the record clearly reflects that during an October 10, 2018 pre-trial conference, the Bankruptcy Court informed all of the parties that it would entertain a motion to intervene by the Commonwealth during the November 15, 2018 hearing. (Order (Adv, Pro. No. 18-03003, ECF No. 102) at 1 n.1.) Moreover, Allied now raises the same arguments on appeal that it raised in its Preliminary Objection to the Commonwealth's Motion, suggesting that the lack of additional time to object did not prejudice Allied. (Prelim. Obj. at 2-5.) And, in any case, the Bankruptcy Court did not abuse its discretion even after considering Allied's fully matured arguments.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	)	Chapter 13
SHIRLEY DEAN TAYLOR,	)	Case No. 17-30142-KRH
Debtor.	)	
SHIRLEY DEAN TAYLOR,	)	
Plaintiff,	)	Adv. Proc. No. 18-03003-KRH
v.	)	
ALLIED TITLE LENDING, LLC d/b/a ALLIED CASH ADVANCE, *et al.*,	)	
Defendants.	)	

NOTICE OF MOTION AND NOTICE OF HEARING

Shirley Dean Taylor (the "**Debtor**") has filed a *Motion for Approval of Compromise and Settlement of Adversary Proceeding Claims* dated November 22, 2021 (the "**Motion**"). A copy of the Motion, together with exhibits, may be obtained from the Debtor's counsel (as defined below) or through the Court's PACER system.

In connection with the Motion, the Boleman Law Firm, P.C., The Law Office of Dale W. Pittman, P.C., and Consumer Litigation Associates, P.C. (collectively, the "**Debtor's Counsel**") are requesting compensation for legal services rendered in the combined amount of $280,000.00 in connection with commencing Adversary Proceeding No. 18-03003, commencing Adversary Proceeding No. 18-3028 filed by Denise Ann Nurmi ("**Ms. Nurmi**"), and representing the Debtor and Ms. Nurmi in related appeals. Declarations with respect to attorney's fees are filed as Exhibits to the Motion and, together with supporting billing records, may be obtained from the Debtor's Counsel or through the Court's PACER system.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

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Counsel for Plaintiff

If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then on or before **seven (7) days** prior to the date of the scheduled hearing, you or your attorney must:

☒ File with the Court, at the address shown below, a written response and supporting memorandum pursuant to Local Bankruptcy Rule 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above:

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond, Virginia 23219

☒ Mail a copy of your response and supporting memorandum to:

Mark C. Leffler, Esquire
Boleman Law Firm, P.C.
2104 W. Laburnum Ave., Suite 201
Richmond, VA 23227
Fax: (804) 358-8704
Email: mcleffler@bolemanlaw.com
[Counsel to Debtor Shirley Dean Taylor]

☒ Attend a hearing on the Motion scheduled to be held on **December 15, 2021 at 12:00 p.m.** before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge.

NOTICE IS HEREBY GIVEN that the hearing will be conducted by video conference via Zoom for Government in accordance with General Order 20-5. Any participant wishing to appear via Zoom for Government must preregister. Parties wishing to participate in hearings via Zoom for Government must transmit, via e-mail, a completed request form, linked here https://www.vaeb.uscourts.gov/wordpress/?wpfb_dl=871 as a PDF-fillable request form, by the requesting party to the appropriate bankruptcy judge's chambers, as follows: EDVABK-ZOOM-Judge_Huennekens@vaeb.uscourts.gov.

Absent compelling circumstances, the request form should be submitted no later than two (2) business days prior to the hearing or proceeding. The appropriate bankruptcy judge's chambers will then provide the requesting party with a registration link. All participants must separately register for the video conference no later than one (1) business day prior to the hearing or proceeding. Persons that register will receive separate email notification on whether their registration has been approved or denied. In the event that registration is approved, the confirmation email will include the participant's unique link to the video conference.

UNDER NO CIRCUMSTANCES MAY ANY PARTICIPANT OR LISTENER RECORD OR BROADCAST THE PROCEEDINGS.

If you or your attorney do not take these steps, including the filing and serving of a written response and supporting memorandum within the time period and in the manner set forth above pursuant to Local Bankruptcy Rule 9013-1, the Court may deem any opposition waived, treat the Motion as conceded, decide that you do not oppose the relief sought in the Motion and issue an order granting the relief requested without further notice or hearing.

Respectfully submitted,

SHIRLEY DEAN TAYLOR

By: */s/ Mark C. Leffler*
Counsel for Debtor/Plaintiff

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Counsel for Debtor/Plaintiff Shirley Dean Taylor

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2021, a true and accurate copy of the foregoing Notice of Motion and Notice of Hearing was served on all persons receiving electronic notices in this case via the Court's Electronic Case Filing (ECF) system, as well as by first-class U.S. Mail, postage prepaid, and/or by email, on the following parties and the parties on the attached **Service List**:

Kathryn R. Montgomery, Esq.
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Shirley Dean Taylor
[redacted]

By: */s/ Mark C. Leffler*
Counsel for Debtor/Plaintiff

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	)	Chapter 13
SHIRLEY DEAN TAYLOR,	)	Case No. 17-30142-KRH
Debtor.	)	
SHIRLEY DEAN TAYLOR,	)	
Plaintiff,	)	Adv. Proc. No. 18-03003-KRH
v.	)	
ALLIED TITLE LENDING, LLC d/b/a ALLIED CASH ADVANCE, *et al.*,	)	
Defendants.	)	

MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT OF ADVERSARY PROCEEDING CLAIMS AND MEMORANDUM OF POINTS AND AUTHORITIES
(*Taylor v. Allied Title Lending, LLC*, Adv. Proc. No. 18-03003)

Shirley Dean Taylor (the "**Debtor**"), by counsel, and pursuant to Rules 2002(a)(3), 2002(a)(6), and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Local Bankruptcy Rules 2016-1 and 9013-1, respectfully moves this Court to approve the compromise and settlement of certain claims of the Debtor against Allied Title Lending, LLC d/b/a Allied Cash Advance ("**Allied**"), including a request for approval of compensation for legal services rendered by the Boleman Law Firm, P.C., The Law Office of Dale W. Pittman, P.C., and Consumer Litigation Associates, P.C. (collectively, the "**Debtor's Counsel**") in the combined amount of $280,000.00 in connection with commencing Adversary Proceeding No.

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Counsel for Plaintiff

18-03003, commencing Adversary Proceeding No. 18-3028 filed by Denise Ann Nurmi ("**Ms. Nurmi**"), and representing the Debtor and Ms. Nurmi in related appeals. In connection therewith, the Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On January 11, 2017, the Debtor filed a voluntary petition for relief under Chapter 13 of Title 11 of the Bankruptcy Code.

3. On January 15, 2018, the Debtor brought an adversary proceeding against Allied objecting to Allied's proof of claim, as well as seeking damages and injunctive relief against Allied on behalf of herself and other similarly situated bankruptcy debtors arising out of a line of credit opened by the Debtor with Allied (the "**Adversary Proceeding**").

4. On November 13, 2019, Allied appealed the district court's decision affirming the bankruptcy court's judgment denying Allied's Motion to Compel Arbitration of certain claims raised in the Debtor's Adversary Proceeding to the United States Court of Appeals for the Fourth Circuit (the "**Fourth Circuit**").

5. After arms-length negotiations conducted in good faith, as well as the assistance of a Fourth Circuit mediator, the Debtor and Allied (hereinafter, the Debtor and Allied are collectively referred to as the "**Parties**") have entered into a settlement regarding all of the Debtor's claims asserted in the Adversary Proceeding, which is memorialized in the settlement

agreement, a copy of which is attached hereto as **Exhibit A** (the "**Settlement Agreement**"). The Settlement Agreement is subject to the Court's approval pursuant to this motion.

6. In the mediation proceedings with the Fourth Circuit Mediator, the Attorney General's Office for the Commonwealth of Virginia was involved because of its status as a party to the action after this Court granted its request to intervene in the action. Although several rounds of mediation were conducted between all parties at that time, the whole matter was unable to be resolved. After that first round of mediations was unsuccessful, Allied was ultimately able to settle with the Commonwealth of Virginia under an agreement that provided for $850,000.00 to be distributed as restitution to some Allied customers, prohibited Allied from collecting any further payments from Allied customers whose accounts were not converted to a separate loan program, and provided for $150,000.00 to be paid to the Commonwealth as attorney's fees and settlement administration expenses. *See* https://www.oag.state.va.us/media-center/news-releases/1974-march-4-2021-herring-secures-850-000-in-restitution-for-virginia-consumers-from-open-end-credit-plan-lender.

The Compromise and Settlement

7. After consideration of the respective claims, defenses, and positions asserted by the Parties, the costs and risks of litigation, the settlement with the Commonwealth of Virginia, and the impact of litigation on the Debtor, Allied, and the Debtor's creditors, the Parties have reached a settlement relating to the Adversary Proceeding and related matters -- all subject to notice and Court-approval. The Debtor believes that the settlement is in the best interests of the Debtor, the Debtor's bankruptcy estate, and the Debtor's creditors.

8. The Debtor (i) has conducted significant due diligence in connection with the Adversary Proceeding, (ii) has carefully considered and analyzed pertinent legal and factual

issues, and (iii) has conducted cost-benefit and risk analyses. The Parties have conducted substantial back and forth negotiations and made and fielded multiple settlement offers.

9. The Settlement Agreement provides, in pertinent part, that:

i. Allied agrees to the disallowance of its proof of claim against the Debtor;

ii. Allied agrees to pay the sum of $10,000 to the Debtor;

iii. Allied agrees to withdraw all proofs of claim arising out of or related to its "Line of Credit Agreement" products sold on or after July 31, 2012, to the extent it has not already done so, and it will not pursue such claims in the future;

iv. Allied agrees to pay the combined sum of $280,000 to Debtor's Counsel (as defined below) in the Adversary Proceeding and in the companion adversary proceeding filed by Ms. Nurmi in connection with legal services rendered in both adversary proceedings and related appeals;

v. Allied agrees to pay $125 to similarly situated debtors who petitioned for Chapter 13 bankruptcy on or after January 15, 2016 in whose cases Allied filed a proof of claim; and

vi. The Parties agree to mutual releases and dismissal of the Adversary Proceeding with prejudice.

Basis for Relief

10. "To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy." *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996). A proposed compromise or settlement should be approved so long as "it is within the acceptable range of reasonableness." *Nellis v. Shugrue,* 165 B.R. 115, 123 (S.D. N.Y. 1994). The Court need not "be convinced that the settlement is the best possible compromise or that the parties

have maximized their recovery." *Id*. *See also In re Austin*, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995) (citations omitted).

11. In determining whether to approve a compromise, the Court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable to the creditors of the estate. *In re Frye*, 216 B.R. 166, 174 (Bankr. E.D. Va. 1997). These factors include: (a) the probability of success in litigation; (b) the potential difficulties, if any, in collection; (c) the complexity of the litigation involved and the expense, inconveniences and delays necessarily attending it; and (d) the paramount interest of the creditors. *Id.* These factors help the Court determine whether it should approve the proposed compromise as fair and equitable to the creditors of the estate. *Martin v. Kane* (*In re A & C Prop.*), 784 F.2d 1377 (9th Cir. 1986); *Drexel, Burham, Lambert, Inc. v. Flight Transp. Corp. (In re Flight Transp. Corp. Sec. Litig.)*, 730 F.2d 1128 (8th Cir. 1984); *In re Jackson Brewing Co.*, 624 F.2d 605 (5th Cir. 1980); *see also In re Austin*, 186 B.R. 397 (Bankr. E.D. Va. 1995) (discussing factors to approve settlements). As explained below, all of these factors weigh in favor of the approval of the Settlement Agreement.

12. **The probability of success in further litigation**. Although the Debtor believes her claims are well founded, there exists the very real possibility that Allied could prevail in defending against the claims asserted in the Adversary Proceeding. As such, resolution as set forth in the Settlement Agreement is appropriate. More importantly, the main purpose of the Debtor's adversary proceeding was to stop Allied from using this Court's processes to collect on any of its accounts while the legitimacy of those accounts were being litigated in state court by the Commonwealth of Virginia. That purpose was accomplished prior to the appeal of this action when Allied agreed to withdraw all pending proofs of claim. That litigation took years and has

now been concluded without a judicial determination of the underlying validity of the claims but with an agreement by Allied not to seek further collection on such accounts. With the main purpose of the litigation accomplished, the additional success of affirmative relief for Debtors was not similarly guaranteed. Furthermore, the settlement with the Commonwealth of Virginia, which was based on the same claims but for all Virginia residents, recovered the affirmative remedy for all consumers at a magnitude that demonstrated that the claims for additional affirmative relief in the Adversary Proceedings were inherently risky.

13. **The potential difficulties, if any, in collection**. In the event the Debtor obtains a judgment against Allied, the Debtor recognizes that collection on such potential judgment may require the Debtor to incur additional effort and expense. Given that Allied is a corporate entity that is no longer extending credit in Virginia, and given that the settlement with the Commonwealth of Virginia showed that the OAG was also concerned about the ability to collect affirmative relief, the Debtor is uncertain if Allied would be able to satisfy a significant judgment. Consequently, this factor favors approval of the settlement.

14. **The complexity of the litigation involved and the expense, inconveniences and delays necessarily attending it**. The Debtor's claims against Allied are factually intensive and relate to various contentions based on alleged violations of various Virginia state law consumer finance statues and usury remedies. For instance, one of the Debtor's claims relates to whether Allied's Line of Credit Agreement constitutes an open-end credit plan under Virginia law. The Debtor believes the case would require extensive fact discovery and depositions of parties that live throughout the country. Further, the Debtor anticipates that if litigation continues, the case would have complex motions practice, a complex class certification process, and a lengthy trial,

with the testimony of multiple witnesses, including expert witnesses and the production of numerous exhibits.

15. **The paramount interest of the creditors**. The Settlement Agreement provides for a substantial payment of funds to the Debtor, disallowance of Allied's proof of claim against the Debtor, withdrawal of proofs of claim filed against similarly situated bankruptcy debtors, and further monetary relief for similarly situated bankruptcy debtors (as described in paragraph 4 of the Settlement Agreement). Further, the resolution of the Debtor's claims against Allied without further litigation reduces delay in the administration of the Debtor's Chapter 13 bankruptcy case. This factor favors approval of the Settlement Agreement.

16. Finally, the resolution of a presumptive class action with a settlement that does not utilize Rule 23 is appropriate here because of the risk that no class would be certified given the relief already obtained: the withdrawal of the proofs of claims for all presumptive class members. Given that affirmative relief is provided to these people and given the settlement with the Commonwealth of Virginia and the prohibition of any further debt collection, this presumptive class action is properly settled as an individual action.

17. The Debtor believes that the proposed settlement embodied in the Settlement Agreement resolves all matters between the Parties in a cost-effective and efficient manner and alleviates undue risk and costs of litigation. In light of the above considerations, the Court should approve the relief requested herein because the Settlement Agreement is fair and equitable.

Request for Compensation and Allocation of Settlement Payment

18. Pursuant to the Declarations attached hereto and incorporated herein as **Exhibits C**, **D**, and **E**, the Debtor's Counsel requests approval for compensation in the amount of

$280,000 related to combined legal services rendered in the Adversary Proceeding, a companion adversary proceeding filed by Ms. Nurmi, and related appeals. The compensation paid to Debtor's Counsel for legal services rendered in the Adversary Proceeding, the Adversary Proceeding filed by Ms. Nurmi, related appeals, and the relief provided for in the Settlement Agreement shall be paid by Allied and delivered directly to Debtor's Counsel in accordance with paragraph 3 of the Settlement Agreement.

19. To determine what fees should be awarded, this Court should follow the lodestar method. In *Perdue v. Kenny*, 559 U.S. 542, 130 S.Ct. 1662 (2010), the United States Supreme Court decided that the lodestar method for determining reasonable fees should be used instead of the "Johnson factors" and it explained why the lodestar calculation is objective.

> One possible method was set out in *Johnson v. Georgia Highway Express, Inc.,* which listed 12 factors that a court should consider in determining a reasonable fee.[4] This method, however, "gave very little actual guidance to district courts. Setting attorney's fees by reference to a series of sometimes subjective factors placed unlimited discretion in trial judges and produced disparate results."
> An alternative, the lodestar approach, was pioneered by the Third Circuit in *Lindy Bros. Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp*., and "achieved dominance in the federal courts" after our decision in *Hensley Gisbrecht v. Barnhart*. "Since that time, '[t]he "lodestar" figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence.'"
>
> Although the lodestar method is not perfect, it has several important virtues. First, in accordance with our understanding of the aim of fee-shifting statutes, the lodestar looks to "the prevailing market rates in the relevant community." Developed after the practice of hourly billing had become widespread, the lodestar method produces an award that *roughly* approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case. Second, the lodestar method is readily administrable; and unlike the *Johnson* approach, the lodestar calculation is "objective," and thus cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results.

559 U.S. at 550-52 (citations omitted).

Since the *Perdue v. Kenny* decision, the Fourth Circuit has in some cases stated that the "Johnson factors" are still to be applied separately, *see e.g. McAfee v. Boczar*, 738 F.3d 81, 88-91 (4th Cir. 2014), but it has also recognized that a short one paragraph explanation for a fee award can be sufficient, *see Berry v. Schulman*, 807 F.3d 600, 617-18 (4th Cir. 2015). The *Johnson* factors are as follows: time and labor expended; novelty and difficulty of question raised; skill required to properly perform legal services; attorney's opportunity cost; customary fee; attorney's expectations at outset of litigation; time limitations imposed by the client or circumstances; experience, reputation, and ability of attorney; amount in controversy and results obtained; undesirability of case within legal community; nature and length of professional relationship between attorney and client; and attorneys' fee awards in similar cases. The Fourth Circuit recognizes that the *Perdue* consideration of attorneys' reasonable hourly rates and the reasonableness of the time expended can in many cases incorporate these factors. *See Jones v. Dancel*, 792 F.3d 395, 405 fn. 12 (4th Cir. 2015) (finding "no basis to vacate the arbitration award, given that the arbitrator explicitly considered *Perdue* and appears to have incorporated the factors set forth in *Barber* in his analysis of the reasonableness of attorneys' billing rates and time expended on successful claims").

20. In this case, both the lodestar analysis and the "Johnson factors" support approval of the fees requested by Debtor's Counsel. For the Court to make that determination, Debtor's Counsel offer the attached Declarations and Exhibits which present the evidence for the Court to consider when making those three determinations. The requested hourly rates are supported by their Declarations and are lower than rates charged by lawyers of similar experience who practice in this Court. Debtor's counsel have also attached detailed time records for all work performed in this case. Counsel have also explained in their Declarations the reason this work

was necessary and specifically draw the Court's attention to the detailed narrative summary of the case found in the Declaration of Mark C. Leffler (Exhibit C). The time records reflect that Debtor's counsel have proceeded both prudently and diligently in their attempts to reach a satisfactory resolution in the matters brought forth in the Adversary Proceedings.

21. Finally, this Court can also have confidence in the reasonableness of the fee, given the process by which it was negotiated. Some courts have recognized that "the determination of attorneys' fees in class action settlements is fraught with the potential for a conflict of interest between the class and class counsel." *Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3rd Cir. 2005) (citations omitted). While this case did not ultimately reach the stage at which class certification occurred, Debtor's Counsel approached negotiation over fees in a manner designed to ensure a fair process that minimized conflicts. Throughout negotiations and the mediation presided over in the Fourth Circuit, Debtor's Counsel steadfastly focused negotiations first on the relief to Ms. Taylor, Ms. Nurmi, and similarly-situated debtors without discussing the amount of their attorney's fees. Negotiating these issues sequentially confirms that the Debtors and similarly-situated debtors are receiving full value for their claims by eliminating any suggestion that Debtor's Counsel's interests were even potentially in conflict—as there is no possibility that a greater recovery for the Debtors and the similarly-situated debtors would decrease the money available to pay the attorneys' fee award.

22. As shown by the attached Declarations and related time records, the total amount of fees (including costs) accrued by Debtor's Counsel significantly exceeds the $280,000.00 that they request for approval. This number comprises 76.4% of the recorded fees, at counsel's current hourly rate, and $27.00 of expenses, and is amply supported by the evidence before the Court.

Notice of Motion

23. Bankruptcy Rule 2002(a)(3) provides for at least 21 days' notice by mail of a hearing to approve a compromise and settlement of a controversy. Bankruptcy Rule 2002(a)(6) provides for at least 21 days' notice by mail of a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000. A separate notice of this motion and the hearing hereon has been filed and served in accordance with Bankruptcy Rule 2002.

Waiver of Memorandum of Law

24. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in this motion and all applicable authority is set forth herein, the Debtor respectfully requests that the Court waive the requirement that a motion be accompanied by a separate memorandum of law.

Requested Relief

WHEREFORE, the Debtor respectfully requests that the Court to enter an order, substantially in the form attached hereto as **Exhibit B**, approving the Settlement Agreement, including the request for approval of compensation for legal services rendered by the Debtor's Counsel in the combined amount of $280,000.00 in connection with commencing Adversary Proceeding No. 18-03003, commencing Adversary Proceeding No. 18-3028 filed by Ms. Nurmi, and representing the Debtor and Ms. Nurmi in related appeals, and grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

SHIRLEY DEAN TAYLOR

By: */s/ Mark C. Leffler*
Counsel for Debtor/Plaintiff

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Counsel for Debtor/Plaintiff Shirley Dean Taylor

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2021, a true and accurate copy of the foregoing Motion to Approve Compromise and Settlement of Adversary Proceeding Claims was served on all persons receiving electronic notices in this case via the Court's Electronic Case Filing (ECF) system, as well as the following parties via first class U.S. Mail (postage prepaid) or via e-mail:

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Shirley Dean Taylor
[redacted]

By: */s/ Mark C. Leffler*
Counsel for Debtor/Plaintiff

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: DORI DANYELLE WINGATE **Case No. 15-35033-KLP**
Debtor **Chapter 13**

DORI DANYELLE WINGATE*, individually and on behalf of a class of similarly situated individuals,*

Plaintiff,

v. **Adv. Pro. No. _____**

BLUECHIP FINANCIAL,
d/b/a Spotloan.
and
AMERICAN INFOSOURCE LP

Defendants.

CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, DORI DANYELLE WINGATE, ("Plaintiff", or "Ms. Wingate"), by counsel, and for her Complaint against the Defendants, she alleges as follows:

I. PRELIMINARY STATEMENT

1. This is an action for declaratory relief, injunctive relief, actual damages, statutory damages, costs and attorneys' fees brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("FDCPA") and for sanctions pursuant to Federal Rule of Bankruptcy Procedure 3001. Plaintiff brings this action individually and on behalf of all others similarly situated to recover remedies by reason of the Defendants' violations of the FDCPA and Federal Rule of

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Counsel for Plaintiff

Bankruptcy Procedure 3001. The violating actions addressed in this complaint stem from Defendants' attempts to collect a usurious debt by filing improper Proofs of Claim in Plaintiff's Chapter 13 bankruptcy case.

II. JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(b), and 1334, and 11 U.S.C. §§ 105 and 502, and Federal Rules of Bankruptcy Procedure 3001, 3007, and 7023 in that this action arises in and relates to Plaintiff's Chapter 13 bankruptcy case.

3. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (C), and (O). The claims in this case arise under 28 U.S.C. §§ 1331 and 1332, and 15 U.S.C. § 1692k(d). To the extent that the Court finds that any of Plaintiff's claims in this complaint are non-core claims, Plaintiff consents to entry of final judgment on all claims presented in this matter by the Bankruptcy Court.

4. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and 1409. A substantial portion of the events giving rise to Plaintiff's claims occurred in this District, Plaintiff and other similarly-situated debtors filed bankruptcy in this District, payments were demanded in this District, and Defendants transact business in this District.

III. PARTIES

5. Plaintiff Dori Danyelle Wingate is a natural person, and an adult resident of the Richmond Division. She is a "consumer" as defined by 15 U.S.C. §1692a(3).

