

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DARREN CHESTER,

Plaintiff,

v.

1:14-cv-00092-JAP-KK

TANCORDE FINANCE, INC.,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

1. **Parties.** The parties to this Settlement Agreement are: Plaintiff Darren Chester, individually and on behalf of a class of persons, and Defendant Tancorde Finance, Inc. This Agreement binds the Defendant, its assigns and successors, officers and employees of Defendant, and all others acting on behalf of Defendant with knowledge of this Agreement. This Agreement also binds Plaintiff and all members of the class defined herein, their successors and heirs.
2. **Nature of litigation.** On February 1, 2014 Plaintiff filed a class action in this court, alleging that Defendant violated the Truth in Lending Act.
3. **Denial of Liability.** Defendant denies any wrongdoing. Defendant considers it desirable that the action and the claims therein be settled upon the terms and conditions set forth in this Settlement Agreement, in order to avoid further expense and burdensome, protracted litigation.
4. **Investigation.** Counsel for the class has investigated the facts available and the applicable law. Counsel for the class has taken several depositions and obtained written discovery responses and documents from defendant. Defendant warrants that, to the best

of its knowledge, its testimony and records are truthful, accurate, and contain no significant omissions. Defendant acknowledges that Plaintiff and class counsel have relied on this information in agreeing to this Settlement Agreement.

5. **Compromise.** Plaintiff and the members of the class desire to settle their claims against Defendant, having taken into account, through their counsel, the risks, delay and difficulties involved in further litigation. Based on the foregoing, and upon an analysis of the benefits which this Settlement Agreement affords the class, Plaintiff considers it to be in the best interest of the class to enter into this Settlement Agreement.
6. In consideration of the foregoing and other good and valuable consideration, the parties agree that the claims of the Plaintiff and the members of the class should be and are compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

TERMS OF SETTLEMENT

1. **Effective Date.** This Settlement Agreement shall become effective (“Effective Date”) upon the Court’s entry of a final Order (1) approving this Settlement Agreement as fair, reasonable and adequate to the class; (2) finding that this Settlement Agreement is made in good faith; and (3) entering an order retaining jurisdiction to enforce the settlement, if necessary; provided, however, that the Judgment and Order has become final, meaning that the time for appeal by an objector has expired, or, if there has been an appeal, that the Judgment and Order has been upheld on appeal without material change.
2. **Class definition.** The class consists of all natural persons who entered into “holiday loans” or “Instant Cash” loans, or both, with Tancorde Finance, Inc., on or after February 2, 2013 through April 15, 2014.

3. **Monetary relief:** Defendant shall pay a total amount of \$354,000.00 (three hundred fifty four thousand dollars) within five days of the Effective Date. The money will be utilized as follows:
 - a. **Payment of class attorney fees and costs.** Plaintiff will submit an attorney fee application to the Court. Defendant will not oppose Plaintiff's position that hourly billing rates of \$325 for attorney Feferman and \$425 for attorney Delbaum are fair and reasonable. Plaintiff's attorneys also will receive gross receipts tax and reimbursement of all taxable costs and all out-of-pocket expenses.
 - b. **Payment of costs of administration.**
 - c. **Incentive payment for plaintiff.** In recognition of the fact that Mr. Chester made one or more trips to Albuquerque to meet with his attorneys, made a trip to Gallup for his deposition, and expended considerable time conferring with his attorneys in connection with this case, Mr. Chester will receive \$3,000, subject to Court approval.
 - d. **Monetary relief to the class.** After payment of the above sums, the balance remaining from the total settlement amount will be distributed to members of the class. All class members will receive \$10. In addition, class members who paid a \$55 "application fee" to Defendant will receive an equal share of the remaining funds. The parties believe that application fees were paid by class members on approximately 8,497 loans by approximately 4,497 customers, and that those persons will receive in the vicinity of \$16 for each such fee paid.
 - i. **Distribution of relief to the class.** Defendant will cooperate fully, providing in appropriate electronic format the identities of all class

members and the amount of “application fees” they paid, that can be used by the Settlement Administrator. Within fifteen business days after the Effective Date, a Settlement Administrator selected by Plaintiff’s counsel will distribute the money to such members of the class as can be located, in the form of a check which will become void 180 days from the date of issue. The return address on the envelope will be that of the Settlement Administrator.

- ii. The checks shall be issued on a national bank that has branch offices in the Gallup and Window Rock areas. Defendant agrees to cash any settlement checks presented at the T&R Market pawn and jewelry locations at the Gallup Rio West Mall or U.S. Highway 491:
 - (1) Without payment of any fee;
 - (2) without requiring the payee to present identification other than a driver’s license;
 - (3) without asking or requiring the payee to purchase any goods or services, or otherwise obligating or burdening the payee.
- iii. In the event that a class member who is entitled to payment is deceased, Plaintiff shall issue the amount to a person reasonably believed to be that person’s heir or beneficiary, upon presentation of reasonable written documentation by such person to Plaintiff.
- iv. **Unclaimed amounts.** Any amounts for class members who cannot be located or who fail to cash their checks by the void date, will be donated to one or more 501(c)(3) charitable organizations which provides assistance

to low and moderate income persons in New Mexico. The Court will select the recipient(s) and amount(s) from the following list: COPE (Community Outreach and Patient Empowerment, a division of Partners in Health); New Mexico Legal Aid, Inc.; and Southwest Indian Foundation. The Settlement Administrator, through Plaintiff's counsel, shall advise Defendant's counsel of the amount of any unclaimed amounts within 210 days of the issuance of the settlement checks.

