

EXHIBIT

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

* * * * *

FEDERAL TRADE COMMISSION, * CIVIL ACTION NO. 11-3017

*

Plaintiff, * HEARING ON MOTION

-vs-

* FOR PARTIAL SUMMARY JUDGMENT

PAYDAY FINANCIAL, LLC, et al, *

*

Defendants. *

* * * * *

TIME AND PLACE: October 10, 2012
United States District Courtroom
225 S. Pierre St.
Pierre, SD 57501

BEFORE: HON. ROBERTO A. LANGE
U. S. District Court
225 S. Pierre St.
Pierre, SD 57501

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ALSO PRESENT: MR. MARTIN A. "BUTCH" WEBB - DEFENDANT

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1 agreements then contain additional languages -- additional
2 provisions regarding waiver of jury trial, waiver of class
3 action, and arbitration provision?

4 **MS. CALLAWAY:** Yes. But there are variations in
5 that language as well.

6 **THE COURT:** In the arbitration provision language?

7 **MS. CALLAWAY:** In the arbitration provision. For
8 example, in a Western Sky loan agreement, the arbitration
9 provision allows for an opt-out there, where a consumer can
10 contact Western Sky within a specific time period and opt out
11 of the arbitration provision and the class action and jury
12 trial waiver.

13 **THE COURT:** The Document 10, pages 14 through 18,
14 that the Court pulled, appears to be an agreement between
15 consumer and Payday Financial, LLC.

16 **MS. CALLAWAY:** Which does business as Lakota Cash,
17 yes, Your Honor.

18 **THE COURT:** All right. And in it, the arbitration
19 provision, which is a bit of a difficult read, seems to
20 contemplate arbitration on the Cheyenne River Sioux Tribal
21 Nation, but the Court is not sure whether it is arbitration
22 within the court system, which is sort of a curious thing to
23 think of. Usually arbitration means non-court.

24 **MS. CALLAWAY:** Right, Your Honor.

25 **THE COURT:** We are dealing with tribal court, so the

1 Court was puzzled here, at least looking at this particular
2 agreement, whether there in fact is exclusive jurisdiction
3 that is attempted to be placed in the Cheyenne River Sioux
4 tribal court, or if there is a binding arbitration provision
5 that contemplates arbitration on the Cheyenne River Indian
6 Reservation. How would -- well, in this case, Payday
7 Financial, LLC, interpret or read this agreement?

8 **MS. CALLAWAY:** In this case, Payday Financial,
9 LLC -- looking at disputes regarding the contract itself,
10 including the arbitration provision, and as the body of law
11 regarding arbitration in the federal courts, if the -- if the
12 Court were looking at a challenge to the arbitration
13 provision, that challenge would need to be in the Cheyenne
14 River Sioux tribal courts rather than in the courts of the
15 United States or South Dakota or any other state.

16 The main contract here invokes the exclusive
17 jurisdiction of the Cheyenne River Sioux courts and also the
18 exclusive application of Cheyenne River Sioux law. The
19 arbitration provision within the Cheyenne River Sioux Nation
20 arbitration is -- is within that court system.

21 **THE COURT:** So what the entity is contemplating is
22 binding arbitration conducted by the Cheyenne River Sioux
23 tribal court?

24 **MS. CALLAWAY:** Within the Cheyenne River Sioux
25 court, yes, Your Honor. But the other thing --

1 **THE COURT:** Is there a separate -- the Court thinks
2 it knows the answer to this, but is going to ask it anyway.
3 There are judges that are part of the Cheyenne River Sioux
4 tribal court. Is there a separate arm of the court that is
5 for arbitration?

6 **MS. CALLAWAY:** No. You know, and this is something
7 Ms. Bogue may speak to, and I was going to say -- I was going
8 to make a distinction using the word "no." I apologize. Yes,
9 there is a separate arm, and this is all within the Cheyenne
10 River Sioux tribal court system, because when you look at the
11 arbitration issue and when you look at the contract
12 four-square, you have provisions regarding the -- and by the
13 way, there is no dispute here that this is a consensual
14 relationship. I don't think that anybody -- I don't think
15 that the FTC is saying that there is no consensual
16 relationship here.

17 This contract designates application of Cheyenne
18 River Sioux tribal law. The contract sets forth the loan
19 terms, sets forth the same federal Truth-in-Lending Act
20 disclosures that you would receive from a loan from Wells
21 Fargo, sets forth the terms of the loan, and then has an
22 arbitration provision that is strikingly similar to the Wells
23 Fargo arbitration provision that you would -- that you would
24 receive, or any of the other, let's say, Citibank or Capital
25 One.