6. Defendant BlueChip Financial ("Spotloan") is an out-of-state company that is not registered with the Virginia State Corporation Commission. It does business as Spotloan, Inc.

7. Defendant American InfoSource LP ("InfoSource") is an out-of-state limited partnership that is not registered with the Virginia State Corporation Commission. It filed a Proof of Claim in Ms. Wingate's bankruptcy on behalf of Spotloan.

8. InfoSource asserts that it is a leading servicer of consumer bankruptcy debt, and the largest filer of bankruptcy Proofs of Claim in the U.S. American InfoSource, Bankruptcy Solutions, www.americaninfosource.com/business-process-experts/bankruptcy/ (last visited June 12, 2017).

9. InfoSource regularly collects or attempts to collect debts that are owed or due or asserted to be owed or due another. InfoSource is a "debt collector" as defined by 15 U.S.C. §1692(a)(6).

IV. FACTUAL ALLEGATIONS

10. On September 30, 2015, Plaintiff filed for relief under Chapter 13 of Title 11 U.S. Code in the Bankruptcy Court for the Eastern District of Virginia, Case No. 15-35033-KLP.

11. On October 5, 2015, Defendants filed or caused to be filed a Proof of Claim against Ms. Wingate in her bankruptcy case, attempting to collect $1,498.87. The Proof of Claim is attached to this complaint as Exhibit 1.

12. The alleged debt described in the Proof of Claim is a "debt" as defined in 15 U.S.C. § 1692(a)(5).

13. In the Proof of Claim, Defendants describe the current creditor as "American InfoSource LP as agent for Spot Loan".

14. In Box 1 of the Proof of Claim, Defendants indicated that no interest or other charges were included in the claim.

15. Because the claim asserted that no interest or fees were included in the claim, no itemization of interest or fees was attached.

16. In Box 2 of the Proof of Claim, Defendants indicated the basis of the claim was "Money Loaned".

17. Despite referencing a loan, the Proof of Claim included no copies of any loan agreement.

18. In Box 8 of the Proof of Claim, Defendant InfoSource checked the box indicating that it is "the creditor's authorized agent".

19. The Proof of Claim is signed by an employee of InfoSource.

20. Attached to the Proof of Claim is a document called "Statement of Accounts".

21. This document asserts that the InfoSource employee who signed the Proof of Claim "relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request."

22. Above the signature of the InfoSource employee, the Proof of Claim states, "I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief."

23. Contrary to that declaration, both Spotloan and InfoSource knew that the information was not true and correct.

24. Both Spotloan and InfoSource knew that Spotloan was claiming that it had made a loan in the principal amount of $800.00.

25. Both Spotloan and InfoSource knew that Spotloan claimed the right to charge 360% annual interest on that loan amount.

26. Both Spotloan and InfoSource knew that Spotloan's standard business practice was to charge excessively high interest on loans made through the internet.

27. At the time it was filed, both Spotloan and InfoSource knew that the claim amount included interest.

28. Spotloan and InfoSource intentionally and willfully misrepresented in the Proof of Claim that no interest was included.

29. Spotloan and InfoSource intentionally and willfully failed to attach the loan documents in their possession which would show that interest was included.

30. Plaintiff denies owing this debt to Defendants and has objected to the Proof of Claim (see Objection filed in Case No. 15-35033-KLP, Docket No. 26, filed May 16, 2016).

31. Plaintiff's Objection asserts that the loan is both usurious and void under Virginia law.

32. Plaintiff's Objection also requested that Defendants provide a copy of the loan documents that were not filed with the Proof of Claim.

33. In response to Plaintiff's Objection, Defendants filed or caused to be filed an Amended Proof of Claim. The Amended Proof of Claim is attached to this complaint as Exhibit 2.

34. The Amended Proof of Claim again asserts that no interest or fees are included in the claim amount.

35. The Amended Proof of Claim again asserts, under oath, that the information provided is true and correct.

36. The Amended Proof of Claim includes a copy of the loan agreement showing a principal balance of $800.00 and an interest rate of 360%.

37. In the Amended Proof of Claim, Spotloan and InfoSource intentionally and willfully misrepresented that no interest was included.

38. Although the issues in this case can be determined without deciding whether the underlying claims are void, upon information and belief, the actions taken by Defendants in their efforts to conceal the invalidity of the underlying debts lead to their violations of the FDCPA and Bankruptcy Rule 3001.

39. The loan agreement is a standardized document which asserts that the laws of the Turtle Mountain Band of Chippewa Indians apply and "that United States state law does not apply to the Loan Agreement in any way."

40. Although the loan agreement contains an arbitration clause, it also asserts that it "shall remain exclusively subject to the laws and courts of the Turtle Mountain Band of Chippewa Indians."

41. The choice of forum and choice of law clauses used in Spotloan's form contract seek to disclaim the laws of the United States, and these clauses are unenforceable. *See Dillon v. BMO Harris Bank*, 856 F.3d 330, 335-36 (4th Cir. 2017).

42. The loan agreement does not disclose that BlueChip Financial is in any way the original creditor extending credit.

43. The loan agreement's only statement about BlueChip Financial is that the debtor irrevocably appoints BlueChip Financial as a "Registrar" who will keep a "Register" of the ownership of the loan and the principal and interest owing from time to time.

44. The loan agreement asserts that the Registrar's Register is "conclusive" upon the parties, "absent clear error".

45. InfoSource did not become involved in attempting to collect this debt until Plaintiff declared bankruptcy and stopped making payments on the debt.

46. InfoSource has a contract with Spotloan to file Proofs of Claim for Spotloan when debtors on Spotloan's high-interest rate loans declare bankruptcy.

V.

COUNT I
CLASS CLAIM AGAINST INFOSOURCE
VIOLATIONS OF THE FDCPA – 15 U.S.C. § 1692, *et seq.*

47. Plaintiff realleges and incorporates all of the preceding paragraphs in this complaint.

48. Pursuant to Rules 23(a), (b)(2), (b)(3) and (c)(4) of the Federal Rules of Civil Procedure, Plaintiff brings this class action on behalf of herself and all others similarly situated. Specifically, Plaintiff seeks to represent the following persons ("the FDCPA Class" or "FDCPA Class Members"):

> All debtors in the Bankruptcy Court for the Eastern District of Virginia in whose bankruptcy cases InfoSource filed Proofs of Claim alleging that a claim owed to Spotloan included no interest, fees, or other charges in the claim amount, and that state the person signing the Proof of Claim has a reasonable belief that the information in the Proof of Claim is true and correct.

49. Members of the above-defined FDCPA Class can be easily identified through Defendants' records, the records of this Court, and the records of this Court's Chapter 13 trustees.

A. Numerosity

50. The proposed FDCPA Class is so numerous that individual joinder of all Members is impracticable.

51. While the identities of FDCPA Class Members are unknown to Plaintiff at this time, their identifying information is readily ascertainable through appropriate investigation and discovery. The disposition of the claims of the FDCPA Class Members in a single action will provide substantial benefits to all class members and to the Court. The FDCPA Class Members may be notified through the Bankruptcy Noticing Center.

B. Predominance of Common Questions of Law and Fact

50. Common questions of law and fact exist as to all Members of the FDCPA Class and predominate over any questions affecting only individual FDCPA Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether the Proofs of Claim are false;

(b) Whether the Proofs of Claim violate Federal Rule of Bankruptcy Procedure 3001;

(c) Whether InfoSource violated the Fair Debt Collection Practices Act;

(d) Whether InfoSource engaged in unfair, deceptive, and unconscionable practices in connection with the Proofs of Claim;

(e) Whether, as a result of InfoSource's activities, Plaintiff and FDCPA Class Members have suffered damages and, if so, the appropriate valuation of those damages; and,

(f) Whether, as a result of InfoSource's activities, Plaintiff and FDCPA Class Members are entitled to declaratory and injunctive relief, or other relief; and, if so, the nature of that relief.

C. Typicality

51. Plaintiff's claims are typical of the claims of the Members of the FDCPA Class. Plaintiff and FDCPA Class Members share the facts and legal claims or questions in this complaint, and Plaintiff and all FDCPA Class Members have been similarly affected by

InfoSource's common course of conduct: filing improper claims with false representations in this District.

D. Adequacy

52. Plaintiff will fairly and adequately represent and protect the interests of the FDCPA Class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

53. Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the FDCPA Class. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

E. Superiority

54. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) The claims presented in this case predominate over any questions of law or fact affecting individual FDCPA Class Members;

(b) Individual joinder of all FDCPA Class Members is impracticable;

(c) Absent a Class, Plaintiff and FDCPA Class Members will continue to suffer harm as a result of InfoSource's unlawful conduct;

(d) Given the amount of individual FDCPA Class Members' claims, few, if any, FDCPA Class Members have the resources to, or would choose to, seek legal redress for the wrongs Defendants committed against them, and absent FDCPA Class Members have no substantial interest in individually controlling the prosecution of individual actions;

(e) Even if individual FDCPA Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

(f) Adjudications of FDCPA Class Members' claims against InfoSource on an individual basis would, as a practical matter, be dispositive of the interests of other FDCPA Class Members who are not parties to the adjudication, and may substantially impair or impede the ability of other FDCPA Class Members to protect their interests; and,

(g) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and FDCPA Class Members can seek redress for the harm caused by Defendants.

F. Injunctive Relief

55. InfoSource knowingly filed improper Proofs of Claim, which failed to comply with Bankruptcy Rule 3001 and which contained false statements, resulting in uniform damage to Plaintiff and FDCPA Class Members. As a result, InfoSource has acted on grounds generally applicable to each FDCPA Class Member, which makes final injunctive relief or corresponding declaratory relief appropriate with respect to the FDCPA Class as a whole. Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

56. Because Plaintiff seeks injunctive and corresponding declaratory and equitable relief for the entire FDCPA Class, the prosecution of separate actions by individual FDCPA Class Members would create a risk of inconsistent or varying adjudications with respect to individual FDCPA Class Members, and would establish incompatible standards of conduct for

Defendants. Further, bringing individual claims would overburden the courts and would be an inefficient method of resolving the dispute at the center of this litigation.

G. The FDCPA Violations

57. InfoSource violated 15 U.S.C. §1692e by using false, deceptive, and/or misleading representations or means in connection with the collection of a debt. Specifically, InfoSource filed Proofs of Claim falsely asserting that a reasonable belief exists that no interest or fees were included in the claims even though it knew the claims were based on high-interest rate loans and that interest was included.

58. InfoSource violated 15 U.S.C. § 1692f by using unfair and unconscionable means to collect a debt by filing Proofs of Claim that did not comply with Rule 3001's requirement that the documentation supporting the claims be attached.

59. As further examples of InfoSource's standard practice in violation of the FDCPA, Exhibits 3, 4, 5, and 6 of this Complaint show the exact practice by InfoSource of withholding the documentation underlying the claim.

60. The standard practice of InfoSource of withholding the documentation underlying the claim is unfair and unconscionable because providing that documentation in the first instance would show the following;

a. that interest was included;

b. that the interest was at an extremely high rate; and

c. that the loan agreement asserted that no laws of the United States applied.

61. If the loan agreements had been attached in the first instance in each case, bankruptcy trustees and debtor's counsel could then have knowledgeably decided whether to

challenge the Proofs of Claim as falsely asserting no interest was included, and also whether to challenge the claims as based on usurious or void debts.

62. As a result of the violations of the FDCPA, InfoSource is liable to Plaintiff and the putative FDCPA Class Members for actual and statutory damages, plus costs and attorneys' fees.

COUNT II
CLASS CLAIM AGAINST SPOTLOAN
VIOLATIONS OF FEDERAL RULE OF BANKRUPTCY PROCEDURE 3001

63. Plaintiff realleges and incorporates all of the preceding paragraphs in the complaint.

64. Pursuant to Rules 23(a), (b)(2), and (c)(4) of the Federal Rules of Civil Procedure, Plaintiff brings this class action on behalf of herself and all others similarly situated. Specifically, Plaintiff seeks to represent the following persons ("the Rule 3001 Class" or "Rule 3001 Class Members"):

> All debtors in the Bankruptcy Court for the Eastern District of Virginia in whose bankruptcy cases Proofs of Claim alleged that a claim was owed to Spotloan that included no interest, fees, or other charges in the claim amount.

65. As set forth below, using the factors for (b)(3) class actions as a guide for this (b)(2)-only class, injunctive and corresponding declaratory relief is appropriate for the Rule 3001 Class as a whole.

66. For this (b)(2) class, the members can be easily identified through Spotloan's records, the records of this Court, and the records of this Court's Chapter 13 trustees.

A. Numerosity

67. The proposed Rule 3001 Class is so numerous that individual joinder of all Members is impracticable.

68. While the identities of Rule 3001 Class Members are unknown to Plaintiff at this time, their identifying information is readily ascertainable through appropriate investigation and discovery. The disposition of the claims of the Rule 3001 Class Members in a single action will provide substantial benefit to all class members and to the Court. The Rule 3001 Class Members and the Chapter 13 Trustees in each affected case may be notified through the Bankruptcy Noticing Center.

B. Predominance of Common Questions of Law and Fact

69. Common questions of law and fact exist as to all Members of the Rule 3001 Class and predominate over any questions affecting only individual Rule 3001 Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether the claim amount actually included interest or fees;

(b) Whether the Proofs of Claim violate Federal Rule of Bankruptcy Procedure 3001;

(c) Why Spotloan would file false Proofs of Claim;

(d) Whether the decision to withhold the documentation underlying the claim was an effort to conceal the false assertion of no interest in the claim;

(e) Whether the decision to withhold the documentation underlying the claim was an effort to conceal the terms of the loan agreement, which are unenforceable;

(f) Whether the decision to withhold the documentation underlying the claim was an effort to conceal that the loans were usurious and void;

(g) Whether, as a result of Spotloan's activities, Plaintiff and Rule 3001 Class Members are entitled to declaratory and injunctive relief, or other relief; and, if so, the nature of the relief.

C. Typicality

70. Plaintiff's claims are typical of the claims of the Members of the Rule 3001 Class. Plaintiff and Rule 3001 Class Members share the facts and legal claims or questions in this complaint. Plaintiff and all Rule 3001 Class Members have been similarly affected by Spotloan's common course of conduct: filing Proofs of Claim in this District that violate Rule 3001.

D. Adequacy

71. Plaintiff will fairly and adequately represent and protect the interests of the Rule 3001 Class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

72. Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the Rule 3001 Class. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

E. Superiority

73. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) The claims presented in this case predominate over any questions of law or fact affecting individual Rule 3001 Class Members;

(b) Individual joinder of all Rule 3001 Class Members is impracticable;

(c) Absent a Class, Plaintiff and Rule 3001 Class Members will continue to suffer harm as a result of Spotloan's unlawful conduct;

(d) Few, if any, Rule 3001 Class Members have the resources to, or would choose to, seek legal redress for the wrongs that Spotloan committed against them, and absent Rule 3001 Class Members have no substantial interest in individually controlling the prosecution of individual actions;

(e) Even if individual Rule 3001 Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

(f) Adjudications of individual Rule 3001 Class Members' claims against Spotloan would, as a practical matter, be dispositive of the interests of other Rule 3001 Class Members who are not parties to the adjudication, and may substantially impair or impede the ability of other Rule 3001 Class Members to protect their interests; and,

(g) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Rule 3001 Class Members can seek redress for the harm caused by Spotloan.

F. Injunctive Relief

74. Spotloan knowingly filed or knowingly authorized the filing of improper Proofs of Claim that failed to comply with Bankruptcy Rule 3001 and which contained false statements, resulting in uniform damage to Plaintiff and Rule 3001 Class Members. As a result, Spotloan has acted or refused to act on grounds generally applicable to each Rule 3001 Class Member, which makes final injunctive relief or corresponding declaratory relief appropriate with respect to the Rule 3001 Class as a whole. Pursuant to 28 U.S.C. § 2201, there is an actual justiciable controversy which is not speculative, and a declaratory judgment is the appropriate mechanism for resolving the dispute.

75. Because Plaintiff seeks injunctive and corresponding declaratory and equitable relief for the entire Rule 3001 Class, the prosecution of separate actions by individual Rule 3001 Class Members would create a risk of inconsistent or varying adjudications with respect to individual Rule 3001 Class Members, and would establish incompatible standards of conduct for Spotloan. Further, bringing individual claims would overburden the courts and would be an inefficient method of resolving the dispute at the center of this litigation.

G. The Rule 3001 violation

76. Spotloan violated Federal Rule of Bankruptcy Procedure 3001(c)(1) by filing or authorizing the filing of Proofs of Claim that intentionally omit the documentation underlying the claims.

77. Spotloan violated Federal Rule of Bankruptcy Procedure 3001(c)(2) by filing or authorizing the filing of Proofs of Claim that intentionally falsely assert that no interest or fees or other charges were in the claim amounts, and that fail to include an itemized statement of the interest, fees, expenses, or charges that it knew were actually incurred before the bankruptcy petitions were filed and which were included in the claim amounts.

78. Exhibits 3, 4, 5, and 6 show the exact practice of Proofs of Claim filed on Spotloan's behalf that withhold the documentation underlying the claim.

79. As a result of the violations of the Federal Rule of Bankruptcy Procedure 3001(c), and as the "holder of the claim", Spotloan is subject to an appropriate remedy as determined by this Court, for Plaintiff and the putative Rule 3001 Class Members, and also for costs and attorneys' fees.

VII. DEMAND FOR RELIEF

Plaintiff therefore requests on behalf of herself and the proposed two classes, the following relief:

(i) An order certifying the FDCPA Class Members' claims pursuant to Fed. R. Civ. P. 23(b)(3) and/or 23(b)(2), or certifying such issues as may be deemed appropriately treated on a class basis;

(ii) An order certifying the Rule 3001 Class Members' claims pursuant to Fed. R. Civ. P. 23(b)(2), or certifying such issues as may be deemed appropriately treated on a class basis;

(iii) An order appointing named Plaintiff as representative of both classes and appointing undersigned counsel as Class counsel for each class;

(iv) An award of damages under the FDCPA, including actual and statutory damages against InfoSource in an amount to be proven at the time of trial;

(v) An award of the appropriate remedy as determined by this Court for Spotloan's violations of Federal Rule of Bankruptcy Procedure 3001(c)(1), including but not limited to striking Spotloan's claims filed in violation of this rule;

(vi) An award of attorneys' fees;

(vii) An award of litigation costs;

(viii) A Declaration that Defendants violated the law and an injunction against them filing any further Proofs of Claim that violate Federal Rule of Bankruptcy Procedure 3001(c)(1); and

(ix) Other declaratory or injunctive relief as the Court deems fair and equitable.

Respectfully submitted,
DORI DANYELLE WINGATE
By: /s/ Mark C. Leffler
Counsel for Plaintiff

Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
2104 W. Laburnum Ave., Suite 201
Richmond, VA 23227
Telephone (804) 358-9900
Counsel for Plaintiff

Dale W. Pittman (VSB #15673)
THE LAW OFFICE OF DALE W. PITTMAN, P.C.
The Eliza Spotswood House
112-A West Tabb Street
Petersburg, VA 23803
Telephone (804) 861-6000
Counsel for Plaintiff

Thomas D. Domonoske (VSB #35434)
Consumer Litigation Associates, P.C.
763 J. Clyde Morris Blvd., Suite 1A
Newport News, VA 23601
Telephone (540) 442-7706
Counsel for Plaintiff

B10 (Official Form 10) (04/13) 5374593

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA		**PROOF OF CLAIM**
Name of Debtor: DORI DANYELLE WINGATE	Case Number: 15-35033	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property): American InfoSource LP as agent for Spot Loan		**COURT USE ONLY**
Name and address where notices should be sent: American InfoSource LP as agent for Spot Loan PO Box 248838 Oklahoma City, OK 73124-8838 Telephone number: (877) 893-8820 email: poc_ais@americaninfosource.com		☐ Check this box if this claim amends a previously filed claim. **Court Claim Number:** _____ *(If known)* Filed on: _____
Name and address where payments should be sent (if different from above): Telephone number: email:		☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $ 1,498.87

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: Money Loaned
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
0074	_____ (See instruction #3a)	_ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $ _____

Annual Interest Rate _____% ☐ Fixed or ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:
$ _____

Basis for perfection: _____

Amount of Secured Claim: $ _____

Amount Unsecured: $ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is eariler - 11 U.S.C § 507 (a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

$ _____

**Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. *(See instruction #7, and the definition of "**redacted**".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☑ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Amanda Matchett
Title: Paralegal
Company: American InfoSource
Address and telephone number (if different from notice address above):

/s/ Amanda Matchett (Signature) 10/05/2015 (Date)

Telephone number: email:

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
DORI DANYELLE WINGATE (XXX-XX-5713)		XX0074		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
$1,498.87		$1,498.87		
Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
05/17/2015				

Creditor Information

Claimant	Current Creditor
American InfoSource LP as agent for Spot Loan	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
DORI DANYELLE WINGATE			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]
Case Number	**Court**	**Chapter**	**Filing Date**
15-35033	Eastern District of Virginia	13	09/30/2015

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	PO Box 248838 Oklahoma City, OK 73124-8838	5374593

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

Fill in this information to identify the case:

Debtor 1 DORI DANYELLE WINGATE

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: EASTERN District of VIRGINIA (State)

Case number 15-35033

Official Form 410

Proof of Claim

04/16

Read the instruction before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

American InfoSource LP as agent for Spot Loan
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g))

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
American InfoSource LP as agent for Spot Loan Name	Name
PO Box 248838 Number Street	Number Street
Oklahoma City OK 73124-8838 City State ZIP Code	City State ZIP Code
Contact phone (877) 893-8820	Contact phone
Contact email poc_ais@americaninfosource.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

☐ No
☑ Yes. Claim number on court claims registry (if known) 1 Filed on 10/05/2015 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 0 0 7 4

7. **How much is the claim?** $ 1,498.87
Does this amount include interest or other charges?
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Money Loaned

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____
Amount of the claim that is secured: $ _____
Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) _____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $ _____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to property.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	$ _____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507 (a)(7).	$ _____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C § 507 (a)(4).	$ _____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. §507 (a)(8).	$ _____
☐ Contributions to an employee benefit plan . 11 U.S.C. § 507 (a)(5).	$ _____
☐ Other. Specify subsection of 11 U.S.C § 507 (a)(__) that applies.	$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward that debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 06/14/2016
MM / DD / YYYY

/s/ Amanda Matchett
Signature

Print the name of the person who is completing and signing this claim:

Name: Amanda Matchett
First Name Middle Name Last Name

Title: Paralegal

Company: American InfoSource
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: PO Box 248838
Number Street

Oklahoma City OK 73124-8838
City State Zip Code

Contact Phone (877) 893-8820 Email poc_ais@americaninfosource.com

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
DORI DANYELLE WINGATE (XXX-XX-5713)		XX0074		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
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Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
05/17/2015				

Creditor Information

Claimant	Current Creditor
American InfoSource LP as agent for Spot Loan	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
DORI DANYELLE WINGATE			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]

Case Number	Court	Chapter	Filing Date
15-35033	Eastern District of Virginia	13	09/30/2015

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	PO Box 248838 Oklahoma City, OK 73124-8838	5374593Amendment

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

TURTLE MOUNTAIN
BAND OF CHIPPEWA INDIANS

4180 HIGHWAY 281
P.O. BOX 900
BELCOURT, NORTH DAKOTA 58316

(701) 477-2600
FAX: (701) 477-6836

Effective January 1, 2015

BlueChip Financial License

To Whom It May Concern:

By way of chartering BlueChip Financial, the Tribal government presented to Office of the Secretary/ Treasurer of the Tribe that information required under Part 7 of the Turtle Mountain Band of Chippewa Indians Tribal Credit Transaction Code. Having found the requirements met by BlueChip, and having found it in the best interests of the Tribe to waive the $400 renewal fee, the Tribe hereby extends the previously issued license through the year 2015. The next renewal fee of $400 should be paid to this office on or before December 1, 2015.