4. **Releases.**

- a. Plaintiff and each class member, as of the Effective Date, releases and discharges Defendant, its officers, directors, successors, predecessors, executors, administrators, assigns, shareholders, affiliated companies, attorneys and employees, from Defendant's alleged violation of the Truth in Lending Act and Regulation Z arising from its extension of "holiday" and "instant cash" loans executed through April 15, 2014.
- b. This release is conditioned upon the performance by Defendant of its obligations toward Plaintiff and the class members, as set forth in this Settlement Agreement.

5. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used as a limitation on Plaintiff's alleged damages nor an admission, or evidence, of liability by Defendant in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

6. **Notice.** Plaintiff will take responsibility for mailing notice to class members. Defendant will cooperate fully, providing last known addresses in electronic format that can be used

by the mailing service and the settlement administrators. Plaintiff will arrange to mail notice of this proposed settlement, to be sent via first class mail to the class members within fifteen days of entry of the Preliminary Approval Order. In connection with the submission for preliminary approval, the parties shall submit to the Court for approval a proposed mailing service for the class notice, a proposed form of notice to the class, and a proposed class administrator. If a mailing is returned with a forwarding address provided by the Postal Service, Plaintiff will re-mail it to the address provided. Plaintiff then shall file with the Court attestation that notice has been mailed to all class members. Plaintiff shall preserve and make available to Defendant all notices to class members which have been returned.

7. **Preliminary Approval.** As soon as practicable after execution of this Settlement Agreement, the parties shall apply to the Court for an Order which:
 - a. Preliminarily approves this Settlement Agreement.
 - b. Schedules a “fairness hearing” for final approval of this Settlement Agreement by the Court.
 - c. Sets deadlines for exclusions and objections to the Agreement.
 - d. Approves the form of notice to the class, to be directed to the last known address of each class member as shown on Defendant’s records.
 - e. Finds that mailing of such class notice is the only notice required and that such notice satisfies the requirements of due process and FRCP 23.

8. **Final Approval.** At the conclusion of the Fairness Hearing, the Court will determine whether to enter a Final Order approving the terms of this Settlement Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions,

finding that the notice given to the class members satisfies the requirements of due process and FRCP 23, directing the entry of the Final Order, and retaining jurisdiction to enforce the provisions of this Settlement Agreement. Upon final disposition of any unclaimed amounts as described in Paragraph 3(d)(iv), the Court will enter a final Order dismissing this matter, with prejudice.

9. **Court Required Changes to Settlement Agreement.** In the event that the Court conditions its preliminary or final approval of this Agreement on any changes to the Agreement, the Parties shall in good faith consider such changes and consent to them if they do not substantively alter the obligation of the party. Changes that shall be deemed to substantively change the obligation of a party include, but are not limited to, changes that affect (a) the monetary payments required hereunder; (b) the scope of the release to be granted; (c) the definition of the Class or class members; or (d) a provision expressly noted as material in this Agreement. Changes that merely alter wording or that reasonably modify timing of any event do not substantively change the obligations hereunder.
10. **Exhibits.** The Plaintiff will file Plaintiff's Unopposed Motion to Approve Settlement, attaching as exhibits this Class Action Settlement Agreement (Exhibit A), the proposed Preliminary Approval Order (Exhibit B), the proposed Notice of Proposed Settlement and Fairness Hearing to be sent to the class (Exhibit C), and the proposed form of Final Order (Exhibit D). The fact that the Court may require minor changes in the notice or either Order does not invalidate this Settlement Agreement. Neither party may send or distribute to class members (other than Mr. Chester) any form of notice or information

pertaining to the settlement, directly or indirectly, without the prior written approval of opposing counsel.

11. **Objections.** Any notices of objections shall be sent, via first class mail, to Richard Feferman, 300 Central Avenue, SW, Suite 2000 West, Albuquerque, NM 87102. Mr. Feferman shall provide copies via electronic mail to counsel for defendant within seven days of receipt.
12. **Right of Exclusion.** Any Class member may seek to be excluded from this Agreement and from the Class writing the time and in the manner provided by the Court. Any Class member so excluded shall not be bound by the terms of this Agreement nor entitled to any of its benefits.
13. **Other matters.** The parties and their attorneys agree to cooperate fully with one another in seeking court approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein as soon as is reasonably possible.
14. The foregoing constitutes the entire Agreement between the parties with regard to the subject matter hereof and may not be modified or amended except in writing, signed by both parties hereto, and approved by the Court.
15. This Settlement Agreement may be executed in counterparts, in which case the various counterparts shall be said to constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.

16. Each and every term of this Settlement Agreement shall be binding upon Plaintiff, the class members, their successors and personal representatives, and Defendant and its successors, assigns and affiliates. All of these persons and entities are intended to be beneficiaries of this Settlement Agreement.

17. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so agreed, on April 10, 2015.

/s/ Darren Chester

Darren Chester, Plaintiff

/s/ Shannon Tanner

Shannon Tanner, President, Defendant Tancorde Finance, Inc.

Approved:

/s/ Richard N. Feferman

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