Patrick J. Marcellais
Tribal Secretary/ Treasurer

CONSENT FOR ELECTRONIC SIGNATURES, RECORDS, AND DISCLOSURES

You give your consent to electronic disclosures. This CONSENT informs you of your rights when receiving legally required disclosures, notices and information from Spotloan. By consenting to the electronic delivery of disclosures, you agree that Spotloan, Inc. (“Spotloan” or we or us) may provide electronically any and all communications relating to your loan application and/or loan, including any applicable disclosures required by applicable state or federal law (the “Communications”). The Communications may be sent to you electronically by emailing it to you at the address you provide to us. We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.

Option for Paper or Non-Electronic Records.You may request any electronic disclosures, electronic records, and contract documents ("Disclosures") by emailing us at help@Spotloan.com or by mailing your written request to P.O. Box 927, Palatine, IL 60078-0927. We will provide paper copies at no charge, and we retain all Disclosures as applicable law requires.

Scope of Consent.Your Consent and our agreement to conduct transactions electronically apply to all transactions between you and Spotloan. By exercising Your Consent, Spotloan will process your information and interact electronically during this transaction and any future online transactions. We will also send you notices related to your information and other notices electronically.

Hardware and Software Considerations.Before you decide to do business electronically with Spotloan, you should consider whether you have the required hardware and software capabilities described herein. To access and retain the Disclosures electronically, you will need to use the following computer software and hardware: A PC or MAC compatible computer or other device capable of accessing the Internet and an Internet Browser software program that supports at least 128 bit encryption, such as Microsoft® Internet Explorer, Google Chrome® Mozilla Firefox®, Opera®, Maxthon®, Avant Browser®, PhaseOut®, Deepnet Explorer®, SpaceTime®, or Safari®. If at any time during this transaction these requirements change in a way that creates a material risk that you may not be able to receive Disclosures electronically, we will notify you of these changes. You will need a printer or a long-term storage device, such as your computer's disk drive, to retain a copy of the Disclosures for future reference. By Your Consent, you confirm that you are able to access and view records and documents in HTML format. For questions regarding the hardware and software requirements, you may email us at help@Spotloan.com or write to us at P.O. Box 927, Palatine, IL 60078-0927.

Withdrawing Consent.You may withdraw Your Consent at any time and at no charge by emailing us at help@Spotloan.com or writing to us at the address above with the details of your request. However, withdrawing Your Consent (1) does not change the legal effect, validity, and enforceability of prior electronic Disclosures, and (2) prevents you from doing future business with us online.

Change to Your Contact Information.You must keep us informed of any change in your email address or mailing address. You can do this by sending an email to help@Spotloan.com or by writing to us at the address above.

YOUR ABILITY TO ACCESS DISCLOSURES. BY CLICKING "I AGREE," YOU ACKNOWLEDGE THAT YOU CAN ACCESS THE DISCLOSURES IN THE DESIGNATED FORMATS DESCRIBED ABOVE. YOU ACKNOWLEDGE THAT YOUR CONSENT IS REQUIRED (1) IN ORDER FOR US TO CONDUCT THE TRANSACTIONS WITH YOU; (2) TO PROVIDE YOU WITH ELECTRONIC VERSIONS OF YOUR ACCOUNT DOCUMENTS; (3) TO CHECK THE STATUS OF YOUR ACCOUNT ONLINE IF AND WHEN SUCH FUNCTIONALITY BECOMES AVAILABLE; AND/OR (4) TO CONTACT US BY EMAIL.

This agreement was executed on May 17, 2015 at 11:10am CDT by Dori Wingate

LOAN AGREEMENT

Spotloan TILA Disclosures

Itemization of Amount Financed	
Amount given to you directly	$800.00
Amount financed	$800.00
Interest rate (until paid in full)	360%
Interest	$1,382.63
Total you pay	$2,182.63

Finance Charge is the amount of money it costs you to borrow $800.00. Your finance charge is $1,382.63.

Annual Percentage Rate ('APR') is the cost of your loan at a yearly rate. The APR of your loan is 360%.

Amount Financed is how much money you are borrowing from us. Your amount financed is $800.00.

Total of Payments is the amount you will have paid when you have made all scheduled payments. This is the sum of the amount you borrow and the finance charge. Your total of payments is $2,182.63.

Payment Schedule You will have 17 bi-weekly payments of $128.39, starting on JUN 5, 2015 and ending on JAN 15, 2016, assuming you make all your payments on time. A full payment schedule is below.

Prepayment There is no penalty for paying part or all of your loan early, and you can reduce the amount of interest paid by paying early. Just call us at (888) 681-6811 to get your payoff amount and instructions on making a special payment.

This loan agreement is your contract with Spotloan, and you should refer to it for information about missed payments and default.

Missing a Payment. If any payment is dishonored or returned for any reason, you may be charged a $10.00 fee for non-sufficient funds. If you miss a payment, you will pay more interest on your loan over time. If you call us at least 2 business days before your payment is due, we can usually work something out. Call (888) 681-6811.

Promise to Pay. You promise to pay us, or any subsequent holder of this Loan Agreement, the amount financed plus finance charges according to your most recent payment schedule. Interest accrues at the stated annual percentage rate until the loan is paid in full. Amounts shown above assume that you make all payments when due. See http://www.spotloan.com/how-spot-loans-work for the types of payment we accept.

Reduction in Interest Rate. We reserve the right to lower your interest rate in accordance with our internal policy at any time after you accept these loan terms. If your rate is lowered, we will notify you and

give you an updated payment schedule. You will remain obligated to repay your loan in full. If your rate is lowered as part of a settlement agreement and you miss any payment, your rate may be reverted back to the interest rate as stated in this agreement.

Default. You will be in default under this Agreement if you provide false or misleading information in connection with your loan, or if you fail to make a payment within 90 days of your scheduled or deferred due date. If you fail to cure the default within 7 days after we notify you of default, we may declare the entire outstanding balance due under this Agreement payable at once and proceed to collect it, including bringing legal action. If you default on your loan and we incur fees in connection with collecting on your account (e.g., third-party collection agency costs or attorneys fees), you may be required to reimburse us for those fees, to the extent permitted by law, in addition to paying your unpaid principal and interest.

Disputes. Any dispute under this Agreement will be decided under the terms set forth in the Binding Arbitration and Jury Trial Waiver below unless you decide to opt out (see "Other Options" below).

Final Loan Approval. This Loan Agreement is effective only when it has been accepted by us and we initiate the disbursement of loan funds to you. Your application is always subject to review by our credit team, and we may request additional documentation before funding your loan.

Governing Law. Spotloan is organized under the laws of the Turtle Mountain Band of Chippewa Indians (the "Tribe"). Your Loan Agreement becomes a binding contract with us when we accept it at our offices on the Turtle Mountain Indian Reservation. By signing this Loan Agreement, you agree that the laws of the Tribe will apply to the Loan Agreement, and understand that United States state law does not apply to the Loan Agreement in any way. You also agree to be subject to the jurisdiction of the Tribe.

Dori Wingate
[redacted]

Spotloan
c/o BlueChip Financial
P.O. Box 720
Belcourt, ND 58316

Binding Arbitration Clause and Jury Trial Waiver

Background and Scope.		
What is binding arbitration?	**An alternative to court.**	In binding arbitration, a neutral third party ("Arbiter") solves Disputes in a hearing ("hearing"). By accepting this Clause, you, related third parties, and we, waive the right to go to court to have our Dispute heard. All parties forgo jury trials and other court proceedings that would decide the Dispute.
Is it different from court and jury trials?	**Yes.**	The hearing is private and less formal than court. Arbiters may limit pre-hearing fact finding, called "discovery." The decision is usually final. Courts rarely overturn Arbiters.
Who does the Clause cover?	**You, Us, and Others.**	This Clause covers you and us and any of our collective heirs, successors, and assigns, along with any third parties related to any Dispute.

Which Disputes are covered?	**All Disputes.**	In this Clause, the word "Disputes" has the broadest possible meaning. This Clause governs all Disputes involving the parties. This includes all claims even indirectly related to your application and agreements with us. This includes claims related to information you previously gave us. It includes all past agreements. It includes extensions, renewals, refinancings, or payment plans. It includes claims related to collections, privacy, and customer information. It includes claims related to setting aside this Clause. It includes claims about the Clause's validity and scope. It includes claims about whether to arbitrate.
Are you waiving rights?	**Yes.**	You waive your rights to: 1. Have juries solve Disputes. 2. Have any court solve Disputes. 3. Serve as a private attorney general or in a representative capacity. 4. Be in a class action.
Are you waiving class action rights?	**Yes.**	COURTS AND ARBITERS WON'T ALLOW CLASS ACTIONS. You waive your rights to be in a class action, as a representative and a member. Only individual arbitration will solve Disputes. You waive your right to have representative claims.
What law applies?	**The Federal Arbitration Act ("FAA").**	This transaction involves interstate commerce. Thus, the FAA governs. If a court finds the FAA doesn't apply, and the finding can't be appealed, then your state's law governs. The Arbiter must apply substantive law consistent with the FAA. The Arbiter must follow statutes of limitation and privilege claims.
What is the first step in trying to solve Disputes?	**Please call us.**	We strive for excellent customer service. We prefer that you try to solve Disputes by calling us at 888-681-6811. If this doesn't solve the Dispute, mail us written notice, within 100 days of the Dispute date. In your notice, tell us the details and how you want to solve it. We will try to solve the Dispute. If we make a written offer ("Settlement Offer"), you can reject it and arbitrate. If we don't solve the Dispute, either party may start arbitration. To start arbitration, contact an Arbiter or arbitration group listed below. Settlement Offers are considered confidential, and neither you nor we are allowed to disclose Settlement Offer proposals to the Arbiter during arbitration.
How should you contact us?	**By mail.**	Send mail to Lender c/o Spotloan's mail processor at P.O. Box 927, Palatine, IL 60078-0927. You can call us or use certified mail to confirm receipt.
Will this Clause continue to govern?	**Yes, unless otherwise agreed.**	The Clause stays effective, unless the parties sign an agreement stating it doesn't. The Clause governs if you rescind the transaction. It governs if you default, renew, prepay, or pay. It governs if your contract is discharged through bankruptcy. The Clause remains effective, despite a transaction's termination, amendment, expiration, or performance.

Process.		
How does arbitration start?	**Mailing a notice.**	Either party may mail the other a request to arbitrate. The notice should describe the Dispute and relief sought. The receiving party must mail a response within 20 days. If you mail the demand, you may choose the arbitration group. Or, your demand may state that you want the parties to choose a local Arbiter. If related third parties or we mail the demand, you must respond in 20 days. Your response must choose an arbitration group or propose a local Arbiter. If it doesn't, we may choose the group.

Who arbitrates?	**AAA, JAMS, or an agreed Arbiter.**	You may select the American Arbitration Association ("AAA") (1-800-778-7879) http://www.adr.org or JAMS (1-800-352-5267) http://www.jamsadr.com. The parties may also agree in writing to a local attorney, retired judge, or Arbiter in good standing with an arbitration group. The Arbiter must arbitrate under AAA or JAMS consumer rules. You may get a copy of these rules from such group. Any rules that conflict with any of our agreements with you don't apply. Such Arbiter must enforce your agreements with us, as they are written.
Will the hearing be held nearby?	**Yes.**	For your convenience, you can choose to have the hearing take place telephonically. Otherwise, the arbitration hearing will take place in the county of your residence or in a place as ordered by the Arbiter.
What about appeals and enforcement?	**Appeals are limited.**	The Arbiter's decision is usually final. A party may file the Arbiter's award with the Virginia state court for enforcement against either party.
Will we advance Arbitration Fees?	**Yes, but you may pay costs.**	We advance your "Arbitration Fees" if you ask us to. This includes filing, administrative, hearing, and Arbiter's fees. You pay your attorney fees and other expenses.
Are damages and attorney fees possible?	**Yes, if allowed.**	The Arbiter may award the same damages as a court. Arbiters may award reasonable attorney fees, and expenses, if allowed by law.
Will you pay Arbitration Fees if you win?	**No.**	If the Arbiter awards you funds, you don't reimburse us the Arbitration Fees.
Will you ever pay Arbitration Fees?	**Yes.**	If the Arbiter doesn't award you funds, then you may be required to repay the Arbitration Fees. If you must pay Arbitration Fees, the amount won't exceed normal court costs.
Can an award be explained?	**Yes.**	A party may request details from the Arbiter, within 14 days of the ruling. Upon such request, the Arbiter will explain the ruling in writing.

Other Options.		
If you don't want to arbitrate, can you still get a transaction?	**Yes. You can get our services and decide not to arbitrate.**	Consider these choices: 1. Informal Dispute Resolution. Contact us, and attempt to settle any Disputes. 2. Tribal Court. Seek to solve Disputes in tribal court, within tribal law limits. 3. Get Credit Without the Clause. Write to us and ask for a Contract without the Clause. 4. Opt-Out of Arbitration. Sign this clause and then opt-out within 60 days.
Can you opt-out of the Clause?	**Yes. Within 60 days.**	Write us within 60 calendar days of signing your agreement to opt out of the Clause for that agreement. List your name, address, account number and date. List that you "opt out." If you opt out, it will apply only to that agreement.

Payment Schedule

Here is the full schedule of your payments so you know exactly what to expect.

Date	Amount
Jun 5, 2015	$128.39
Jun 19, 2015	$128.39
Jul 3, 2015	$128.39
Jul 17, 2015	$128.39
Jul 31, 2015	$128.39
Aug 14, 2015	$128.39
Aug 28, 2015	$128.39
Sep 11, 2015	$128.39
Sep 25, 2015	$128.39
Oct 9, 2015	$128.39
Oct 23, 2015	$128.39
Nov 6, 2015	$128.39
Nov 20, 2015	$128.39
Dec 4, 2015	$128.39
Dec 18, 2015	$128.39
Jan 4, 2016	$128.39
Jan 15, 2016	$128.39

INTEREST ACCRUES ON A DAILY BASIS. IF YOU DEFER OR MISS A PAYMENT, INTEREST WILL CONTINUE TO ACCRUE AND YOUR PAYMENT SCHEDULE WILL BE ADJUSTED ACCORDINGLY. THIS MEANS THAT YOUR PAYMENT SCHEDULE MAY BE EXTENDED AND/OR YOUR PERIODIC PAYMENT AMOUNT MAY BE INCREASED.

Additional Disclosures

Permission to Gather/Verify Data

You give Spotloan permission to verify the information you provided to us in this application. We may also use the information you provided to gather additional data related to your loan application. This information may come from a number of sources, including consumer reporting agencies and sources named in this application. If we make you a loan and you consent to ACH withdrawals for loan payments, we will use the bank account information you give us to process those payments. Also, as we gather information, we may detect additional bank accounts that you own, and we will consider those accounts as we process your loan application.

Credit Reporting

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Loan Sale

Spotloan reserves the right to sell this loan and/or the rights to service this loan to anyone of Spotloan's choosing. If the ownership of your loan changes, you will receive notice from the new owner and your obligation to repay your loan according to the terms and conditions outlined in this agreement will remain unchanged.

Expensive Form of Credit

This is an expensive form of credit and is intended only for short-term financial needs. Spotloans are designed to help you deal with emergencies such as rent, medical bills, car repairs, or expenses related to your job. Spotloans are not intended to solve longer-term credit or other financial needs, and alternative forms of credit may be better for you, including borrowing from a friend or relative; using a credit card cash advance; taking out a personal loan; or using a home equity loan or savings.

Fair Lending Policy Statement

Spotloan is providing you the following information in a manner consistent with principles under applicable United States federal law. It is Spotloan’s policy to make credit products and loan support services available to all qualified applicants without discriminating on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant is of legal age and has the legal capacity to enter into a binding contract); income derived from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. We will not discourage a consumer from making or pursuing an application for credit on a prohibited basis. Spotloan treats all consumers in a fair, equitable, and consistent manner on an equal opportunity basis.

Transfer of Rights/Maintenance of Register

We may assign or transfer this Agreement, or any of our rights, without notice or your consent. This Agreement shall remain exclusively subject to the laws and courts of the Turtle Mountain Band of Chippewa Indians. BlueChip Financial ("Registrar"), acting as your irrevocably appointed agent, shall maintain at a U.S. office (1) a copy of each assignment delivered to it, and (2) a register ("Register") recording the names and addresses of the original owner and assignees, and the principal and interest owing to each from time to time pursuant to the terms of this Loan. The Register's entries shall be conclusive, and you, the Registrar, the Lender and all its assignees shall treat each person appropriately recorded in the Register as the owner of such principal and interest payments for all purposes of this Agreement, notwithstanding any contrary notice. You may obtain the name of the owner in the Register by writing the Registrar with reasonable notice, and the Registrar shall include on the Register the names and addresses of any person holding a participation interest in the Loan of which it has notice. You are not responsible for any fees or expenses for the Registrar's services.

We (or any assignee or transferee) may at any time, without notice or your consent, sell participations to any person (a "Participant") in all or a portion of such Lender's rights and/or obligations under this

Agreement; provided that (i) such Lender's obligations under this Agreement remain unchanged, and (ii) you shall continue to deal solely and directly with that Lender in connection with its rights and obligations under this Agreement. The Registrar shall, acting as your irrevocably appointed agent, maintain a register with the name and address of each Participant and the principal and interest of each Participant's interest in the Loan or other obligations under the Loan documents (the "Participant Register"). The Participant Register entries shall be conclusive absent clear error, and Lender shall treat each Person in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any contrary notice.

This Section shall be construed so that the Loan is always maintained in "registered form" according to Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code of 1986, as amended, and the associated Treasury Regulations.

This agreement was executed on May 17, 2015 at 11:10am CDT by Dori Wingate

Automated Clearing House Credit and Debit Authorization Agreement ("ACH Authorization")

By electronically signing this ACH Authorization, you authorize Spotloan, and our successors and assigns, ("us") to credit your check/savings account number XXXXXXXXX0807, routing number XXXXX0020 in the loan amount, and debit the same account on the dates and for the amounts listed in your most recent payment schedule. The schedule outlined in your loan agreement assumes you make all payments in full and on time and is subject to change if you make a special payment, defer or miss a payment, or if a payment is returned for non-sufficient funds ("NSF"). If a debit attempt is returned NSF, you agree to pay a $10 fee, which will be added to the end of your payment schedule. Also, if a payment is dishonored or returned for any reason, you authorize us to re-attempt the debit for the same amount up to two additional times within 14 days. If a loan payment date falls on a weekend or holiday, we may debit the payment on the next business day.

You authorize us to debit your account for principal, interest, and fees until your loan is paid in full or you revoke this Authorization in writing, whichever comes first. To stop a payment, you must contact us in time for us to receive your request 2 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after your call. You must notify us of any changes to your account information or you may revoke this authorization either by mail at P.O. Box 927, Palatine, IL 60078-0927 or by email to help@Spotloan.com at least 5 business days prior to the next payment due date. If you revoke this Authorization, you agree to provide us with another form of payment acceptable to us.

You agree that you will receive a notice at least 10 days before a payment is debited from your Account if the payment we are going to debit from your Account falls outside the range disclosed in the Payment Schedule above plus applicable fees and charges due to us pursuant to this Agreement and the outstanding balance owing under this Agreement (which may include the unpaid principal balance and accrued unpaid interest owing under the Loan plus any returned payment fees and accrued interest on overdue payments). You certify that you are an authorized user of the bank account you provided in your application and that you will not dispute any scheduled transactions that correspond to this loan agreement and Authorization. You are responsible for providing accurate bank account information, and you authorize us to verify and correct such information, if necessary. If you give us inaccurate account information, loan funds may be sent to someone else's account. If loans funds are sent to an account number you provide that is not yours and the funds are not returned to us, you are responsible for repaying the full amount of the loan, including any finance charges or fees.

You understand that you are not required to authorize electronic debits from your account in order to be approved for a loan. Do not click the "I Agree" button if you do not authorize us to automatically debit your account. Instead call 1-888-681-6811 to speak with a Relationship Manager.

Consent to a Back-up Payment Method. You also agree that by electronically signing this ACH Authorization, you authorize us to use the back-up form of payment you provided in your application (if applicable). You authorize us to process a payment in an amount equal to your periodic payment amount (according to your payment schedule) within two business days of the date that: (i) your regularly scheduled automatic bank payment ("primary ACH payment") is returned to us, or (ii) you miss a payment. You understand that if your primary ACH payment is returned to us, you may still be charged an NSF fee by your bank and we will not reimburse you for any charges you incur by your bank or any third party. We will, however, waive any interest that accrues between the time your primary ACH payment is returned as NSF and the time your back-up form of payment is processed so long as that payment clears. You will be charged the total amount due for that period, and the dates may differ from your payment

schedule (for example, if your primary ACH payment is returned to us 2 days after your original payment due date, your back-up payment method may not be charged for another 2 days, which would result in a charge to your back-up payment method 4 days after your original payment due date). You agree that no prior-notification will be provided. You must notify us of any changes to your account information or you may revoke this authorization either by mail at P.O. Box 927, Palatine, IL 60078-0927 or by email to help@Spotloan.com at least 2 business days prior to the next payment due date.

You certify that you are the account owner of all accounts provided to Spotloan pursuant to this ACH Authorization and will not dispute any payments processed in accordance with this ACH Authorization.

This agreement was executed on May 17, 2015 at 11:10am CDT by Dori Wingate

Fill in this information to identify the case:

Debtor 1 RICHARD ANDREW WEAVER

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: EASTERN District of VIRGINIA (State)

Case number 17-31712

Official Form 410

Proof of Claim

04/16

Read the instruction before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Spot Loan by American InfoSource LP as agent
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g))

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Spot Loan by American InfoSource LP as agent Name	Spot Loan by American InfoSource LP as agent Name
4515 N Santa Fe Ave Number Street	PO Box 248838 Number Street
Oklahoma City OK 73118 City State ZIP Code	Oklahoma City OK 73124-8838 City State ZIP Code
Contact phone (877) 893-8820	Contact phone (877) 893-8820
Contact email poc_ais@americaninfosource.com	Contact email poc_ais@americaninfosource.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

— —

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 2 7 3 9

7. **How much is the claim?** $ 860.49
Does this amount include interest or other charges?
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Money Loaned

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____

Amount of the claim that is secured: $ _____

Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) _____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $ _____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to property.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	$ _____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507 (a)(7).	$ _____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C § 507 (a)(4).	$ _____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. §507 (a)(8).	$ _____
☐ Contributions to an employee benefit plan . 11 U.S.C. § 507 (a)(5).	$ _____
☐ Other. Specify subsection of 11 U.S.C § 507 (a)(__) that applies.	$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward that debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 04/10/2017
MM / DD / YYYY

/s/ Ashley Boswell
Signature

Print the name of the person who is completing and signing this claim:

Name: Ashley Boswell
First Name Middle Name Last Name

Title: Paralegal

Company: American InfoSource
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4515 N Santa Fe Ave
Number Street

Oklahoma City OK 73118
City State Zip Code

Contact Phone (877) 893-8820 Email poc_ais@americaninfosource.com

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
RICHARD ANDREW WEAVER (XXX-XX-2546)		XX2739		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
$860.49		$860.49		
Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
03/20/2017				

Creditor Information

Claimant	Current Creditor
Spot Loan by American InfoSource LP as agent	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
RICHARD ANDREW WEAVER			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]

Case Number	Court	Chapter	Filing Date
17-31712	Eastern District of Virginia	13	03/31/2017

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	4515 N Santa Fe Ave Oklahoma City, OK 73118	5868069

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

Fill in this information to identify the case:

Debtor 1 JULIE FAYE NIMMO

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: EASTERN District of VIRGINIA (State)

Case number 17-31737

Official Form 410

Proof of Claim

04/16

Read the instruction before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Spot Loan by American InfoSource LP as agent
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g))

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Spot Loan by American InfoSource LP as agent Name	Spot Loan by American InfoSource LP as agent Name
4515 N Santa Fe Ave Number Street	PO Box 248838 Number Street
Oklahoma City OK 73118 City State ZIP Code	Oklahoma City OK 73124-8838 City State ZIP Code
Contact phone (877) 893-8820	Contact phone (877) 893-8820
Contact email poc_ais@americaninfosource.com	Contact email poc_ais@americaninfosource.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

— —

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 8 7 4 1

7. **How much is the claim?** $ 851.68
Does this amount include interest or other charges?
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Money Loaned

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____

Amount of the claim that is secured: $ _____

Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) _____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $ _____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to property.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	$ _____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507 (a)(7).	$ _____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C § 507 (a)(4).	$ _____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. §507 (a)(8).	$ _____
☐ Contributions to an employee benefit plan . 11 U.S.C. § 507 (a)(5).	$ _____
☐ Other. Specify subsection of 11 U.S.C § 507 (a)(__) that applies.	$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward that debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 04/10/2017
MM / DD / YYYY

/s/ Ashley Boswell
Signature

Print the name of the person who is completing and signing this claim:

Name: Ashley Boswell
First Name Middle Name Last Name

Title: Paralegal

Company: American InfoSource
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4515 N Santa Fe Ave
Number Street

Oklahoma City OK 73118
City State Zip Code

Contact Phone (877) 893-8820 Email poc_ais@americaninfosource.com

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
JULIE FAYE NIMMO (XXX-XX-6571)		XX8741		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
$851.68		$851.68		
Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
03/07/2017		03/17/2017		

Creditor Information

Claimant	Current Creditor
Spot Loan by American InfoSource LP as agent	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
JULIE FAYE NIMMO			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]

Case Number	Court	Chapter	Filing Date
17-31737	Eastern District of Virginia	13	03/31/2017

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	4515 N Santa Fe Ave Oklahoma City, OK 73118	5868068

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

Fill in this information to identify the case:

Debtor 1 TRACY LEE JACOBS

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: EASTERN District of VIRGINIA (State)

Case number 17-71441

Official Form 410

Proof of Claim

04/16

Read the instruction before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Spot Loan by American InfoSource LP as agent
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g))

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Spot Loan by American InfoSource LP as agent Name	Spot Loan by American InfoSource LP as agent Name
4515 N Santa Fe Ave Number Street	PO Box 248838 Number Street
Oklahoma City OK 73118 City State ZIP Code	Oklahoma City OK 73124-8838 City State ZIP Code
Contact phone (877) 893-8820	Contact phone (877) 893-8820
Contact email poc_ais@americaninfosource.com	Contact email poc_ais@americaninfosource.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

— —

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 1 2 1 8

7. **How much is the claim?** $ 408.30
Does this amount include interest or other charges?
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Money Loaned

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____

Amount of the claim that is secured: $ _____

Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) _____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $ _____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to property.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	$ _____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507 (a)(7).	$ _____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C § 507 (a)(4).	$ _____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. §507 (a)(8).	$ _____
☐ Contributions to an employee benefit plan . 11 U.S.C. § 507 (a)(5).	$ _____
☐ Other. Specify subsection of 11 U.S.C § 507 (a)(__) that applies.	$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward that debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 04/24/2017
MM / DD / YYYY

/s/ Ashley Boswell
Signature

Print the name of the person who is completing and signing this claim:

Name: Ashley Boswell
First Name Middle Name Last Name

Title: Paralegal

Company: American InfoSource
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4515 N Santa Fe Ave
Number Street

Oklahoma City OK 73118
City State Zip Code

Contact Phone (877) 893-8820 Email poc_ais@americaninfosource.com

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
TRACY LEE JACOBS (XXX-XX-8831)		X1218		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
$408.30		$408.30		
Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
01/25/2017		03/17/2017		

Creditor Information

Claimant	Current Creditor
Spot Loan by American InfoSource LP as agent	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
TRACY LEE JACOBS			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]

Case Number	Court	Chapter	Filing Date
17-71441	Eastern District of Virginia	13	04/19/2017

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	4515 N Santa Fe Ave Oklahoma City, OK 73118	5895054

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

Fill in this information to identify the case:

Debtor 1 JEFFERY DEVELLE GOODE, SR

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: EASTERN District of VIRGINIA (State)

Case number 17-32115

Official Form 410

Proof of Claim

04/16

Read the instruction before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Spot Loan by American InfoSource LP as agent
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g))

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Spot Loan by American InfoSource LP as agent Name	Spot Loan by American InfoSource LP as agent Name
4515 N Santa Fe Ave Number Street	PO Box 248838 Number Street
Oklahoma City OK 73118 City State ZIP Code	Oklahoma City OK 73124-8838 City State ZIP Code
Contact phone (877) 893-8820	Contact phone (877) 893-8820
Contact email poc_ais@americaninfosource.com	Contact email poc_ais@americaninfosource.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

— —

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 5 7 0 4

7. **How much is the claim?** $ 320.74
Does this amount include interest or other charges?
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Money Loaned

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____

Amount of the claim that is secured: $ _____

Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) _____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $ _____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to property.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	$ _____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507 (a)(7).	$ _____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C § 507 (a)(4).	$ _____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. §507 (a)(8).	$ _____
☐ Contributions to an employee benefit plan . 11 U.S.C. § 507 (a)(5).	$ _____
☐ Other. Specify subsection of 11 U.S.C § 507 (a)(__) that applies.	$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward that debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 05/02/2017
MM / DD / YYYY

/s/ Ashley Boswell
Signature

Print the name of the person who is completing and signing this claim:

Name: Ashley Boswell
First Name Middle Name Last Name

Title: Paralegal

Company: American InfoSource
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4515 N Santa Fe Ave
Number Street

Oklahoma City OK 73118
City State Zip Code

Contact Phone (877) 893-8820 Email poc_ais@americaninfosource.com

Statement of Accounts

Account Information

Account Holder(s)		Account Number(s)		Creditor Reference
JEFFERY DEVELLE GOODE, SR (XXX-XX-0655)		X5704		
Total Claim Amount (pre-petition balance)	**Secured Amount**	**Unsecured Amount**	**Interest**	**Fees**
$320.74		$320.74		
Account Open Date	**Last Transaction Date**	**Last Payment Date**	**Charge-off Date**	
04/06/2017				

Creditor Information

Claimant	Current Creditor
Spot Loan by American InfoSource LP as agent	Spot Loan
Previous Creditor	**Creditor at Last Account Transaction**

The individual whose signature appears on this claims form has relied in part on information provided by an employee at Spot Loan who has personal knowledge as to the calculation of the claim amount and a summary of that process. This information will be provided upon request.

Case Information

Debtor(s)			
JEFFERY DEVELLE GOODE, SR AND JACQUELINE RENEE GOODE			
Street	**City**	**State**	**Zip**
[redacted]	[redacted]	VA	[redacted]
Case Number	**Court**	**Chapter**	**Filing Date**
17-32115	Eastern District of Virginia	13	04/21/2017

Contact Information (for questions regarding this claim)

Phone	Email	Address	Reference Number
(877) 893-8820	poc_ais@americaninfosource.com	4515 N Santa Fe Ave Oklahoma City, OK 73118	5900024

Special Notice

The information provided on this proof of claim was the best available information at the time of filing. For additional information please contact us using the information listed above.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	*	
	*	
DORI DANYELLE WINGATE,	*	**Case No. 15-35033-KLP**
	*	
	*	Chapter 13
Debtor.	*	
	*	

MOTION UNDER FEDERAL RULES OF BANKRUPTCY PROCEDURE 7023 AND 9019 FOR PRELIMINARY APPROVAL OF COMPROMISE AND CLASS ACTION SETTLEMENT

The Plaintiff, Dori Danyelle Wingate, filed a class action adversary proceeding against BlueChip Financial and American InfoSource, alleging violations of Federal Rule of Bankruptcy Procedure 3001 and the Fair Debt Collection Practices Act. The parties have engaged in litigation, including a two-day mediation, and have reached a Settlement that provides debt relief and monetary awards to 218 individual chapter 13 debtors and certain of their bankruptcy estates. The Settlement will eliminate each party's litigation risks and avoid the expenditure of further resources by the parties and the Court. Because the Settlement is fair, reasonable, and adequate, the Plaintiff asks this Court to approve it on a preliminary basis pursuant to Fed. R. Bankr. P. 7023, which incorporates Fed R. Civ. P. 23 by reference, and Fed. R. Bankr. P. 9019. The Plaintiff also asks that this Court set a further hearing, after providing notice to the Settlement Class Members, to confirm on a final basis that the proposed settlement is fair, reasonable, and adequate.

Factual Summary

1. Plaintiff, Dori Danyelle Wingate, (the "Plaintiff") is an adult resident of Virginia.

2. Defendant BlueChip Financial ("BlueChip") is a wholly-owned economic enterprise of the Turtle Mountain Band of Chippewa Indians, a federally recognized tribe, that

does business as Spotloan, Inc.

3. Defendant American InfoSource, L.P. ("American InfoSource") is a Limited Partnership and has a main office located at 1212 Corporate Drive, Suite 400, Irving, TX.

The Bankruptcy Case, Proofs of Claim, and Objections

4. On September 30, 2015, Ms. Wingate filed a voluntary chapter 13 bankruptcy in this Court, which is Case No. 15-35033-KLP.

5. On May 17, 2015, Ms. Wingate borrowed $800 from BlueChip, doing business as Spotloan, pursuant to a loan agreement she electronically signed.

6. On October 5, 2015, American InfoSource, as agent for BlueChip, filed a proof of claim against Plaintiff in her bankruptcy case in the amount of $1,498.87. Claim 1-1.

7. The amount asserted in Claim 1-1 included both the principal amount of the loan as well as interest. However, Box 1 of Claim 1-1, which requires creditors to disclose that the claim filed includes interest charges, was not checked nor was an itemization of interest provided. Claim 1-1 did not attach the loan agreement between Ms. Wingate and BlueChip.

8. On May 16, 2016, Ms. Wingate filed an objection to Claim 1-1.

9. American InfoSource responded to that objection by filing an Amended Proof of Claim, to which Ms. Wingate also objected.

10. Following a series of objections and amendments, American InfoSource filed Claim 1-4, which is the last version of the Amended Proof of Claim. Claim 1-4 checked the box indicating that the amount sought includes interest, included an itemization of interest charged, and attached a copy of the contract between BlueChip and Ms. Wingate giving rise to the claim.

The Class Action Adversary Proceeding

11. On June 13, 2017, Plaintiff filed a Class Action Complaint against American InfoSource and BlueChip, alleging that American InfoSource did not comply with the Fair Debt

Collection Practices Act and BlueChip did not comply with Federal Rule of Bankruptcy 3001.

12. The Class Action Complaint sought damages and attorneys' fees.

13. On July 31, 2017, American InfoSource filed an Answer to the Complaint, as well as a Motion to Compel Arbitration. The same day, BlueChip filed a Motion to Dismiss the Complaint.

14. Ms. Wingate filed an Opposition Memorandum to each of the Defendants' Motions.

15. On August 18, 2017, the parties jointly moved for Court-ordered mediation on the Class Action Complaint and Ms. Wingate's proof of claim objection.

16. The Court granted the parties' motion on September 25, 2017, appointing the Honorable Frank J. Santoro as Mediator.

17. The parties engaged in two days of mediation on November 29 and 30, 2017, leading to the Parties reaching an agreement that was ultimately memorialized in the Settlement.

18. Before and during the mediation process, the parties voluntarily exchanged information through informal discovery, including information regarding the Defendants' business practices and certain financial information, including with respect to the Loans.

19. The parties also agreed on a process where certain business proprietary information was provided to the Mediator, who reviewed and confirmed to the Plaintiff that the information met her expectations expressed at the mediation. Other than the information filtered through the Mediator, all documents and information that the Plaintiff requested were provided directly to her and to her counsel through informal discovery subject to a protective order.

20. Defendants acknowledge that all of the Claims filed in the Bankruptcy Cases of Settlement Class Members did not state that they included interest and did not itemize interest,

even though interest was included in the amount claimed. Defendants maintain that they have substantial defenses to the claims alleged in the Class Action Complaint and deny all liability. Nonetheless, given the costs, risks, and uncertainties of litigation, Defendants agreed to the Settlement. Similarly, Ms. Wingate was motivated to obtain significant and immediate relief for herself and other chapter 13 debtors and avoid the substantial risks and uncertainties of

21. On February 13, 2018, the Parties entered into the Stipulation and Agreement of Settlement (the "Settlement"). A copy of the Settlement is attached as Exhibit A.

22. The proposed Settlement resolves all of the claims raised in the Class Action Complaint. Defendants deny liability and that a class is appropriate for certification under Fed. R. Bankr. P. 23 on the claims asserted in this action, but the Defendants do not oppose the certification of the Settlement Class for the sole purpose of resolving this action.

The Proposed Settlement of the Class Claim

A. The Settlement Class.

Under the Settlement, the Parties have agreed to resolve the claims of the Class of persons defined as follows (the "Settlement Class"):

> All individuals who obtained a loan from BlueChip and, upon such loan, American InfoSource, on behalf of BlueChip, filed a claim in the individual's bankruptcy case in the Eastern District of Virginia Bankruptcy Court, which case was open and pending under chapter 13 of the Bankruptcy Code as of June 13, 2017.

Based on a review of their records, the Defendants have identified 218 individual debtors that comprise the Settlement Class.

B. The Consideration Provided to the Settlement Class Under the Settlement.

The Settlement was reached in the face of defenses against class certification and jurisdiction, and the claim of the Defendants to require arbitration. The Settlement limits costs for all parties and provides all parties the benefit of mutual releases. For the Settlement

Members, the Settlement provides assurance that neither BlueChip nor American InfoSource will take collection action against them on the Loans that the Class Members obtained from Nor will the Defendants continue to seek payment for the Claims through the Bankruptcy Cases.

The Settlement requires that the Defendants pay $70,000.00 into an Escrow Account to be used to create a Claims Fund for Settlement Class Members. The Fund will be used to make payment of cash awards to the Settlement Class Members who have not opted out of the Class. Under the Settlement, the Defendants will also refund all amounts paid by chapter 13 trustees on account of the Claims in open bankruptcy cases. The payments to Class Members will be made pursuant to the following plan of allocation: (a) a minimum payment of $50.00 to each person who does not opt out; and (b) the remainder to be paid pro rata to the Settlement Class Members based on the relative amount paid by each person on their Loan(s) from BlueChip. The Class Notice will inform each Class Member of the approximate minimum amount that each Class Member can expect to receive. The average amount paid to Class Members is estimated to be $320. Approximately five Class Members are eligible to receive a cash award of over $1,000, with the largest award estimated to be $1,334.01.

The Settlement Class Members were identified by the Defendants based on records that they maintain, including the name, account number, and most recent address for each Settlement Class Member. Class Counsel had an opportunity to review the list of Settlement Class Members and found no objection to the list.

Settlement Class Members are not required to complete claims forms in order to obtain payment. Defendants' counsel will administer the Claims Fund, and the costs and fees of Defendants' counsel to administer the Claims Fund will be paid by Defendants. The Settlement does not contemplate the appointment or expense of an independent claims administrator given relatively small number of Settlement Class Members and amount of the Fund. Defendants'

Counsel has agreed to perform the administrative functions set forth in the Settlement, given bankruptcy claims processing resources and experience, including over 25 years of experience assisting chapter 7 and 11 bankruptcy trustees and post-confirmation trustees administer claims funds in bankruptcy. To assist in administering the Fund, Defendants' counsel intends to use the services of their bankruptcy claims software provider, Bankruptcy Management Solutions, Inc. ("BMS").

After sixty days from the date of mailing, each Cash Award check will become void. If any residual funds remain in the Fund after distribution and administration, then the residual funds will be disbursed to the Virginia Poverty Law Center pursuant to the *cy pres* doctrine. The Virginia Poverty Law Center provides resources and training to advocates for low-income people and works to protect low-income people from improper lending.

In addition to this monetary relief, the Settlement Class Members will receive relief in the form of the withdrawal of the Claims sought against their bankruptcy estates. Their bankruptcy estates will receive refunds of the amounts paid by the chapter 13 trustees. The total amount of refunds to be paid to chapter 13 bankruptcy trustees is estimated to be around $13,000. The Defendants will also discharge, cancel, release, forgive, and adjust to a zero balance all Loans belonging to Settlement Class Members who have not opted out. The Parties have also reached agreements with respect to credit reporting and tax reporting of the Settlement.

As summarized above, the Settlement provides significant financial relief to the Class Members through both the elimination of the outstanding Loans of each of the Settlement Class Members as well as additional cash payments. Based on the Defendants' records, 218 individual debtors will benefit from this proposed Settlement. The Settlement Class Members receive the benefits of this relief without having to complete any forms or make any showing of harm. In addition, the refunds to the affected bankruptcy estates will benefit the

trustees and the creditor bodies of those estates.

C. The Required Class Action Fairness Notice.

Under the Class Action Fairness Act, when a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement is required to notice the settlement on an appropriate state official of each state in which a class member resides and upon the appropriate federal official within 10 days of the filing of the proposed settlement. *See* 28 U.S.C. § 1715(b).

The Class Action Fairness Notice will be sent by the Defendants to the Attorney General of the United States and to the Attorney General of Virginia within ten (10) days. To account for the deadlines under the Class Action Fairness Act, the Parties request that the Final Approval Hearing be scheduled no earlier than 90 days from the date of the mailing of the notices. *See* 28 U.S.C. § 1715(b). This period will also allow time for the Settlement Class Members to receive the Direct Mail Notices, file any statements exempting themselves from the Settlement Class, or to file any objections that they may wish to file, and for the Defendants and Plaintiff to respond to any objections and the number of opt outs.

D. Attorneys' Fees and Expenses and Service Award to Class Representative.

Plaintiff's Counsel will apply to the Bankruptcy Court for an award of attorneys' fees and reimbursement of litigation costs at least 14 days prior to the date the Court schedules a Final Fairness Hearing on the approval of the Settlement. The attorneys' fees and cost awarded will be subject to Bankruptcy Court approval and paid by the Defendants in an amount not to exceed $96,500.00. The amounts for attorneys' fees and costs will be paid separately from the Claims Fund and will not diminish the Claims Fund in any way. Any amount up to $96,500.00 not approved by the Bankruptcy Court will revert to the Defendants and any amount approved by the Bankruptcy Court that is greater than $96,500.00 will not be paid.

Ms. Wingate will also apply for a service award for her role as Named Plaintiff and class representative. The service award will compensate Ms. Wingate for her effort in prosecuting this case, including retaining counsel, assisting in discovery, and keeping abreast of the litigation. Defendants have agreed to not oppose the application for the service award, which will be sought in the amount of $3,000. Any amount up to $3,000 not approved by the Court will revert to the Defendants and any amount approved by the Court that is greater than $3,000 will not be paid.

E. The Release of Claims Against the Defendants.

In return for the consideration provided to the Settlement Class, Class Members will release all claims against the Defendants as follows:

> As of the Effective Date of this Settlement, Plaintiff and each member of the Settlement Class shall be deemed to have fully, finally, and forever released and discharged the Released Parties from any and all claims, demands, rights, damages, obligations, suits, debts, liens, grievances, and causes of action that arise out of or are related to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were directly or indirectly alleged or referred to in the Action or that arise out of or are related to loans issued by BlueChip, whether arising in contract, tort, statute, common law, criminal law, or any other theory of action, including without limitation, Bankruptcy Rule 3001, other Bankruptcy Rules, the Bankruptcy Code, the Fair Debt Collection Practices Act, the Racketeer Influenced and Corrupt Organizations Act, the Virginia Consumer Finance Act, the Virginia Consumer Protection Act, tribal law, or state usury statutes, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or un-matured, contingent or fixed, liquidated or unliquidated, accrued or un-accrued, asserted or un-asserted, based upon any fact, whether known or unknown, that happened prior to the Effective Date, all, collectively, the "Released Claims." Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective.

F. Notice, Exclusion, and the Opportunity to Object.

The Parties have prepared a Notice of Class Action Settlement (the "Direct Mail

A copy of the Direct Mail Notice and the Direct Mail Notice Form are attached to the Settlement Exhibit 1(a) and Exhibit 1(b). The Direct Mail Notice is consistent with the due process requirements of Fed. R. Civ. P. 23 and will be provided within 30 days after the date of the entry

the Preliminary Approval Order. Defendants will use an address verification database such as National Change of Address database prior to mailing. Any returned notices will be re-mailed if they are returned with a postmark date within twenty days of the postmark date of the Direct Notice and contain a forwarding address. In addition, Defendants' counsel will establish and maintain an Internet site that will be made available to Class Members, on which will be posted Direct Mail Notice and other case information. For any Class Member represented by counsel in an active bankruptcy, notice will also be sent electronically to that counsel.

Any Class Member who desires to be excluded from the Class must send a written request for exclusion at the address provided in the Direct Mail Notice. All requests by Settlement Class Members to be excluded must be in writing, delivered to Defendants' counsel, and postmarked no later than 60 days after the entry of the Preliminary Approval Order. The written request for exclusion must be personally signed by the Settlement Class Member and must include: (i) the name of the Action; (ii) the Settlement Class Member's name, address and telephone number; and (iii) words to the following effect: "I request to be excluded from the class settlement in this case." No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

Argument

The Settlement should be approved under Fed. R. Civ. P. 23 as made applicable to adversary proceedings by Fed. R. Bankr. P. 7023. The Agreement should also be approved under Fed. R. Bankr. P. 9019 as an appropriate settlement or compromise. The proposed compromise meets the requirements of both sections by fairly, reasonably, and adequately bringing this to a close, as well as being fair and equitable. Approving the compromise is also in the best interests of the affected debtors, bankruptcy estates, chapter 13 trustees, and creditors.

A. The Settlement Should be Approved Under Civil Procedure Rule 23 as an Appropriate Settlement for Preliminary Approval.

"The voluntary resolution of litigation through settlement is strongly favored by the courts." *S.C. Nat. Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (citations omitted). This is particularly true in the class action context where "there is an overriding public interest in favor of settlement" because the "settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources." *Id.*

Approval of a class action settlement is committed to the sound discretion of the trial courts to "appraise the reasonableness of particular class-action settlements on a case-by-case basis in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001). Though, in evaluating proposed class action settlements, "there is a strong initial presumption that the compromise is fair and reasonable." *Id.*

Rule 23 permits courts to preliminarily certify a class in order to effectuate settlement of the case. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 793-94 (3rd Cir. 1995) (collecting cases). Courts may grant preliminary approval of a class action where the class proposed for settlement satisfies both (i) the numerosity, commonality, typicality, and adequacy of representation prerequisites in Rule 23(a); and (ii) the action is any one of the three actions described in Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

If the Court determines a settlement class should be certified, the Court must follow a three-step process prior to granting final approval of a proposed settlement. *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543 (S.D. Ohio 2000). First, the Court must approve the proposed settlement on a preliminary basis. *Id.* at 547. Second, the members of the class must be given

notice of the proposed settlement. *Id.* Third, a final fairness hearing must be held, after which Court must determine that the settlement is fair, adequate, and reasonable to the class as a whole and consistent with the public interest in order to protect the class members' procedural due process rights and fulfill the Court's role as guardian for the class's interests. *Id.*

1. The Proposed Class Here Meets all Rule 23(a) Elements

a. Numerosity

"There is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied," rather the issue is one primarily to be resolved by the trial court "in the light of the facts and circumstances of the particular case." *Kelly v. Norfolk & W. Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978). In considering numerosity, courts have consistently held that joinder is impractical, and numerosity is satisfied, where the class is composed of hundreds of potential claimants, and in fact, numerosity has been deemed sufficient as to classes with fewer than 50 members. *See, e.g., Cypress v. Newport News Gen. and Non-Sectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (finding class of 18 members met numerosity requirement); *Jeffreys v. Communic'n Workers of Am.*, 212 F.R.D. 320, 322 (E.D. Va. 2003) ("[W]here the class numbers twenty-five or more, joinder is generally presumed to be impracticable."). Here, numerosity is not an issue. There are 218 members in the Class, which is more than adequate to establish that joinder is impractical.

b. Commonality

Commonality requires that there be at least one legal or factual question common to the members of the class. *Jeffreys*, 212 F.R.D. at 322. "A class-wide proceeding must be able to generate common answers that drive the litigation." *Brown v. Nucor Corp.*, 785 F.3d 895, 909 Cir. 2015) *citing Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir.2014) (holding that class meets Rule 23(a)(2)'s commonality requirement when the common questions it has raised

are apt to drive the resolution of the litigation"). The ability to resolve these common legal or factual issues is sufficient for commonality and "the fact that there are some factual variances in individual grievances among class members does not defeat commonality." *Moris v. Wachovia Secs., Inc.*, 223 F.R.D. 284, 292 (E.D. Va. 2004).

Here, all of the members of the Settlement Class share multiple questions of law, the relevant facts are shared, and these shared legal and factual questions drive the resolution of this litigation. All of the Class Members are individual chapter 13 debtors before this Court; All of them obtained loans from the same provider; All of them had proofs of claim filed using the same process by American InfoSource; And all are able to raise the same allegations regarding debt collection and bankruptcy procedure, subject to the ability of BlueChip and American InfoSource to assert the same defenses. As a result, the theories of liability as to all Settlement Class Members arise from the same basic questions of law and fact common to all members of the Settlement Class. *See* Fed. R. Civ. P. 23(a).

c. Typicality

To satisfy Rule 23's typicality requirement, a named plaintiff may represent the class "only if the plaintiff establishes that his claims or defenses are 'typical of the claims or defenses of the class.'" *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2001) *citing* Fed. R. Civ. P. 23(a)(3). Typicality ensures that the "representative party's interest in prosecuting his own case" simultaneously tends "to advance the interests of the absent class members." *Id.* This requirement is satisfied so long as the plaintiff's claim is not "so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Id.* at 466-67.

Here, the proof of claim issues in Ms. Wingate's particular case raise the same issues as proofs of claim filed in all of the other Settlement Class Members' cases. Her case, like the

raises the same issues of law and fact, are vulnerable to the same potential defenses, and are redressed by the same remedy. Ms. Wingate's interest in resisting the proof of claim filed in her bankruptcy and pursuing potential claims against the parties who filed the claims is no different than the interests of any other Settlement Class Member and her prosecution of her case simultaneously advanced their interests.

d. Adequacy of Representation

"The requirements of Rule 23(a)(4) are satisfied if the named plaintiffs' interests are not opposed to those of other class members and that the plaintiffs' attorneys are qualified, experienced and able to conduct the litigation." *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 558 (D. Md. 2006). "At the very heart of this inquiry is whether the absent class members, who will be bound by the result, are protected by a vigorous and competent prosecution of the case by someone that shares their interests." *Id.*

Here neither Ms. Wingate nor her counsel have any claim or interest that conflicts with those of the proposed class. On the contrary, this Settlement was reached after significant and hard fought negotiations. Plaintiff's counsel has substantial experience in both class action consumer rights' litigation. The District Court for the Eastern District of Virginia has previously approved fees sought by Plaintiff's firm in other class action cases. *See Thomas v. FTS USA*, No. 3:13CV825 (REP), 2017 WL 1148283, at *10 (E.D. Va. Jan. 9, 2017) (awarding fees and expenses of over $400,000 to Consumer Litigation Associates in class action case alleging violations of Fair Credit Reporting Act), *report and recommendation adopted*, No. 3:13CV825, 2017 WL 1147460 (E.D. Va. Mar. 27, 2017). Members of Plaintiff's counsels' team have repeatedly been recognized as adequate class counsel in consumer litigation cases, and the other members of the team are experienced bankruptcy counsel. (See Exhibits B through E, Declarations of Dale W. Pittman, Thomas D. Domonoske, Mark C. Leffler, and Emily C.

Kennedy). As a result, Plaintiff was competently represented.

2. The Proposed Class Here Meets all Rule 23(b)(3) Elements

An action may be maintained as a class action if the four elements in Fed. R. Civ. P. 23(a), discussed above, are met and in addition, "the Court finds that the questions of law or fact common to members of the Class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Here, both requirements are satisfied: common legal and factual issues predominate and resolution through a class action is superior to any other method.

a. Predominance

If the Settlement Class is to be certified under Rule 23(b)(3), the common issues of law or fact shared by the Settlement Class must "predominate" over individual issues. The predominance inquiry focuses on whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362 (4th Cir. 2004). This criteria is typically satisfied when there is an essential, common factual link between all class members and the defendants for which the law provides a remedy. *Talbott*, 191 F.R.D. 99, 105 (W.D. Va. 2000) (citation omitted). Predominance also exists when all claims are based on the same acts by the defendant with common determinative questions in each individual controversy. *Jeffreys*, 212 F.R.D. at 323.

Here all claims at issue arise out of the facts associated with filing chapter 13 claims on substantially similar loans, all based on the same conduct undertaken by the same Defendants. Each Settlement Class Member shares essential, common facts and legal theories which give rise to a theory of liability in this case, and share the core question regarding application of Rule of Bankruptcy Procedure 3001. As a result, the predominance requirement is satisfied.

b. Superiority

Courts apply four main factors to determine if settlement by class action is superior to other methods of resolving a controversy in a fair, efficient manner. These factors are: (1) the interest in controlling individual prosecutions, (2) the extent and nature of any existing litigation over the controversy, (3) the desirability of concentrating the claims in the particular forum, and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A-D) *see also Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D. Md. 1997) (discussing each of the factors in detail).

"Efficiency is the primary focus to determine if a class action is the superior method to resolve a controversy," with courts looking to "judicial integrity, convenience, and economy." *Talbott v. GC Servs. Ltd. P'ship*, 191 F.R.D. 99, 106 (W.D. Va. 2000). In considering these factors, it is appropriate for courts to also consider the "inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161 (7th Cir. 1974); *see also In re Folding Carton Antitrust Litigation*, 75 F.R.D. 727, 732 (N.D.Ill.1977) (efficiency is more apparent when the individual claim would be small).

Here, the individual claims revolve around loans of a few hundred dollars per individual consumer. Each would be difficult to litigate on their own. Two other objections were asserted Settlement Class Members to proofs of claim filed by Defendants. One was resolved by withdrawal of the claim prior to the objection. With respect to the other, the Defendants to the objection by filing an amended proof of claim. As a result, there are no pending adversary proceedings or contested matters involving the Claims filed in the Bankruptcy Cases of Class Members or raising similar issues on their behalf. All of the proofs of claim and potential litigation involve the same set of facts and legal contentions, and the individual Settlement Class

Members have few resources to pursue these claims on their own. So resolution of this matter by class action is by far the most efficient method.

This Court is also by far the most appropriate and convenient forum to decide this dispute. Each of the individual debtors filed for chapter 13 in the Eastern District of Virginia, so it is appropriate for this Court to consider and decide litigation over the claims filed in this forum. The litigation involves interpreting the propriety of filings made in the proof of claim process as well as the interpretation of the Bankruptcy Code, a matter in which Bankruptcy Courts have special expertise. Thus, allowing this Court to approve and settle this matter as a class action is the superior way to resolve this dispute.

3. The Proposed Settlement is Appropriate for Preliminary Approval Because it Fairly, Adequately, and Reasonably Resolves this Dispute

Once a Court determines that a matter may be maintained as a class action, it can then turn to the propriety of a settlement that binds that class. For a trial court to approve a class action settlement, the proposed settlement must be "fair, adequate, and reasonable to class members." Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has provided trial courts with a two-level analysis in evaluating settlements: looking at one set of factors that go to the settlement's fairness and another set of factors going to the settlement's adequacy. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 253-54 (E.D. Va. 2009) *citing In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). At the preliminary approval stage, the Court need only find that the settlement is within "the range of possible approval." *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (describing the inquiry as "whether there is probable cause to notify the class of the proposed settlement") (citations omitted).

a. This Proposed Settlement is Fair

In the Fourth Circuit, courts evaluate the fairness of a class action settlement by

considering: (1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) experience of counsel in the area of securities class action litigation." *Jiffy Lube*, 927 F.2d at 159.

A review of the docket shows this case was heavily litigated. The Parties fully briefed Motions to Dismiss and a Motion to Compel Arbitration. *See* Dkt. Nos. 16, 18-19, 24-25. The parties also engaged in a hard-fought, two-day mediation. This allowed the relevant issues to be fully developed and the Settlement Class Members' interest to be adequately represented.

While approval of the Settlement is being sought prior to full discovery, the posture of this case is such that approval at this stage is appropriate. This matter is predominately a dispute over issues of law. Few, if any, contested facts exist between the Parties about the substantive issues. The parties agree on the content of the Claims, including that none of the initially filed Claims separately itemize interest charges or attach the relevant loan agreements, and that the relevant loan agreements include clauses that may allow the Defendants to force arbitration, avoid class action status, or provide a defense to jurisdiction being asserted by this Court. But the parties vehemently disagree about the application of the Fair Debt Collection Practices Act and the Bankruptcy Code and Rules to those facts. As a result, resolving this matter by settlement prior to discovery, but also prior to the Court potentially ruling on some of these issues in the context of the pending Motion to Dismiss and Motion to Compel Arbitration, is the most appropriate manner to proceed under the posture of this case.

Also, while the case is being settled prior to formal discovery, the parties engaged in informal discovery, which the Court can properly consider in determining that the Settlement is fair. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480 (D. Md. 2014) (approving settlement where "informal discovery" assured "sufficient development of the facts to permit an accurate assessment of the merits of the case"). Prior to mediation, the parties entered into a Stipulated

Protective Order to facilitate the informal exchange of discovery through that process. *See* Dkt. No. 44. Before and after the mediation, pursuant to the Protective Order, Defendants provided documents and information to the Plaintiff and Class Counsel regarding Defendants' business practices and certain financial information, including with respect to the Loans. Certain sensitive and business proprietary financial information that Defendants assert contain information from which Plaintiff could derive their trade secrets was provided directly to the Mediator. The Mediator then confirmed to Plaintiff's counsel that the information the Defendants provided to him conformed to the parties' settlement expectations. *See* Exhibit C (Declaration of Thomas D. Domonoske describing this review process). As a result, the Plaintiff is confident that the Settlement reaches the same result that would have been reached had the information been provided to Plaintiff directly. At the very least, approval of the Settlement is appropriate at this stage, without formal discovery, because all documents that the Plaintiff requested were either provided to her or to the Mediator.

Also, the presence of an experienced Mediator adds further confidence that the Settlement is fair and the process reasonable. In the course of the mediation, the parties conferred with the Mediator. The Mediator presided over the mediation process and the parties' informal discovery requests. In the course of that mediation, the Mediator determined and confirmed to the parties that, in his view, the information provided was adequate and he agreed that the Plaintiff had conducted a reasonable investigation. As a result, the Plaintiff does not believe that further discovery is likely to yield additional material benefits.

In the end, the result of the mediation was a negotiated, hard-fought settlement. Courts have found that where a settlement results from genuine arms-length negotiations, the settlement presumed fair. *See, e.g., City P'Ship Co. v. Atlantic Acquisition Ltd. P'Ship,* 100 F.3d 1041, 1043 (1st Cir. 1996) (citations omitted). The parties also approached these negotiations in a manner

designed to ensure a fair process that minimized conflicts. The parties negotiated the amount of payment into the Claims Fund prior to discussing the amount of the payments for attorneys' fees to the Class Representative. Negotiating these issues sequentially confirms that the Settlement Class Members are receiving full value for their claims by eliminating any suggestion that Class Counsel's interests were even potentially in conflict with the Settlement Class; thus no exists that a greater recovery for the Settlement Class would decrease the money available to pay the attorneys' fee award.

Plaintiff's counsel is also highly experienced in consumer class action litigation and endorses the settlement as fair and adequate under the circumstances. Where counsel for both sides are competent, experienced, and have the resources to serve effectively as counsel, "it is appropriate for the court to give significant weight to the judgment of class counsel that the proposed settlement is in the interest of their clients and the class as a whole and to find that the proposed partial settlement is fair." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 665 (E.D. Va. 2001) *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("[T]he trial court is entitled to rely upon the judgment of experienced counsel for the parties. Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.").

b. The Settlement Terms Proposed Here are Adequate and Reasonable

In the Fourth Circuit, courts evaluate the fairness of a class action settlement by considering: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to (3) the anticipated duration and expenses of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of to the settlement. *Jiffy Lube*, 927 F.2d at 159.

This is a complex case centering on the interplay of two federal statutes that present a great amount of uncertainty for both sides. The Defendants have raised significant defenses and contested jurisdiction in this Court, and the Defendants assert they are entitled to arbitration as well as to enforce a class action waiver in that arbitration.

Beyond these initial defenses, litigation risk exists for both sides. Plaintiff has raised claims under both the Fair Debt Collection Practices Act and Bankruptcy Rule 3001. Even if either of those theories survived to a merits hearing, the question remains whether they would be successful as a class action. A circuit split exists regarding whether a debtor is entitled to seek recoveries under the Fair Debt Collection Practices Act in connection with the filing of a proof of claim in a bankruptcy. *See Walls v. Wells Fargo*, 276 F.3d 502 (9th Cir. 2002) (finding that a debtor may not pursue simultaneous actions under the Bankruptcy Code and the Fair Debt Collection Practices Act); *Randolph v. IMBS, Inc.*, 368 F.3d 726 (7th Cir. 2004) (concluding that a debtor can bring an action against a creditor under both provisions). Similarly, the Plaintiff is also advancing a theory using Rule 3001 of the Bankruptcy Rules that has been rejected by at least one bankruptcy court. *See In re Rogers*, 391 B.R. 317, 323 (Bankr. M.D. La. 2008) (finding that violations of Rule 3001 do not give rise to a private cause of action on behalf of a chapter 13 debtor). At the same time, this Court has recently awarded significant attorneys' fees for Rule 3001 violations, which presents a litigation risk to the Defendants. *See Maddux v. Midland Credit Mgmt., Inc. for Midland Funding, LLC*, 567 B.R. 489, 501 (Bankr. E.D. Va. 2016)

Given this posture, in the absence of Court approval of this Settlement, all parties face the possibility of long and expensive litigation with an indeterminate outcome. The case may culminate in a trial and, given the uncertainty of the legal issues involved, lead to complex and potentially lengthy appeals. By contrast, if the Court grants preliminary approval, these risks will be avoided to those Settlement Class Members who do not opt out.

But the Settlement Class Members will also receive a notice carefully explaining the terms of the Settlement and informing them of their right to object or opt-out. So those Settlement Class Members who believe that their cases are more valuable than proposed in the Settlement or who believe it is in their interest to press these legal issues, have the ability to do so by opting out and litigating their claims on an individual basis.

While the degree of any opposition to the Settlement cannot be known at this time, the lack of any other currently filed competing class cases, or any other pending adversaries or contested matters, on behalf of the individual debtors support the strength of the proposed Settlement and the likelihood it will stand. For these reasons, the opinion of all counsel involved is that the terms of the Settlement present a fair, reasonable, and adequate resolution of the claims alleged.

4. The Proposed Notice and Notice Proposal Satisfy Rule 23

Under Rule 23, following the Court's preliminary approval of the Settlement, the Class Members must be given notice concerning the nature of the settlement and their rights. Fed. R. Civ. P. 23(e)(1). Notice must be directed "in a reasonable manner to all class members who would be bound by the proposal." *Id.* The contents of the notice to be sent to Class Members are set forth in the Rules, which provide that:

> For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B) The proposed Direct Mail Notice, which is attached to the Settlement, satisfies all of these requirements.

Notice to the Class Members is being accomplished in a manner reasonably calculated

under all circumstances to provide them with adequate notice. *See Minter v. Wells Fargo Bank, N.A.*, 283 F.R.D. 268, 275 (D. Md. 2012) (discussing the notice standard). As set forth in the Settlement, to accomplish the contemplated class notice, Defendants will generate and provide a list of the Class Members from its business records, including the relevant name, account and most recent address for each. The Defendants will send a unique notice to each Class that identifies the approximate amount of money that Class Member will receive.

Approved class action notices will be mailed after the addresses have been electronically checked and updated against the U.S.P.S. National Change of Address database or any other postal verification that the Defendants deem proper. Any returned mail will also get a second level of review for re-mailing. Apart from individual mailed notice, the Administrator will also establish and maintain an Internet site, which will include the Direct Mail Notice, the Class Action Complaint, the Settlement, any Orders of this Court relating to this Settlement and other relevant documents. The Direct Mail Notice will direct recipients to the location of the Internet site, which will become active within five days of an order of this Court preliminarily approving the Settlement. Additionally, for class members with counsel in an active bankruptcy, notice will electronically go to their counsel, and all Ch. 13 trustees in the Eastern District of Virginia have received notice of this Motion for Preliminary Approval.

As the Manual for Complex Litigation recognizes, mail notice is the ideal method of informing class members of a class settlement where such members can be identified, while through an internet website is a supplemental means of providing notice. *See* MCL, § 21.311; *see also Peters v. National R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. (finding that "it is beyond dispute" that "notice by first class mail ordinarily satisfies Rule 23(c)(2)'s requirement that class members receive the best notice practicable under the circumstances") (internal citation omitted).

For these reasons, the proposed Notices and Notice Plan represent the "best notice that is practicable under the circumstances," and it therefore meets the notice requirements of Rule 23. Consequently, the Direct Mail Notice and the Settlement's notice procedures should be approved by the Court.

B. The Settlement Should also be Approved Under Fed. R. Bankr. P. 9019 as an Adequate Resolution of the Claims of the Class Members' Bankruptcy Estates

Rule 9019(a) of the Federal Rules of Bankruptcy Procedure Provides "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." The Rule also applies to agreements sought by non-trustee parties where the compromise would affect the rights or assets of a bankruptcy estate and bind the trustee. *See Liberty Towers Realty, LLC v. Richmond Liberty, LLC*, 569 B.R. 534, 543 (E.D.N.Y. 2017) (affirming a bankruptcy court's approval of 9019 motion by non-trustee after the debtor-in-possession signed but then repudiated the agreement). Rule 9019 also provides the requirements for notice and gives the Court the power to require notice "to any other entity as the court may direct." Fed. R. Bankr. P. 9019(a). Compromises are "a normal part of the process of reorganization." *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). "Compromises are favored because they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate." *In re NII Holdings, Inc.*, 536 B.R. 61, 98-99 (Bankr. S.D.N.Y. 2015) (citations omitted). To approve a Rule 9019 Settlement, the Court must determine that the proposed compromise is "fair and equitable." *In re Alpha Nat. Res. Inc.*, 544 B.R. 848, 857 (Bankr. E.D. Va. 2016).

This Court evaluates that standard through a four factor test: (i) the probability of success in litigation; (ii) the potential difficulties in any collection; (iii) the complexity of the litigation the expense, inconvenience, and delay necessarily attending it; and (iv) the paramount interest of

the creditors. *Id.* (citations omitted). In so doing, it is not necessary for the Court to conduct a mini-trial or evidentiary hearing; rather, "the Court need only canvass the issues to determine if settlement falls below the lowest point in the range of reasonableness." *In re Gordon Properties, LLC*, 515 B.R. 454, 465 (Bankr. E.D. Va. 2013) (quotations omitted). The proponent of the settlement bears the burden "to persuade the court that the settlement is in the best interests of estate." *In re MF Glob. Inc.*, 466 B.R. 244, 248 (Bankr. S.D.N.Y. 2012). But a compromise will "most likely gain approval" if it is "fair and equitable" as well as "representative of the best interests of the estate as a whole." *In re Three Rivers Woods, Inc.*, No. 98-38685-T, 2001 WL 720620, at *6 (Bankr. E.D. Va. Mar. 20, 2001).

Here, for the same reasons that the Settlement is "fair, reasonable, and adequate" within the meaning of Fed. R. Civ. P. 23, it is also "fair and equitable" to the affected Debtors and bankruptcy estates within the meaning of Fed. R. Bankr. P. 9019.

This case presents complex legal questions at the intersection of two intricate federal statutes: the Fair Debt Collection Practices Act and the Bankruptcy Code. The results are clearly uncertain, given the variance of opinions among courts that have addressed some of these issues. The expense of the litigation will vastly dwarf the dollar amount of the claims. Outside of a class action settlement, the affected debtors, creditors, or the relevant chapter 13 trustees will not likely bring litigation to address these issues.

The Settlement also fairly addresses the interests of the relevant bankruptcy estates. the Settlement, in addition to the loan relief and monetary awards provided to the individual debtors, the Defendants will be refunding to the chapter 13 trustees all amounts paid on account the claims, unless the estates have already been closed. As a result, the Settlement is not only in best interest of the individual debtors, it is also in the best interest of the relevant chapter 13 trustees and the respective creditor bodies as a whole.

Wherefore, the Plaintiff asks that this Court enter an order preliminarily approving the Settlement under Fed. R. Civ. P. 23 and Fed. R. Bankr. P. 9019, schedule a Final Fairness Hearing on the Settlement, authorize the Direct Mail Notice to be sent to the Class Members, direct the Parties to take any necessary steps to effectuate the Settlement on a preliminary matter, and for any further relief that may be just and proper.

Respectfully submitted,

DORI DANYELLE WINGATE

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	*	
	*	
DORI DANYELLE WINGATE,	*	**Case No. 15-35033-KLP**
	*	
	*	Chapter 13
Debtor.	*	
	*	

MOTION UNDER FEDERAL RULES OF BANKRUPTCY PROCEDURE 7023 AND 9019 FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Dori Danyelle Wingate, as Debtor in the above-captioned bankruptcy case and Plaintiff in the adversary proceeding *Wingate v. BlueChip*, Adv. Pro. No. 17-04453-KLP (the "Action"), individually and on behalf of all other similarly situated individuals (the "Plaintiff"), by counsel, submits this Motion under Federal Rules of Bankruptcy Procedure 7023 and 9019 for Final Approval of Class Action Settlement (the "Motion").[1]

The Settlement Class has received notice of the Settlement. Not one Class Member has objected to the Settlement and none have excluded themselves. In short, nothing has changed since the Court's grant of preliminary approval, finding on a preliminary basis that the Settlement was fair, reasonable, and adequate within the standard set by Fed. R. Bankr. P. 7023, which incorporates Fed R. Civ. P. 23 by reference, and that the settlement is fair and equitable within the meaning of Fed. R. Bankr. P. 9019. As a result, the Court should confirm that the

[1] This Motion and memorandum in support of the Motion have been combined into a single pleading pursuant to Local Rule 9013-1(G). All capitalized terms not otherwise defined herein have the meaning set forth in the Stipulation and Agreement of Settlement (the "Settlement"). Dkt. No. 58-2.

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Settlement meets those standards on a final basis, grant approval of the Settlement on a final basis pursuant to the attached Order (Exhibit A), and enter a final judgment dismissing the Action pursuant to the attached Judgment (Exhibit B).

I. INTRODUCTION.

The Action presents a putative class action alleging a failure to comply with the Fair Debt Collection Practices Act (the "FDCPA") and Federal Rule of Bankruptcy 3001 when certain claims were filed in 221 chapter 13 bankruptcies pending before this Court. The Class Action Complaint names Dori Danyelle Wingate as the Named Plaintiff and BlueChip Financial d/b/a Spotloan ("BlueChip") and American InfoSource L.P. ("American InfoSource") as Defendants (collectively the "Defendants").

After the filing of motions seeking dismissal of the Class Action Complaint and to compel arbitration of the dispute, the Parties engaged in a multiday mediation with the Honorable Frank J. Santoro serving as Mediator. The mediation was successful, and the Parties ultimately entered into the Settlement. The Court held a preliminary approval hearing on March 7, 2018 and entered an order preliminarily approving the Settlement on March 13, 2018 (the "Preliminary Approval Order"). Dkt. No. 64. The Defendants notified the 221 debtors making up the Settlement Class via the Court-approved Direct Mail Notice. *See*

1, McKelvey Decl. at ¶ 4. Pursuant to Federal Rule of Civil Procedure 23, the Plaintiff is now seeking final approval of the Settlement. Specifically, the Plaintiff requests that the Court finally certify the Settlement Class for settlement purposes only, award attorneys' fees and costs, approve the service award for the Named Plaintiff, and dismiss the Action with prejudice.

Having carefully overseen preliminary approval of the Settlement, the Court's role now is to determine whether the Settlement comports with Rule 23(e)(1)(C), which permits a court to

approve a settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." The Fourth Circuit has established what has become known as the *Jiffy Lube* standard to guide courts in this fairness analysis. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991). There are two parts to the Rule 23(e) consideration: (1) reasonableness and adequacy of the settlement—whether the Settlement Class recovery is adequate versus what the Settlement Class gives up;[2] and (2) fairness—the process question as to how the settlement came about.[3]

First, the Settlement remains an excellent result for the Settlement Class. The Settlement resolves all of the proofs of claims filed by American InfoSource on behalf of BlueChip in the Class Members' bankruptcy cases, discharges all outstanding Loans belonging to Settlement Class Members, returns funds that were paid by the chapter 13 bankruptcy estates to the extent a bankruptcy case is still open, and sends automatic cash payments to Class Members. Additionally, the Defendants agreed that for Loans the Defendants have previously reported to credit bureaus, the Defendants will request that such Loans be reported as having a zero balance and "included in bankruptcy." No claim process is required, and any money remaining in the Fund not distributed to Class Members will *cy pres* and not revert to the Defendants.

In exchange for this broad relief, Class Members provide a release of their claims against the Defendants and Defendants' Affiliates. No Class Members have opted out of the Settlement

[2] The "adequacy" aspect considers: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Jiffy Lube*, 927 F.2d at 158–59.

[3] These "fairness" considerations include: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of securities class action litigation." *Jiffy Lube*, 927 F.2d at 158–59.

and there are no objections to the Settlement. Thus, the Settlement is "reasonable and adequate." Fed R. Civ. P. 23(e)(1)(C).

Second, the Settlement occurred after significant, informal exchange of information and in the context of settling a complex dispute at the intersection of two federal statutes that posed significant litigation risk at both sides. Settlement at this stage is appropriate because the dispute centers on legal issues, which would benefit from consensual resolution between the Parties prior to a ruling by this Court that may advantage one side or the other. The Defendants provided to the Plaintiff or to the Mediator all of the information the Plaintiff sought. At the conclusion of the Mediation, Judge Santoro concluded that the Plaintiff's investigation had been thorough and that no further information that was requested was outstanding. *See* Dkt. No. 58-4 at ¶¶15-22 (Declaration of Thomas D. Domonoske in connection with preliminary approval, outlining the process in mediation for exchanging information and conclusions of the Mediator). As a result, there is no question that the negotiations were arm's length, that Class Counsel advocated aggressively and effectively on behalf of the Settlement Class, and that the Settlement is "fair, reasonable, and adequate" within the meaning of Fed. R. Civ. P. 23(e)(2) and is "fair and equitable" within the meaning of Fed. R. Bankr. P. 9019.

II. BACKGROUND.

The case background, nature of Plaintiff's claims, Settlement structure, and class certification analysis are detailed in Plaintiff's Motion for Preliminary Approval. Dkt. No. 58. In brief, the Action began as a Class Action Complaint filed on June 13, 2017, against American InfoSource and BlueChip, alleging that American InfoSource did not comply with the Fair Debt Collection Practices Act and BlueChip did not comply with Federal Rule of Bankruptcy Procedure 3001. On July 31, 2017, American InfoSource filed an Answer to the Class Action

Complaint, as well as a Motion to Compel Arbitration. The same day, BlueChip filed a Motion to Dismiss the Class Action Complaint. On November 29 and 30, 2017, the Parties engaged in two days of mediation resulting in the agreement that was memorialized in the Settlement.

Defendants maintain that they have substantial defenses to the claims alleged in the Class Action Complaint and deny all liability. Nonetheless, given the costs, risks, and uncertainties of litigation, Defendants agreed to the Settlement. Defendants deny that a class is appropriate for Rule 23 certification on the claims asserted in the Action, but Defendants do not oppose the certification of the Settlement Class for the sole purpose of resolving the Action. Similarly, Plaintiff was motivated enter into the Settlement to obtain significant and immediate relief for herself and other chapter 13 debtors and avoid the substantial risks and uncertainties of litigation. The Settlement proposed herein resolves all of the claims raised in the Class Action Complaint.

III. THE SETTLEMENT OF THE ACTION.

A. The Settlement Class.

In the Preliminary Approval Order, this Court preliminarily certified, for settlement purposes only, a class action on behalf of the following class of plaintiffs (the "Settlement Class"):

> All individuals who obtained a loan from BlueChip and, upon such loan, American InfoSource, on behalf of BlueChip, filed a claim in the individual's bankruptcy case in the Eastern District of Virginia Bankruptcy Court, which case was open and pending under chapter 13 of the Bankruptcy Code as of June 13, 2017.

Based on a review of their records, the Defendants have identified 221 individual debtors that comprise the Settlement Class.

B. The consideration provided to the Settlement Class.

This case was fiercely litigated, with the Plaintiff facing substantial merits and Rule 23 defenses, including motions to dismiss and to compel arbitration. Nevertheless, the Plaintiff was able to negotiate a favorable settlement structure. The Settlement requires that Defendants discharge Loans belonging to Settlement Class Members, pay a total of $70,000 into a Fund for the benefit of the Settlement Class, withdraw proofs of claim, refund the bankruptcy estates of Class Members having open bankruptcy cases, and contact credit bureaus to report the discharge of the Loans at issue where the Defendants had made prior reports to the credit bureaus. Dkt. No. 58-2 (Settlement) at § 3.4.

The Settlement provides real financial relief in the form of a cash payment and Loan elimination to each Settlement Class Member. The Settlement also provides benefits to the bankruptcy estates of the Class Members by withdrawing proofs of claim and refunding amounts paid on claims by chapter 13 trustees where the bankruptcy case remains open.

Finally, these benefits will be provided to Class Members without Class Members submitting any forms or making any claims against the Fund. Class Members will receive these benefits without having to prove any harm whatsoever.

In addition to the benefits for Class Members, Defendants have agreed to pay attorneys' fees (not to exceed $96,500), the costs of notice and administration, and a service award of up to $3,000 to the Named Plaintiff. *Id*. at §§ 3.5, 3.6.

C. The notice process is complete as the Court has instructed and under the applicable law.

In its Preliminary Approval Order, the Court approved the Direct Mail Notice and the Direct Mail Notice Form. In accordance with the Settlement and the Preliminary Approval Order, counsel for Defendants mailed the Direct Mail Notice to each of the 221 Settlement Class Members and emailed the Direct Mail Notice Form to bankruptcy counsel for all Settlement

Class Members who have counsel in an active bankruptcy action. Exhibit C, McKelvey Decl. at ¶¶ 4-5.

In addition, Defendants' counsel established and maintained an internet site at https://www.ofplaw.com/virginiaclaimsettlement/. *Id.* at ¶ 6. That site was activated on or before March 1, 2018 and remains active. *Id.* The site was referenced on Direct Mail Notice and the Direct Mail Notice Form.

The Defendants' counsel is experienced with bankruptcy case administration, which includes familiarity with mailing large batches of bankruptcy notices, administering payments to large numbers of claimants, and overseeing the administration of claim funds. Class Counsel coordinated with and had input into all actions taken by the Defendant's counsel for providing notice to Class Members.

Class Notice is a fairly well-established process. In accordance with the Settlement, and in preparation for the mailing of the Direct Mail Notices, the Defendants, together with their counsel, reviewed their records for the Class Members and ran all Class Member addresses through the National Change of Address ("NCOA") system. In that review, Defendants learned that one class member who was a Virginia resident may have moved to Texas after the Action was filed. In addition, the Defendants, together with their counsel, finalized the list of Class Members consistent with the Definition of the Settlement Class, resulting in the estimated total number of Class Members increasing from 218 to 221. Exhibit C, McKelvey Decl. at ¶ 8.

The Direct Mail Notice was mailed to each of the 221 Settlement Class Members to the address shown in Defendants' electronic records, as maintained in the ordinary course of business, for the Loan at issue, or as shown in the Bankruptcy Court's records, or as identified by the NCOA system. *Id.* at ¶ 4. Mailing addresses were run once through the NCOA system prior

to mailing. *Id.* If multiple addresses were identified through the Defendants' records, the Bankruptcy Court's records, or the NCOA system, the firm made its best effort to identify the most recent address and sent the Direct Mail Notice to the most recent address. *Id.*

After the initial mailing, the postal service returned six of the 221 Direct Mail Notices to the firm; one with a forwarding address and five as undeliverable. *Id.* The returned Direct Mail Notice with a forwarding address was resent on or before May 2, 2018. *Id.* Four of the five undeliverable Direct Mail Notices were resent to another address for the Class Member and have not been returned to the firm by the postal service. *Id.* Thus, only one Direct Mail Notice was unable to be delivered to a known address for a Class Member. *Id.* All told, it is estimated that Defendants' counsel successfully mailed notice to 220 Class Members, a reach of 99 percent.

The Direct Mail Notices, with supplemental email notice to the Class Members' bankruptcy counsel, was the best available notice method given the circumstances of this case. A 99% successful-mail-delivery rate is remarkable—and much better than rates approved in other cases.[4]

D. Class members overwhelmingly support the settlement and there are no opt-outs or objectors.

Class Member reaction to the Settlement confirms that it is adequate. There are no objections and no Class Members opted-out of the Settlement. Exhibit C, McKelvey Decl. at ¶10.

[4] Counsel ordinarily aspires to an 80% target, which is well above the "reasonable notice" thresholds used in other venues. *See Alberton v. Commn'w Land Title Ins. Co.*, No. 06-3755, 2008 WL 1849774, at *3 (E.D. Pa. Apr. 25, 2008) (finding as sufficient direct notice projected to reach 70% of class plus publication in newspapers and Internet); *Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006) (approving of direct mail to 55% of class and publication in three newspapers and Internet).

Likewise, Defendants' counsel served the required Class Action Fairness Act notices on the Attorney General of the United States and the Attorney General of Virginia on February 27, 2018 (along with supplemental notices on April 19, 2018), and on the Attorney General of Texas on April 19, 2018. *Id.* at ¶¶ 7-9. Defendants received no substantive comments, questions, or objections in response. *Id.* at ¶ 10.

It has been Class Counsel's experience that nearly every case, regardless of size, will draw some sort of objection or complaint from class members. There are none in this case. Presumably, even the large industry of professional objectors did not conclude that there was a valid basis to challenge the Settlement.

E. The release of claims.

In return for the consideration Class Members will receive, and without a showing of monetary harm or willfulness, they will release all claims against Defendants, Defendants' Affiliates, and other Released Parties, as follows:

> 4.1 As of the Effective Date of this Settlement, Plaintiff and each member of the Settlement Class shall be deemed to have fully, finally, and forever released and discharged the Released Parties from any and all claims, demands, rights, damages, obligations, suits, debts, liens, grievances, and causes of action that arise out of or are related to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were directly or indirectly alleged or referred to in the Action or that arise out of or are related to loans issued by BlueChip, whether arising in contract, tort, statute, common law, criminal law, or any other theory of action, including without limitation Bankruptcy Rule 3001, other Bankruptcy Rule, the Bankruptcy Code, the Fair Debt Collection Practices Act, the Racketeer Influenced and Corrupt Organizations Act, the Virginia Consumer Finance Act, the Virginia Consumer Protection Act, tribal law, or state usury statutes, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or un-matured, contingent or fixed, liquidated or unliquidated, accrued or un-accrued, asserted or un-asserted, based upon any fact, whether known or unknown, that happened prior to the Effective Date, all, collectively, the "Released Claims." Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective.

This paragraph constitutes a waiver of Section 1542 of the California Civil Code and any similar or comparable provisions, rights, and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law, which provide:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff and each Settlement Class Member understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiff and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that they release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts.

Dkt. No. 58-2 at § 4.1.

IV. THE COURT SHOULD APPROVE THE SETTLEMENT ON A FINAL BASIS.

A. Nothing has changed since preliminary approval of the Settlement under Rule 23, giving the Court no cause to overturn that decision.

1. The standards for approval of class action settlements.

Settlement by compromise is part of a strong judicial policy within this Circuit favoring resolution of litigation prior to trial. *See, e.g., S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (noting "[t]he voluntary resolution of litigation through settlement is strongly favored by the courts") (citing *Williams v. First Nat'l Bank*, 216 U.S. 582 (1910)). Settlement spares the litigants the uncertainty, delay, and expense of a trial and appeal while simultaneously reducing the burden on judicial resources. As the court in *South Carolina National Bank* observed:

> In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.

Id. *quoting Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980).

To safeguard the interests of the absent class members, all class settlements and the corresponding later dismissal of the case require court approval. Fed. R. Civ. P. 23(e)(1)(A). Rule 23(e) imposes two basic requirements before approval of a class settlement and dismissal. First, the Court must determine that notice was directed "in a reasonable manner to all class members." Fed. R. Civ. P. 23(e)(1)(B). Second, the Court must determine that the settlement "is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(C).

Federal jurisprudence strongly favors resolution of class actions through settlement. *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1029 (N.D. Cal. 1999); *see* ALBA CONTE & HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy."). Rule 23 requires Court review of the resolution of a class action such as this one. Specifically, the Rule provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Court approval is required to ensure that the parties gave adequate consideration to the rights of absent class members during settlement negotiations. *Henley v. FMC Corp*., 207 F. Supp. 2d 489, 492 (S.D. W. Va. 2002) *citing In re Jiffy Lube Sec. Litig*., 927 F.2d 155, 158 (4th Cir. 1991).

Despite the policy favoring settlement, in a class action, a court may approve a settlement only after a hearing and upon a finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Approval of a class action settlement is committed to the "sound discretion of the

district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig*., 148 F. Supp. 2d 654, 663 (E.D. Va. 2001). However, "there is a strong initial presumption that the compromise is fair and reasonable." *Id. quoting S.C. Nat'l Bank*, 139 F.R.D. at 339.

In determining whether a given settlement is reasonable, the Court should avoid transforming the hearing on the settlement into a trial on the merits regarding the strengths and weaknesses of each side of the case. *Flinn v. F.M.C. Corp*., 528 F.2d 1169, 1172–73 (4th Cir. 1975).

2. The notice to Class Members met the requirements of due process.

In a settlement class maintained under Rule 23(b)(3), the class notice must meet the requirements of both Federal Rules of Civil Procedure 23(c)(2) and 23(e). Rule 23(e) specifies that class actions may not be settled without court approval and notice to class members. Fed. R. Civ. P. 23(e). Rule 23(c)(2) requires that notice to the class be "the best practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c). The Rule also requires that the notice inform potential class members that (1) they have an opportunity to opt out; (2) the judgment will bind all class members who do not opt out; (3) and any member who does not opt out may appear through counsel. *Id.* The Court must consider the mode of dissemination and the content of the notice to assess whether such notice was sufficient. *See* Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION § 21.312 (4th 2004).

The class list was compiled by Defendants with the assistance of their counsel. Reasonable measures were taken to locate updated addresses for the Class Members. In each case "what amounts to reasonable efforts under the circumstances is for the Court to determine

after examining the available information and possible identification methods" and "in every case, reasonableness is a function of [the] anticipated results, costs, and amount involved.'" *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 227 (E.D. Va. 2003) (citations omitted). The Supreme Court has concluded that direct notice satisfies due process, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812-13 (1985), and as addressed above, other courts—including the United States District Court for the Eastern District of Virginia and others within the Fourth Circuit—have approved mail notice programs that reached a much smaller percentage of class members than this class notice reached. *See In re Serzone*, 231 F.R.D. 221, 236 (S.D. W. Va. 2005) (approving notice program where direct mail portion was estimated to have reached 80% of class members); *Martin v. United Auto Credit Corp.*, No. 3:05cv00143 (E.D. Va. Aug. 29, 2006) (granting final approval where class notice had approximately 85% delivery). In fact, almost every case in which present Class Counsel has sought and obtained approval has presented an equal or lower rate of deliverables than in this case.

The Parties' efforts to provide Class Members with notice of the Settlement makes it clear that such notice was the best available notice under the circumstances given: (a) the available information; (b) the possible identification methods; (c) the number of Class Members; and (d) the amount of the Settlement. The Parties have complied fully with the Court's Preliminary Approval Order, and have taken reasonable steps to ensure that the Class Members were notified—in the best and most direct manner possible—of the Settlement's terms and significant benefits.

3. An analysis of the *Jiffy Lube* factors confirms that the Settlement is fair and reasonable.

The next phase of the Court's determination of compliance with Rule 23(e)(2) typically requires a two-part analysis, referred to in this Circuit as the *Jiffy Lube* factors. The Court must

determine whether the settlement is "fair and reasonable," and then whether the settlement is "adequate." The approval of a proposed settlement agreement is in the sound discretion of the Court. *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158.

The first step in the *Jiffy Lube* analysis is an analysis of the fairness of the settlement. The fairness factors are critical to the protection of the class members from unscrupulous class counsel and relate to whether there has been arm's length bargaining. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1383 (D. Md. 1983); *S.C. Nat'l Bank*, 139 F.R.D. at 339. The Court must consider four factors: (i) the posture of the case at the time of settlement; (ii) the extent of discovery that has been conducted; (iii) the circumstances surrounding the negotiations; and (iv) the experience of counsel. *Jiffy Lube*, 927 F.2d at 158–59; *see also In re Microstrategy, Inc.*, 148 F. Supp. 2d at 663–64; *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995). A proposed class action settlement is considered presumptively fair where there is no evidence of collusion and the parties, through capable counsel, have engaged in arm's length negotiations. *See S.C. Nat'l Bank*, 139 F.R.D. at 339. As described below, the settlement reached in this case is clearly fair and each of the *Jiffy Lube* factors are satisfied.

The determination of the appropriate time at which to settle a case is one that is entrusted to experienced class counsel. It can be difficult to detour from a litigation track to a mindset that considers that every case—no matter how conceivably strong it may seem—will always have an element of risk. Settlement is the only outcome that allows both sides to be assured of a certain ending to the litigation, alleviating both the risk and cost inherent in further litigation to both sides, as well as the additional burden on the resources of the Court. This case was no exception, and in fair consideration of the strengths and weaknesses of the case, Class Counsel felt that

settlement was appropriate at this juncture because the result for the Class Members weighed against the risk of loss prior to or at trial. *See Cardiology Assocs., P.C. v. Nat'l Intergroup, Inc.*, No. 85CV4038, 1987 WL 7030, at *2 (S.D.N.Y. Feb. 13, 1987) (concluding that because continued prosecution of the action would have been expensive and time-consuming, and would have involved substantial risks, "it [was] not unreasonable for the plaintiff class to take a 'bird in the hand'"); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) (noting that "[i]t has been held prudent to take 'a bird in the hand instead of a prospective flock in the bush'" in weighing the value of an immediate recovery against "the mere possibility of future relief after protracted and expensive litigation") *quoting W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 740 (S.D.N.Y. 1970); *In re Microstrategy*, 148 F. Supp. 2d at 667.

The proposed Settlement in this case was reached only after the Defendants filed a motion to dismiss and motion to compel arbitration, the Parties exchanged significant informal discovery to facilitate an investigation of the proposed settlement, and the Parties participated in a two day mediation. In that mediation, all of the information that the Plaintiff requested was provided either to her or to the Mediator. *See* Dkt. No. 58-4, Domonoske Decl. at ¶¶14-22. Taken as a whole, the decision to settle was as informed as it reasonably could have been. The Parties have appropriately litigated this action and sufficient discovery has been obtained to assess the strength of their respective claims and defenses.

Further, the Parties conducted arms' length, contentious, and complicated negotiations with an experienced Mediator. Courts have presumed settlements reached in that context to be fair. *See In re United Telecommunications, Inc., Sec. Litig.*, No. CIV. A. 90-2251-0, 1994 WL 326007, at *2 (D. Kan. June 1, 1994) (finding that settlement was fair where parties negotiated at arm's length and reached an agreement after mediation supervised by a retired federal judge);

Miller v. CEVA LOGISTICS U.S., INC., No. 2:13-CV-01321-TLN, 2015 WL 729638, at *6 (E.D. Cal. Feb. 19, 2015) (finding that settlement reached "after participation in a full-day mediation with a retired Judge" was the product of "informed, arm's length negotiations"). Consequently, the circumstances surrounding the Parties' settlement negotiations support a finding that the Settlement is fair.

Class Counsel in this case are all highly-skilled and experienced consumer protection attorneys who have successfully litigated individual and class cases on behalf of consumers, and they endorse the settlement as fair and adequate under the circumstances. *See* Dkt. No. 58-4, Domonoske Decl. at ¶¶ 19, 21, 23-24. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See, e.g.*, *In re MicroStrategy*, 148 F. Supp. 2d at 665.

Moreover, there are advantages not only to the Parties, but also to the Court when opposing counsel are already experts on the legal and factual issues in a case and in a field of practice. *See S.C. Nat'l Bank*, 139 F.R.D. at 339 (concluding fairness met where settlement discussions "were hard fought and always adversarial," and those negotiations "were conducted by able counsel" with substantial experience in the area of the subject law). Experienced counsel negotiated the Settlement, making it their first priority bringing the best benefit possible to their clients and, therefore, to the Settlement Class. This Court and many others have found the attorneys here are extremely qualified to represent a consumer class.[5]

[5] *Dreher v. Experian Info. Sols., Inc.*, Case No. 3:11-cv-624 (JAG) (E.D. Va.); *Tsvetovat, v. Segan, Mason, & Mason, PC*, No. 1:12-cv-510 (TSE) (E.D. Va.); *Conley v. First Tenn. Bank*, No. 1:10-cv-1247 (TSE) (E.D. Va.); *Jenkins v. Equifax Info. Servs., LLC*, No. 3:15-cv-443 (E.D. Va.); *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14CV238, 2015 WL 4994549, at *15 (E.D. Va. Aug. 19, 2015) (finding same set of Class Counsel "is experienced in class action work, as well

Class Counsel's collective experience and expertise, together with discovery, sufficient to aid Counsel and the Court in evaluating Plaintiff's claims and Defendants' rebuttals, further point to the conclusion that the Settlement was the product of arm's length negotiation by experienced counsel and thus warrants final approval. *See Jiffy Lube*, 927 F.2d at 159; *see also Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 501–02 (E.D. Va. 1995) (concluding requirement met where "plaintiffs' counsel, with their wealth of experience and knowledge in the securities-class action area, engaged in sufficiently extended and detailed settlement negotiations to secure a favorable settlement for the Class"). In Exhibits B-D of the Preliminary Approval Motion (Dkt. No. 58), Class Counsel set out their qualifications and experience for the Court's consideration.

4. The remaining *Jiffy Lube* factors confirm the Settlement terms are adequate.

In an analysis of the adequacy of a proposed settlement, the relevant factors to be considered may include: (1) the relative strength of the plaintiff's case on the merits; (2) any difficulties of proof or strong defenses the plaintiff would likely encounter if the case were to go to trial; (3) the expected duration and expense of additional litigation; (4) the solvency of the defendant and the probability of recovery on a litigated judgment; (5) the degree of opposition to the proposed settlement; (6) the posture of the case at the time settlement was proposed; (7) the extent of discovery that had been conducted; (8) the circumstances surrounding the settlement

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as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases"); *see Soutter v. Equifax Info. Servs., LLC*, No. 3:10CV107, 2011 WL 1226025 (E.D. Va. Mar. 30, 2011) ("[T]he Court finds that Soutter's counsel is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases."); *Williams v. Lexis-Nexis Risk Mgt.*, No. 3:06CV241 (E.D. Va. 2008).

negotiations; and (9) the experience of counsel in the substantive area and class action litigation. *See Jiffy Lube*, 927 F.2d at 159.

While Class Counsel firmly believes in the merits of Plaintiff's claims, demonstrating that the Fair Debt Collection Practices Act can be applied to the proofs of claim at issue in the Action or that Rule 3001 permits Plaintiff to recover damages under these circumstances is not at all a certainty. In addition to raising defenses to the merits of Plaintiff's claims, the Defendants also raised defenses that the Class Members waived any right they may have to litigate collectively, that the claims were subject to arbitration, and lack of subject matter jurisdiction. Consequently, absent approval of the Settlement, the Plaintiff will be put to challenging proofs, and all Parties face the prospect of a long and expensive litigation which will likely culminate in a trial, and, thereafter, a lengthy appeal (not to mention the likelihood of a requested interlocutory appeal relating to class certification under Rule 23(f)).

It is convincing that despite the successful delivery of 220 notices, no Class Members have objected and none have opted out. "Such a lack of opposition to the partial settlement strongly supports a finding of adequacy, for '[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.'" *In re Microstrategy*, 148 F. Supp. 2d at 668 *quoting Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). As the Eastern District has previously explained, "[b]ecause 'the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.' The lack here of any objections to the settlement and the small number of class members choosing to opt-out of the class strongly compel a finding of adequacy." *Microstrategy*, 148 F. Supp. 2 at 668 (citation omitted); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 478-79 (S.D.N.Y. 1998). Where "[t]he parties objecting

to the settlements are both qualitatively and quantitatively insignificant," their objections may be disregarded. *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1327 (5th Cir. 1981), *cert. denied sub nom. CFS Continental, Inc. v. Adams Extract Co.*, 456 U.S. 998 (1982). Courts recognize that where the class as a whole supports a settlement, it should be approved.[6] Indeed, even a small majority of support creates a presumption in favor of approval. *See Reed v. Gen'l Motors Corp.*, 703 F.2d 170, 174 (5th Cir. 1983) (approving class action settlement where more than 40 percent of class objected or opted out); *Cotton v. Hinton*, 559 F.2d 1326, 1333 (5th Cir. 1977) (nearly 50 percent opted out or objected; settlement nevertheless approved).

If the Court finally approves the Settlement, then the Class Members will receive genuine relief without the need to show any harm whatsoever. Class Members believing their cases are even more valuable or who believe they have damages in excess of these expected awards have had the opportunity to opt-out and pursue those claims on an individual basis. None have done so, further supporting the conclusion that the Settlement is adequate. The absence of any significant opposition to the Settlement, coupled with the lack of any other competing class cases supports the strength of the Settlement. For these reasons, the opinion of Class Counsel is that the terms of the Settlement represent a fair, reasonable, and adequate resolution of the claims alleged. The Court should agree.

B. Similarly, nothing has changed since preliminary approval of the Settlement under Bankruptcy Rule 9019, so the Settlement should be approved under that standard as well.

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[6] *See, e.g., In re Beef Industry Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. 1979; *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (finding small number of objectors demonstrates fairness of a settlement); *Shlensky v. Dorsey*, 574 F.2d 131 (3rd Cir. 1978) (same); *Bryan v. Pittsburgh Plate Glass Co. (PPG Indus., Inc.)*, 494 F.2d 799, 803 (3d Cir.) (approving settlement where 20 percent opted out or objected); *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20 (2d Cir. 1987) (approving settlement with thirty-six objecting); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979) (granting approval where sixteen percent objected).

Just as settlements are favored in the class action context, compromises are also "a normal part of the process of reorganization." *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). "Compromises are favored because they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate." *In re NII Holdings, Inc.*, 536 B.R. 61, 98-99 (Bankr. S.D.N.Y. 2015) (citations omitted). To approve a Rule 9019 Settlement, the Court must determine that the proposed compromise is "fair and equitable." *In re Alpha Nat. Res. Inc.*, 544 B.R. 848, 857 (Bankr. E.D. Va. 2016).

The "fair and equitable" determination is a four factor test considering: (i) the probability of success in litigation; (ii) the potential difficulties in any collection; (iii) the complexity of the litigation and the expense, inconvenience, and delay necessarily attending it; and (iv) the paramount interest of the creditors. *Id.* (citations omitted). In so doing, it is not necessary for the Court to conduct a mini-trial or evidentiary hearing; rather, "the Court need only canvass the issues to determine if the settlement falls below the lowest point in the range of reasonableness." *In re Gordon Properties, LLC*, 515 B.R. 454, 465 (Bankr. E.D. Va. 2013) (quotations omitted). The proponent of the settlement bears the burden "to persuade the court that the settlement is in the best interests of the estate." *In re MF Glob. Inc.*, 466 B.R. 244, 248 (Bankr. S.D.N.Y. 2012). But a compromise will "most likely gain approval" if it is "fair and equitable" as well as "representative of the best interests of the estate as a whole." *In re Three Rivers Woods, Inc.*, No. 98-38685-T, 2001 WL 720620, at *6 (Bankr. E.D. Va. Mar. 20, 2001).

Here, for the same reasons that the Settlement is "fair, reasonable, and adequate" within the meaning of Fed. R. Civ. P. 23, it is also "fair and equitable" to the affected debtors and bankruptcy estates within the meaning of Fed. R. Bankr. P. 9019.

While both the Plaintiff and the Defendants believe they would ultimately prevail if this matter went to trial, the results are clearly uncertain and involve difficult questions of federal law, likely to result in significant appellate issues. Both sides have significant risk with different bankruptcy courts split over considering key issues of this case, including the interaction of the Fair Debt Collection Practices Act with the Bankruptcy Code and whether or not debtors have a cause of action against lenders who are alleged to have failed to strictly comply with Fed. R. Bankr. P. 3001. Given these risks, it is reasonable for the Parties to decide it is in their best interests to settle this matter early on and the consideration provided to both sides is fair under the circumstances: providing credit adjustments and significant monetary relief to the affected debtors and their bankruptcy estates, while also releasing the Defendants from liability.

The compromise clearly represents the best interests of the various bankruptcy estates. It is telling that notice of this Settlement was provided to all of the chapter 13 trustees in the Eastern District of Virginia, and none have objected to the Settlement. The chapter 13 trustees are sophisticated, experienced bankruptcy professionals with special expertise in administering and advocating for the best interests of chapter 13 estates. Given the lack of objections by the trustees, this Court can conclude the Settlement is fair to the various chapter 13 estates and the creditors of those estates. Similarly, none of the class members have objected. Just as the Court can conclude from the lack of objections that the Settlement is adequate for class action purposes, the Court can rely on the lack of objections from Class Members to indicate that the Settlement is "fair and equitable." As a result, this Court should approve the Settlement under Fed. R. Bankr. P. 9019.

C. The Court should award the proposed attorneys' fees, the costs, and the class representative service award.

1. The Court should award the service award to the Named Plaintiff.

Plaintiff requests—and the Defendants do not oppose—a modest award of $3,000 for the Named Plaintiff's participation in this case and service to the Settlement Class. In this case, the Named Plaintiff took an active role in the case and the Settlement by participating in the mediation. She understood her role as the Named Plaintiff and was available and answerable to counsel in prosecuting the case. Such awards in this amount and range are reasonable and have been regularly approved by judges in the Eastern District of Virginia.[7] Particularly in light of historical incentive awards both within and outside this District, the incentive awards sought are appropriate. *See, e.g.*, *Staton v. Boeing Co.*, 327 F.3d 938, 976–77 (9th Cir. 2003); *In re Bancorp Litig*., 291 F.3d 1035, 1038 (8th Cir. 2002); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). An empirical study published in 2006 suggests that, when provided, the average award per class representative is about $16,000 with the median award close to $4,000. 4 NEWBERG ON CLASS ACTIONS § 11:38 (4th ed.).

There have been no objections to or comments regarding the proposed service award, and the Plaintiff properly earned her award through her participation in the case. The Court should therefore approve the award.

[7] *See, e.g.*, *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14cv238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016); *Beverly v. Wal-Mart Stores, Inc.*, No. 3:07cv469; *Williams v. Lexis Nexis Risk Mgmt.*, No. 3:06cv241; *Cappetta v. GC Servs. LP*, No. 3:08cv288-JRS (E.D. Va.); *Makson v. Portfolio Recovery Assoc., Inc.*, No. 3:07cv982-HEH (E.D. Va. Feb. 9, 2009); *Daily v. NCO*, No. 3:09CV31-JAG; *Conley v. First Tenn.*, No. 1:10CV1247-TSE (E.D. Va.); *Lengrand v. Wellpoint*, No. 3:11CV333-HEH (E.D. Va.); *Henderson v. Verifications Inc*., No. 3:11CV514-REP (E.D. Va.); *Pitt v. K-Mart Corp*., No. 3:11CV697 (E.D. Va.); *James v. Experian Info. Sols*., No. 3:12CV902 (E.D. Va.); *Manuel v. Wittstadt*, No. 3:12CV450 (E.D. Va.); *Shami v. Middle E. Broadcast Network*, No. 1:13CV467-CMH (E.D. Va.); *Goodrow v. Freidman Freidman & MacFadyen*, No. 3:11CV20 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11CV274 (E.D. Va.); *Marcum v. Dolgencorp*, No. 3:12CV108 (E.D. Va.); *Kelly v. Nationstar*, No. 3:13CV311 (E.D. Va.); *Wyatt v. SunTrust Bank*, No. 3:13CV662 (E.D. Va.).

2. The requested attorneys' fees and costs are appropriate and should be awarded.

Fee awards to counsel fees in class action cases are commonly computed using one of two methods: a percentage of the class award or a lodestar, awarding fees based on the number of hours worked multiplied by a reasonable hourly billing rate for such services. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (finding that both methods are available to the trial court in calculating the appropriate attorney fee). However, "no matter which method is chosen, district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation ...; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Id.*

The requested attorney's fees sought are reasonable under the circumstances of this litigation and should be approved by this Court. Here, Class Counsel is seeking an award of $96,500 which is reasonable given the total number of hours expended and the complexity of this matter. In support of the Motion for Preliminary Approval, counsel submitted declarations reporting the number of hours spent on the case up to that point. Dkt. No. 58-3 at 17, 58-4 at 4, 58-5 at 5, 58-6 at 2. In total, Plaintiff's counsel reported spending a sum of 276.4 hours of attorney time and 6.1 hours of paralegal time on this matter. Given the $96,500 proposed award, this results in a blended rate of about $340 per hour of professional time, which is reasonable in this District and for complex, class action litigation of this nature.[8] Notably, the Settlement Class

[8] Plus, since those declarations were filed, counsel have put in significantly more time attending Court hearings in this case, editing pleadings, and coordinating regarding the administration of the Settlement, which if included would further decrease the effective hourly rate.

was made aware of the proposed fee, and none expressed opposition to the figure. (Attached as Exhibit D, E, and F are supplemental declarations of Class Counsel).

In addition, this Court can also have confidence in the reasonableness of the fee, given the process by which it was negotiated. Some courts have recognized that "the determination of attorneys' fees in class action settlements is fraught with the potential for a conflict of interest between the class and class counsel." *Rite Aid Corp. Sec. Litig.*, 396 F.3d at 307 (citations omitted). But the Parties in this case approached negotiation over fees in a manner designed to ensure a fair process that minimized conflicts. The Parties negotiated the amount of the payment into the Fund prior to discussing the amount of the payments for attorneys' fees or to the Named Plaintiff. Negotiating these issues sequentially confirms that the Settlement Class Members are receiving full value for their claims by eliminating any suggestion that Class Counsel's interests were even potentially in conflict with the Settlement Class—as there is no possibility that a greater recovery for the Settlement Class would decrease the money available to pay the attorneys' fee award.

V. CONCLUSION.

The Settlement is an excellent result considering the contentiousness of the litigation and the lengthy litigation process. The terms of the Settlement, as well as the circumstances surrounding negotiations and its elimination of further costs caused by litigating this case through the completion of trial and appeal, satisfy the strictures for final approval.

Respectfully submitted,

DORI DANYELLE WINGATE

By: /s/ Mark C. Leffler
Counsel for Debtor/Plaintiff

Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
2104 W. Laburnum Ave., Suite 201
Richmond, VA 23227
Telephone (804) 358-9900
Counsel for Debtor/Plaintiff

Dale W. Pittman (VSB #15673)
THE LAW OFFICE OF DALE W. PITTMAN, P.C.
The Eliza Spotswood House
112-A West Tabb Street
Petersburg, VA 23803
Telephone (804) 861-6000
Counsel for Plaintiff

Thomas D. Domonoske (VSB #35434)
Consumer Litigation Associates, P.C.
763 J. Clyde Morris Blvd., Suite 1A
Newport News, VA 23601
Telephone (540) 442-7706
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on July 5, 2018, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtor, counsel for the Defendants, the United States trustee if other than by the electronic means provided for at Local Bankruptcy Rule 2002-1, and to the following Chapter 13 trustees by mail:

Carl M. Bates, Esquire
Chapter 13 Trustee
P.O. Box 1819
Richmond, VA 23218

Suzanne E. Wade, Esquire
Chapter 13 Trustee
P.O. Box 1780
Richmond, VA 23218

Thomas P. Gorman, Esquire
Chapter 13 Trustee
300 N. Washington St.
Suite 400
Alexandria, VA 22314

R. Clinton Stackhouse, Jr., Esquire
Chapter 13 Trustee
7021 Harbour View Boulevard
Suite 101
Suffolk, VA 23435

Michael P. Cotter, Esquire
Chapter 13 Trustee
870 Greenbrier Circle
Suite 402
Chesapeake, VA 23320

By: /s/ Mark C. Leffler
Mark C. Leffler
Counsel for Debtor/Plaintiff

#3794729v2 086904/000001

IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division

In re: [redacted] **Case No.** [redacted]
Debtor **Chapter 13**

Address: [redacted]
Richmond, VA 23224

Last four digits of Social Security No: [redacted] (Debtor)

NOTICE OF OBJECTION TO CLAIM

The above named Debtor has filed an Objection to Claim in this bankruptcy case.

Your claim may be reduced, modified or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the Court to eliminate or change your claims, then no later than 30 days from the date of this notice**,** you or your attorney must:

File with the Court a written response to the objection, explaining your position, at:

Clerk of Court
United States Bankruptcy Court
701 E. Broad Street, Room 4000
Richmond, VA 23219

If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

You must also send a copy to:

Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588

Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
PO Box 11588
Richmond, VA 23230
Telephone (804) 358-9900
Counsel for Debtor

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Dated: February 6, 2017

BOLEMAN LAW FIRM, P.C.
Counsel for Debtor

By: /s/ Mark C. Leffler
Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtor

CERTIFICATE OF SERVICE

I certify that on February 6, 2017 a copy of the foregoing has been sent to the Chapter 13 Trustee via the Court's CM/ECF system and mailed via first class mail to the following:

CashNetUSA
175 W. Jackson Blvd, Suite 1000
Chicago, IL 60604

CNU of Virginia, LLC
d/b/a CashNetUSA
c/o Capitol Corporate Services, Inc.
10 S Jefferson St. Suite 1400
Roanoke, VA 24011

CNU of Kansas, LLC
c/o The Corporation Trust Company, Reg. Agent
Corporation Trust Center
1209 Orange Street
Dover, DE 19901

[redacted]
Richmond, VA 23224

/s/ Mark C. Leffler
Counsel for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division

In re: [redacted] **Case No.** [redacted]
Debtor **Chapter 13**

OBJECTION TO CLAIM NO. 16-1 AND MEMORANDUM IN SUPPORT THEREOF

COMES NOW, [redacted] ("Ms. Green"), by counsel, and files this Objection to the Proof of Claim (Claim No. 16-1) filed by CashNet USA, pursuant to 11 U.S.C. § 502, Federal Rules of Bankruptcy Procedure 3001, 3007 and 9014, and Local Bankruptcy Rules 3007-1 and 9013-1. In support thereof, Ms. Green respectfully states the following:

Jurisdiction

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §§1334 and 157 in that this action arises in and relates to the bankruptcy case of the Ms. Green, a Chapter 13 case having been filed in this Court on July 1, 2016.

2. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).

3. Venue is proper pursuant to 28 U.S.C. §1409.

Parties

4. [redacted] is the Debtor in this case.

5. Respondent CashNetUSA (hereinafter "CashNet") is a Delaware limited liability company with its place of business in Chicago, Illinois, that is a claimant in the

Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
PO Box 11588
Richmond, VA 23230
Telephone (804) 358-9900
Counsel for Debtor

instant case. Upon information and belief, in Virginia, CashNetUSA is the fictitious name of CNU of Virginia, LLC, among a variety of other related entities.

6. Pursuant to a Cashnet Open-End Line of Credit Agreement entered into between Ms. Green and CashNet, another related entity—CNU of Kansas, LLC—is a party to the transaction at issue. CNU of Kansas, LLC, is also a Delaware limited liability company. Accordingly, Ms. Green also served the instant pleading on CNU of Kansas, LLC. Ms. Green will refer herein to both of these entities as CashNet.

Facts

7. Ms. Green, by counsel, filed the Proof of Claim on behalf of CashNet pursuant to Federal Rule of Bankruptcy Procedure 3004. Because Ms. Green was not then in possession of a copy of the Agreement entered into with CashNet, she did not attach a copy of the Agreement to the Proof of Claim.

8. CashNet's Proof of Claim sets forth its claim as follows: Unsecured in the amount of $1,200.00. CashNet and Ms. Green entered into what purports to be an Open-End Line of Credit Agreement (hereinafter the "Agreement").

9. CashNet extended credit to Ms. Green in an unknown initial amount at an annual interest rate of 299.00 percent. The date of final payment and the total payment amount were not clearly stated in the Agreement.

10. Upon information and belief, Ms. Green gave CashNet a security interest in the ACH Authorizations in Ms. Green's financial account.

11. Upon information and belief, Ms. Green, living in Virginia, used a personal computer or other device in Virginia to apply for an extension of credit with CashNet via the internet. Within hours, she was approved. Within 24 hours of being approved for the extension of credit, CashNet deposited funds in an unknown amount in Ms. Green's checking account.

12. Upon information and belief, the purported Agreement indicates the laws of the State of Kansas govern the Agreement.

13. CashNet is not licensed as a consumer finance company with the Virginia State Corporation Commission.

Discussion

14. Pursuant to 11 U.S.C. § 502(a), a claim is "deemed allowed, unless a party in interest . . . objects."

15. Pursuant to 11 U.S.C. § 502(b)(1), where an objection is made to claim, the Court "shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that . . . [ ] such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . . "

16. Pursuant to Virginia Code § 6.2-303, no contact may have a payment of interest on a loan at a rate that exceed 12 percent per year. Va. Code § 6.2-303(B) provides certain exemptions for, among other types of entities, consumer finance companies under Va. Code § 6.2-1500 et seq., and payday lenders under Va. Code § 6.2-1800 et seq.

17. Va. Code § 6.2-1501 forbids entities from making loans or extending credit allowed by Va. Code § 6.2-1500 et seq. without being licensed as a consumer finance company with the Virginia State Corporation Commission.

18. Va. Code § 6.2-1541 treats loans and extensions of credit made in violation of § 6.2-1501 as "void" and forbids the collection of any amount attributable to such loans or extensions of credit.

Argument

19. Because the credit contract was executed online by Ms. Green, who was domiciled in and physically in Virginia, the place of contracting was Virginia.

20. Performance of the credit contract was accomplished when funds from CashNet were deposited into Ms. Green's Virginia bank account, and she accessed these funds in Virginia through his normal Virginia banking activities.

21. Because the funds were made available to Ms. Green in Virginia, the performance of the credit contract was in Virginia.

22. The credit contract was for the personal use of Ms. Green and was a consumer transaction.

23. CashNet is doing business in Virginia as a consumer finance company as defined in Va. Code § 6.2-1500.

24. CashNet has not been issued a license under Va. Code § 6.2-1501(A) to act as a consumer finance company in Virginia.

25. CashNet claims that it is licensed by the Kansas Office of the State Bank Commissioner. Even if that is accurate, the Kansas Office of the State Bank Commissioner does not license any non-bank lender like CashNet to extend credit in Virginia.

26. Kansas has no substantial relationship with the transaction between Ms. Green and CashNet and no reasonable basis exists for CashNet to claim it is subject to Kansas law.

27. Unless exempt from its provisions, the Virginia Consumer Finance Act prohibits any person from engaging in the business of making loans or extending credit in any principal amounts to individuals for personal, family, household, or other non-business purposes, and charging, contracting for, or receiving directly or indirectly, any interest, charges, compensation, consideration or expense which in the aggregate are greater than the rate otherwise permitted by Va. Code § 6.2-303, unless otherwise

exempt, or without having first obtained a consumer finance license from the Virginia State Corporation Commission (SCC). Va. Code § 6.2-1501.

28. Pursuant to Va. Code § 6.2-303, the contract rate of interest permitted on credit is 12 percent per year unless a higher rate of interest is authorized by some other section of the Code of Virginia.

29. CashNet has never held a consumer finance license issued by the Virginia SCC, and it is not subject to any statutory exemption from having a consumer finance license.

30. Application of the law of Kansas would be contrary to the fundamental policy of the Commonwealth of Virginia to protect its citizens from predatory lending, and because Virginia has a greater interest in the transaction than Kansas, the transaction is not subject to Kansas law.

31. Because the credit was subject to an annual interest rate of 299.00 percent, the credit contract was in violation of Va. Code § 6.2-1520.

32. A lender who takes any action to make or collect on any loan or extension of credit which is in violation of Va. Code § 6.2-1501 shall not collect, receive, or retain any principal, interest, or charges whatsoever with respect to the loan or extension of credit and any principal or interest paid on the loan or extension of credit shall be recoverable by the person by or for whom payment was made. Va. Code § 6.2-1541.

33. Therefore, CashNet's credit contract with Ms. Green is void and CashNet is forbidden from collecting any payments, in any manner, from Ms. York on this extension of credit.

34. Ms. Green hereby objects to CashNet's Proof of Claim on the grounds that the interest rate exceeds the allowable rates under the Virginia Code and the extension of credit itself is unenforceable under Virginia law.

WHEREFORE, Debtor respectfully requests that the Court sustain this Objection to Claim, disallow the claim in its entirety, and order such other and further relief as is just and proper.

Respectfully submitted,
[redacted]
By Counsel

By: /s/ Mark C. Leffler

Emily Connor Kennedy (VSB #83889)
Mark C. Leffler (VSB #40712)
B0leman Law Firm, P.C.
PO Box 11588
Richmond, VA 23230
Telephone (804) 358-9900
Counsel for Debtor

CERTIFICATE OF SERVICE

I certify that on February 6, 2017 a copy of the foregoing has been sent to the Chapter 13 Trustee via the Court's CM/ECF system and mailed via first class mail to the following:

CashNetUSA
175 W. Jackson Blvd, Suite 1000
Chicago, IL 60604

CNU of Virginia, LLC
d/b/a CashNetUSA
c/o Capitol Corporate Services, Inc.
10 S Jefferson St. Suite 1400
Roanoke, VA 24011

CNU of Kansas, LLC
c/o The Corporation Trust Company, Reg. Agent
Corporation Trust Center
1209 Orange Street
Dover, DE 19901

[redacted]
Richmond, VA 23224

/s/ Mark C. Leffler
Counsel for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division

In re: [redacted] **Case No.** [redacted]
Debtor **Chapter 13**

Address: [redacted]

Last four digits of Social Security No: [redacted] (Debtor)

NOTICE OF OBJECTION TO CLAIM

The above named Debtor has filed an Objection to Claim in this bankruptcy case.

Your claim may be reduced, modified or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the Court to eliminate or change your claims, then no later than 30 days from the date of this notice**,** you or your attorney must:

File with the Court a written response to the objection, explaining your position, at:

Clerk of Court
United States Bankruptcy Court
701 E. Broad Street, Room 4000
Richmond, VA 23219

If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

You must also send a copy to:

Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588

Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtor

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Dated: January 16, 2018

BOLEMAN LAW FIRM, P.C.
Counsel for Debtor

By: /s/ Mark C. Leffler
Mark C. Leffler (VSB #40712)
Boleman Law Firm, P.C.
P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtor

CERTIFICATE OF SERVICE

I certify that on January 16, 2018 a copy of the foregoing has been sent to the Chapter 13 Trustee via the Court's CM/ECF system and mailed via first class mail to the following:

Anderson Financial Services LLC Loan Max
3440 Preston Ridge Road, Suite 500
Alpharetta, GA 3005

[redacted]

/s/ Mark C. Leffler
Counsel for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
Eastern District of Virginia
Richmond Division

In re: [redacted] **Case No.** [redacted]
Debtor **Chapter 13**

OBJECTION TO CLAIM NO. 4-1 AND MEMORANDUM IN SUPPORT

COMES NOW, [redacted], by counsel, and files this Objection to the Proof of Claim (Claim No. 4-1) filed by Anderson Financial Services, LLC Loan Max ("Loan Max") pursuant to 11 U.S.C. § 502, Federal Rules of Bankruptcy Procedure 3001, 3007 and 9014, and Local Bankruptcy Rules 3007-1 and 9013-1. In support of this objection, Debtor respectfully states the following:

Jurisdiction

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §§1334 and 157 in that this action arises in and relates to the bankruptcy case of the Debtor, a chapter 13 case having been filed in this Court on June 1, 2017.

2. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).

3. Venue is proper pursuant to 28 U.S.C. §1409.

Parties

4. Linda Smith (the "Debtor") is the debtor in this case.

Mark C. Leffler (VSB #40712)
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Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtor

5. Respondent Anderson Financial Services LLC Loan Max ("Loan Max") is a foreign limited liability company that filed a proof of claim in this case.

The Proof of Claim At Issue

6. On August 8, 2017, Loan Max filed its proof of claim designated by the Court as Claim 4-1 ("the Claim").

7. The Claim objected to herein is as follows:

Claimant	Claim No.	Status	Amount
Anderson Financial Services LLC, Loan Max	4-1	Secured	$658.05

8. The Claim asserts in Part 2, Box 9 that Loan Max's Claim is secured by a "Statutory Lien" on a motor vehicle.

9. Attached to the Claim is a document bearing the title, "Itemized Statement of Interest and Additional Charges", which includes the following breakdown of the claim:

Principal Balance	502.73
Interest	155.32
Total Amount of Claim	658.05

10. Attached to the Claim is a Virginia "Certificate of Title for a Vehicle" which contains a description of the vehicle as "1983 GMC Pickup VIN – [redacted]". A lien in favor of "Anderson Financial Services LLC Loan Max" is shown on the Certificate.

11. Attached to the Claim is a document entitled "Motor Vehicle Title Loan Agreement and Federal Truth-in-Lending Disclosures", which sets forth the following details of the loan underlying Loan Max's claim, among others:

a. The date of the loan was December 22, 2016;

b. The amount financed was $610.00, of which $600 was given to the Debtor and $10.00 was paid to Virginia;

c. The annual percentage rate is 263.76%;

d. The finance charges are $1,162.28; and

e. The total of payments is $1,772.28.

12. Among the various terms of the agreement is the following regarding how interest is calculated on the loan and how payments are applied:

1. **Promise to Pay**. You hereby promise to pay us in cash and/or by cashier's check, certified check or money order, in United States currency, the principal amount of $610.00 (which includes the Lender's Lien Fee if it is financed), together with interest calculated as described in paragraph 4 herein, by making the payments disclosed in the payment schedule set forth above until the principal and interest are fully paid together with all other charges and fees required by this Loan Agreement. You agree that all sums due hereunder will be paid without prior demand, notice or claim of set off. Payments will be applied first to fees owed, then to accrued interest, and then to principal. Because of the nature of interest accrual, if you pay late or less than required any month you will owe more at the end of this loan. If you pay early or pay more than required any month, your final payment will be less.

4. **Interest Calculation.** Subject to your right to rescind, and applicable law, interest under this Loan Agreement shall be calculated at the following rates on a daily basis: (a) Twenty-two percent (22%) per month on the portion of the principal that does not exceed $700; (b) Eighteen percent (18%) per month on the portion of the principal that exceeds $700 but does not exceed $1,400; and (c) Fifteen percent (15%) per month on the portion of the principal that exceeds $1,400. The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. Notwithstanding anything else in this Loan Agreement, interest shall not accrue on the principal balance from and after the date that the Motor Vehicle is repossessed or sixty days after you have failed to make a monthly payment as required by this Loan Agreement unless you have failed to surrender the Motor Vehicle and are concealing it.

Discussion

13. Pursuant to 11 U.S.C. § 502(a), a claim is "deemed allowed, unless a party in interest . . . objects."

14. Pursuant to 11 U.S.C. § 502(b)(1), where an objection is made to claim, the Court "shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that . . . [ ] such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . . "

15. Va. Code §§ 6.2-2200 through 6.2-2227 govern title loans such as the one at issue in this case.

16. Va. Code § 6.2-2216(C)(2) provides for the following limits on a title lender's right to charge interest to a borrower:

"[I]interest shall not accrue on the principal balance of a motor vehicle title loan from and after:

[ ]

"2. Sixty days after the borrower has failed to make a monthly payment on a motor vehicle title loan as required by the loan agreement unless the borrower has not surrendered the motor vehicle and the borrower is concealing the motor vehicle."

First Objection to Claim

17. Upon information and belief, Debtor failed to make a monthly payment to Loan Max prior to filing this case, but Loan Max continued charging her interest for a period longer than the 60 days allowed by Va. Code § 6.2-2216(C)(2) after her failure to make a payment.

18. Debtor seeks an accounting from Loan Max of its claim and of the interest it charged before she filed this bankruptcy case.

19. Debtor objects to the claim amount and asserts it is erroneously calculated based upon Loan Max's violation of Va. Code § 6.2-2216(C)(2).

20. Because the Claim is unenforceable in the amount claimed against the Debtor under non-bankruptcy law, it should be disallowed as filed pursuant to 11 U.S.C. §502(b)(1) and Loan Max should be required to prove the correct amount of the claim.

Second Objection to Claim

21. Pursuant to Federal Rules of Bankruptcy Procedure 3001(c)(2), "If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim."

22. Because Loan Max calculated the interest in the claim amount in violation of Va. Code § 6.2-2216(C)(2), its statement of the amount of interest included in the claim violates Virginia law and should be treated as non-compliant with the requirements of Rule 3001(c)(2).

23. Pursuant to Federal Rules of Bankruptcy Procedure 3001(f), "a proof of claim executed and filed" in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim."

24. Due to Loan Max's non-compliance with Rule 3001(c)(2), this claim is not entitled to a presumption of validity pursuant to Rule 3001(f).

25. Debtor requests the Court grant her leave to file a separate Motion under Federal Rules of Bankruptcy Procedure 3001(c)(2)(D) seeking sanctions and other appropriate relief to preclude Loan Max from presenting any evidence to the contrary of what it has sworn to in its claim, dismiss Loan Max's claim, and award reasonable expenses and attorneys' fees.

WHEREFORE, Debtor respectfully requests that the Court sustain this Objection to Claim, order Loan Max to provide an accounting of how it calculated interest before the bankruptcy case was filed, disallow the claim as filed, grant the Debtor leave to file a separate motion for appropriate sanctions against Loan Max including the Debtor's reasonable attorney fees and expenses, and order such other and further relief as is just and proper.

Respectfully submitted,
[redacted]
By Counsel

/s/ Mark C. Leffler_____
Mark C. Leffler (VSB #40712)
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P.O. Box 11588
Richmond, VA 23230-1588
Telephone (804) 358-9900
Counsel for Debtor

CERTIFICATE OF SERVICE

I certify that on January 16, 2018 a copy of the foregoing has been sent to the Chapter 13 Trustee via the Court's CM/ECF system and mailed via first class mail to the following:

Anderson Financial Services LLC Loan Max
3440 Preston Ridge Road, Suite 500
Alpharetta, GA 3005

[redacted]

/s/ Mark C. Leffler
Counsel for Debtor

ABUSIVE LENDING STATUTES AND REMEDIES

NACTT Annual Seminar
July 7 , 2022

Hilary B. Bonial,
Bonial & Associates, Dallas, TX

Lon A. Jenkins,
Chapter 13 Trustee, Salt Lake City, UT

Mark C. Leffler,
Boleman Law Firm, Richmond, VA

1

POTENTIAL ABUSIVE OR PREDATORY LENDING PRODUCTS

2

What Is Predatory Lending?

- Lending practice which – (1) imposes unfair or abusive loan terms; (2)impairs borrower's ability to repay; (3) designed to benefit lender at the expense of borrower
- Tell-tale signs: (1) Failure to disclose important loan terms; (2) imposes unrealistically high interest; (3) borrower pressured to accept unaffordable loan or loan borrower does not need; (4) hidden fees/charges, excessive prepayment penalties

3

Payday Loans

- Short-term loans typically carrying high interest rates
- Considered "cash advances" based on income
- Verification of income/employment may be required
- Annual percentage rate can exceed 500% in some states
- More than 12 million per year may resort to payday loans
- Minorites and low wage earners often most frequent borrowers
- Rollover loans – loan churning
- Some states: no cap or APR, no rollover limit, no loan amount limit (UTAH)

4

Title Pawn Loans

- Borrowers give car title as collateral
- States "regulate" in a variety of ways – capping interest rates under usury laws or treating under "pawn" laws
- As a result, interest rates vary dramatically
- Also targeted to individuals who may have difficulty repaying timely
- Statistics show 1 in 5 title loan borrowers lose their vehicle

5

Auto Finance Loans

- Interest kick-backs to dealers – interest rate manipulation
- Add-on products inflate price: GAP insurance, service contracts, life insurance, theft deterrent package, option packages
- Conditional sales: buyer must return to "renegotiate" loan
- "Churning" sale of same vehicle to high risk buyer/borrowers
- Arbitration clauses

6

Tax Anticipation Loans

- Short-term loan offered on basis of tax refund
- Tax preparer offers immediate refund amount but at lesser amount
- Often unnecessary because electronic filing of return expedites refund anyway
- Fees included include loan origination fee, tax preparation fees, percentage of refund
- Low risk for lender – refund is paid to preparer and balance after fees remitted to taxpayer

7

Subprime Loans

- Loans made to borrowers with poor credit history and likelihood of defaulting
- Subprime loans on the rise again after 2008 financial crisis
- Majority of subprime loans now are for auto purchases
- High interest rates – the poorer the credit, the higher the interest rate
- Ability to repay often not a consideration

8

Mortgage Refinance

- Inadequate or misleading disclosures
- Very high interest rates to less preferred borrowers
- Inflated fees and charges
- Refinance amount based on home equity amount, not ability to pay
- Borrowing more than necessary
- Balloon payments requiring subsequent refinance

9

Internet Loans

- Online presence only, no storefront making personal access difficult
- No credit check, loan too easy to obtain
- High interest rates and excessively long or short maturity
- May focus only on monthly payment amount, ignoring APR and loan terms
- Access to bank account required – risky

10

Credit Card Loans

- "Teaser" account opening interest rates
- Easily triggered penalty interest rates
- Aggressive marketing and promotion
- Move away from paper statements
- Hidden fees and charges
- Cash advance minimums

11

ABUSIVE LENDING PRACTICES

12

Loan Churning/Loan Flipping

- Loans structured to ensure that borrower will be able to unable to repay loan timely (short-term) or reduce principal, thus forcing borrower to roll-over loan into new loan
- New loan comes with additional interest and fees
- Borrower makes little or no progress in paying principal amount of loan
- CFPB reports 80%+ of payday loans are reborrowed within 1 month
- Payday loan borrowers average 10 loans per year- cycle of debt

13

Negative Amortization

- Monthly loan payment is insufficient to pay even interest each month with the shortfall added to principal amount
- Borrower may end up owing substantially more than the original amount borrowed

14

Excessive Prepayment Penalties

- Borrower is assessed excessive prepayment penalties if desiring to pay loan to refinance with a more affordable payment
- As many as 80% of subprime loans contain abnormally high or excessive prepayment penalties
- TILA requires disclosure, but . . . .

15

Loan Packing

- Unnecessary products such as credit insurance and income insurance are added to the loan amount

16

Asset-Based Lending

- Lender encourages borrower to borrow more than is necessary – based on value of the property rather than borrower's ability to repay the loan

17

Excessive Interest Rates/Hidden Fees

- Excessively high interest rate based on perceived risk ("the interest rate *is* the risk")
- Relatively minimal fees may equate to excessive APRs (400%+)
- Disguised origination fees
- Easily triggered late fees and penalties
- Prepayment penalties "may" apply
- Credit insurance/life insurance

18

Convenience Fees

- Additional fees charged to borrower for making monthly payments either online or by phone
- Not all mortgage services charge convenience fees, but borrowers have no ability to choose mortgage servicer because mortgages are frequently transferred among servicers

19

Balloon Payments

- Borrower is enticed with lower payments but with a balloon payment at maturity
- Borrower's only choice is to refinance, often with a loan which has higher interest rate and high fees

20

Deceptive or Misleading Disclosures

- Lender fails to fully disclose or explain the true costs and risks associated with the credit
- New terms after initial "agreement"
- Disclosures in fine print – Misleading information prominent
- Is the consumer's interpretation "reasonable"?
- Do financially distressed borrowers pay attention?
- Does the insufficient or misleading information hinder the consumer's decision-making?

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STATUTORY CONSUMER PROTECTION SCHEMES

22

Federal Law

- Federal Law provides a patchwork of statutes and regulations
- FCRA – Fair Credit Reporting Act
- FDCPA – Fair Debt Collection Practices Act
- TILA – Truth-In-Lending Act

23

State Law Consumer Protection Regimes

- States vary dramatically in their regulation of loan products which may be predatory – for instance payday loans and capped interest rates
- UCC – Uniform Commercial Code required protections

24

Interplay Federal and State Consumer Protection Laws and Bankruptcy

- *Sears Roebuck & Co. v. O'Brien*, 178 F.3d 962 (8th Cir. 1999) (state debt collection law violated by creditor sending reaffirmation solicitation letter)
- *Molloy v. Primus Auto. Fin. Services*, 247 B.R. 804 (C.D. Cal. 2000); *In re* Padilla, 379 B.R. 643 (Bankr. S.D. Tex. 2007) (Bankruptcy Code does not immunize mortgage creditor from causes of action based on Real Estate Settlement Procedures Act)
- *In re Faust*, 270 B.R. 310 (Bankr. M.D. Ga. 1998) (recommending judgment under Fair Debt Collection Practices Act for acts that violated discharge injunction)

25

ENFORCEMENT: CONSUMER PROTECTION VIOLATIONS AND BANKRUPTCY

26

Application of Stern v. Marshall

- Application of *Stern v. Marshall* to claims related to abusive or predatory lending practices in bankruptcy cases and proceedings – most likely in proceeding involving objection to claim
- Does it apply? What are limits of bankruptcy court's jurisdiction to enter final orders on claims related to violations of consumer protection laws?
- *Stern v. Marshall*: A counterclaim may be statutorily "core" but nevertheless be constitutionally "non-core"

27

Application of Stern v. Marshall

- 28 U.S.C. §157(b)(1) allows Article I bankruptcy judges to enter final orders in "core proceedings" – non-exhaustive list set forth in 28 U.S.C. §157(b)(2)
- Only Article III judges may enter final orders on non-core claims or counterclaims
- In objecting to claim raising counterclaim based on state law may render counterclaim constitutionally non-core
- But if counterclaim must necessarily be resolved in the claims allowance process, it will be considered constitutionally core; counterclaims for damages under state law may be constitutionally non-core

28

Filing Objection to Claim(s)

- Under 11 U.S.C. §502(a) claim will be allowed unless objected to
- Any claim enforceable under state law will be allowed unless expressly disallowed
- Often, claims arising from predatory loans are subject to objection because state usury laws render the claim unenforceable
- Usury laws in most states regulate the cost of credit, but different types of loans may be regulated by different statutes
- Loans may be unenforceable for other reasons (See *In re Taylor*, 594 B.R. 643 (Bankr. E.D. Va. 2018)

29

Rule 3001(c) Requirements

- Rule 3001(c): If claim is based on writing, a copy of the writing must be filed with the proof of claim
- Rule 3001(c)(2)(A): If claim includes interest, fees, expenses or other charges, itemization must be filed with proof of claim
- Rule 3001(c)(3)(A): Claim based on revolving or open-ended credit agreement must provide:

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Rule 3001(c) Requirements

- Name of entity from whom creditor purchased account
- Debt holder at time of last transaction on account
- Date of account of holder's last transaction
- Date of last payment on account
- Date on which account was charged to profit and loss
- Within 30 days of request, account holder must provide copy of writing on which account is based

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Rule 3001(c) Requirements

- Rule 3001(c)(2)(D):Non-Compliance with Rule 3001(c):
- Claimant precluded from presenting omitted information in contested matter or AP, unless failure is substantially justified or harmless; or
- Award other "appropriate relief," including reasonable expenses and attorney's fees caused by failure

32

Class Actions

- Class actions are available in bankruptcy proceedings – FRBP 7023
- Bankruptcy courts may certify a class on behalf of debtors to address abuses within the bankruptcy process
- All requirements of Rule 7023(a) must be met: *Numerosity, Commonality, Typicality, Adequate Representation*
- One of the Rule 7023(b) requirements must be met: *Risk* of inconsistent adjudications, *Conduct of party* opposing class applies generally to class members, Common questions of law or fact *predominate*

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Allied Title Lending

- Allied Title Lending made loans in violation of Virginia law and filed proofs of claim for those debts in bankruptcy cases
- Debtor Ms. Taylor filed Adversary Proceeding alleging (1) individual objection to claim; (2) class objection to claim on behalf of similarly situated debtors; (3) class claim for monetary damages for usury violations; and (4) individual claim under FRBP 3001 and 11 U.S.C. §105
- Allied sought to compel arbitration based on loan agreement, arguing class claims were statutorily and constitutionally non-core and therefore arbitration was mandated

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Allied Title Lending

- Bankruptcy Court held claims were both statutorily and constitutionally core
- On appeal, District Court held that usury damage claims were constitutionally core because determination of validity of loan agreement *simultaneously* would resolve the right to monetary damages –the rights were "coupled"
- Appeal to 4th Circuit: parties settled and Allied agreed (1) to disallowance of claims (2) to payment of monetary damages to Ms. Taylor and similarly situated debtors and (3) to payment of attorneys' fees and costs totaling $280,000 and (4) withdrawal of claims filed in E.D. Virginia based on similar loans after July 31, 2012

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Arbitration Clause Enforcement

- U.S. Supreme Court CHIPPING AWAY at exceptions to enforceability of arbitration agreements:
- *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987)(arbitration clause need not be enforced if inherent conflict between arbitration and statute's underlying purpose)
- *Henry Schein Inc. v. Archer & White Sales Inc.* (139 S.Ct. 524 (2019) (arbitrator, not federal courts, decide arbitrability of issue)
- *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018) (language of statute must be clear and manifest before arbitration clause may be overridden)

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Arbitration Clause Enforcement

- *BUT* a number of courts have applied the *McMahon* test more liberally in bankruptcy cases:
- *Moses v. CashCall, Inc., 781 F.3d 63 (4th Cir. 2015)*
- *Henry v. Edu. Fin. Serv.*, 944 F.3d 587 (5th Cir. 2019)
- *Credit One Bank N.A. v. Anderson*, 884 F.3d 382 (2d Cir. 2018), *cert denied*, 139 S.Ct. 144 (2018)
- *Allied Title Lending, LLC v. Taylor,* ___ F.3d ___ (E.D. Va. 2019)

37

Sovereign Immunity Issues

- Federally recognized Indian tribes have immunity from suit based on sovereign status – extends to commercial activities
- Some payday lenders have attempted to insulate themselves from state usury laws by affiliating with a Native American tribe and "piggy-backing" the tribe's sovereign immunity (i.e. "rent-a-tribe" schemes)
- Challenges to loans have met with some success when the arrangement can be shown to be a scam. Factors: (1) where is lending operation located; (2) involvement of the tribe financing/underwriting loans; (3) amount of profits received by tribe
- Nevertheless, when a claim is filed in bankruptcy, sovereign immunity will not excuse failure to comply with bankruptcy rules governing claims

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Remedies

- Loan Voided
- Money Damages
- Disgorgement
- Withdrawal of Claims
- Sanctions under Rule 3001(c)(2)(D)
- *See TransUnion, LLC v. Ramirez*, ___ S.Ct. ___ (2021) (absent identifiable concrete damages plaintiff may lack Article III standing to sue for violation of federal law)

39

Fee Shifting

- The "American Rule": Each party pays its own attorney's fees unless reasonable fees are awarded by virtue of statute or agreement
- "Lodestar method" likely provides the best measure of "reasonableness" of fees
- Practice tips: Disclose fee arrangement pursuant to Rule 2016, maintain detailed, contemporaneous time records, avoid "lumping" of time

40

Speaker Biographies

Lon A. Jenkins currently serves as the Standing Chapter 13 Trustee for the District of Utah, having been appointed to that position in September 2015. A native of Minneapolis, Minnesota, Mr. Jenkins received his J.D. from the University of Utah College of Law, where he served as a member of the *Utah Law Review*. He has practiced bankruptcy law in Salt Lake City for 39 years, with the majority of his career having been spent with a large national law firm's Salt Lake City branch office. Until his 2015 appointment as Chapter 13 Trustee, Mr. Jenkins specialized primarily in Chapter 11 reorganizations and related litigation, representing a variety of constituents in Chapter 11 cases including debtors, Chapter 11 trustees, creditors' committees, secured creditors and indenture trustees. Mr. Jenkins was also appointed by the U.S. District Court for the District of Utah as receiver in federal Ponzi scheme cases to administer receivership estates for the benefit of defrauded investors. Mr. Jenkins is a frequent speaker and seminar panelist on a variety of bankruptcy related topics. He also is engaged in community and civic organizations in the Salt Lake City area, participating on various non-profit boards and committees. Presently, Mr. Jenkins serves as Secretary on the Executive Board of the National Association of Chapter 13 Trustees.

Mark C. Leffler is a shareholder with the Boleman Law Firm, P.C., Virginia's largest consumer bankruptcy practice. Mark has spent most of his career litigating in Bankruptcy Court, including bringing numerous actions against debt collectors, mortgage companies, and predatory lenders in bankruptcy. He is President of the NACTT Academy for Consumer Bankruptcy Education, is a frequent author for the NACTT Academy's webzine at http://considerchapter13.org/, and has served as a panelist at numerous annual conferences of the National Association of Chapter Thirteen Trustees (NACTT). Mark is AV® rated by Martindale Hubbell, he was selected for inclusion in *The Best Lawyers in America* for his work in bankruptcy and debtor rights, and he is a frequent speaker and author on bankruptcy matters for Virginia CLE programs. Mark is a native of Williamsburg, Virginia, and he received his law degree from Duquesne University School of Law in Pittsburgh, Pennsylvania. He is a member of the National Association of Consumer Advocates, Virginia State Bar, Bankruptcy Section, and the Richmond Bankruptcy Bar Association.

Hilary B. Bonial is the Managing Director of Bonial & Associates, P. C. a default services law firm headquartered in Dallas, Texas. Born in Natchitoches and raised in Central Louisiana, Hilary joined Brice Legal Group in 1999. The law firm which now bears her name has been a leader in representing creditors for almost 30 years. Hilary often speaks about her love of Bankruptcy Law throughout the nation and is a regular at industry events. In her spare time, she is a boating and BBQ enthusiast. Member of the Louisiana State Bar 1996, Texas State Bar 2006, Board Certified in Consumer Bankruptcy by the American Board of Certification and the Louisiana Board of Specialization.