UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU,

PLAINTIFF,

v. **Case No. 3:16-cv-356-WHB-JCG**

ALL AMERICAN CHECK CASHING, INC.;
MID-STATE FINANCE, INC.; and
MICHAEL E. GRAY, individually;

DEFENDANTS.

DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

COME NOW, Defendants, All American Check Cashing, Inc., Mid-State Finance, Inc., and Michael E. Gray, by and through counsel, and hereby Responds to the Plaintiff's *Motion for Summary Judgment*. Summary judgment is improper because there exists genuine disputes as to material facts and therefore the Plaintiff is not entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a).

In support of this Response, the Defendants state that the record in this matter – including the pleadings, declarations, admissions, interrogatory responses, testimony, and documents – demonstrates that there are genuine disputes as to material facts. Specifically, Summary Judgment should be denied for the following:

1. Questions of fact exist as to whether Defendants materially interfered with the ability of consumers to understand a term or condition of Defendants' check cashing services (Count I);

2. Questions of fact exist as to whether Defendants took unreasonable advantage of the inability of consumers to protect their interests in selecting or using Defendants' check cashing services (Count II);

3. Questions of fact exist as to whether Defendants deceptively represented to consumers that information about the fee for cashing a check was not available, and whether it was difficult or time-consuming to cancel or reverse a check cashing transaction and whether steps taken by Defendants during processing prevented consumers from cashing their checks elsewhere (Count III);

4. Questions of fact exist as to whether Defendants' check cashing acts and practices caused or were likely to cause substantial injury to consumers that consumers could not reasonably avoid and that was not outweighed by countervailing benefits to consumers or to competition (Count IV);

5. Questions of fact exist as to whether Defendants deceptively represented to consumers that borrowing pursuant to "1st and 3rd lending" was more financially beneficial than or equivalent to obtaining a 30-day loan from a competitor (Count V); and

6. Questions of fact exist as to whether Defendants' policy and practice of failing to notify or refund consumers who made overpayments caused or was likely to cause substantial injury to consumers that consumers could not reasonably avoid and that was not outweighed by countervailing benefits to consumers or to competition (Count VI).

Specifically, in support of this response, the Defendants rely on the Exhibits produced by the Plaintiff and attach to their Response the following exhibits:

A. Settlement and Absolute Release with Covenants;

B. Plaintiff's Complaint for Permanent Injunction and Other Relief;

C. Photos and Rule 3.5;

D. Affidavit of Michael Gray;

E. Mike Garrard's testimony during the DBCF Hearing regarding the Defendants;

F. Mike Garrard's deposition excerpts;

G. Laura Faulkner's deposition excerpts;

H. Check cashing receipts;

I. The eCash Software Handbook;

J. Fourteen day loan contracts;

K. Jeremy Hoskinson's deposition excerpts;

L. Diane Valladares' deposition excerpts;

M. Michael Gray's deposition excerpts;

N. Scott Cain's testimony during the DBCF Hearing regarding the Defendants; and,

O. Sonya Teasley's testimony during the DBCF Hearing regarding the Defendants.

Based on the record in this matter, including the exhibits attached hereto, and the undisputed facts and argument in the Defendants' Memorandum Brief filed in support of this Response, the Defendants respectfully request that the Court deny the Plaintiff's Motion for Summary Judgment.

CFPB's Motion for Summary Judgment did not seek summary judgment on the following issues: (a) Whether or not Michael Gray is individually liable; (b) Whether or not restitution and disgorgement in the amount of $8,364,334.59 is proper; (c) Whether or not imposition of injunctive relief is proper; and, (d) Whether or not civil money penalties are proper. See Plaintiff's Motion for Summary Judgment. These issues were addressed in the Plaintiff's

Memorandum but are not properly before this Court for summary judgment purposes. Rule 56(a) provides in part that "[A] party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought." Fed. R. Civ. P. 56(a). The only claims indentified by the CFPB in its Motion for Summary Judgment were the 6 claims identified above. The other four issues, (a)-(d), were not identified in Plaintiff's Motion, only in its legal Memorandum, and consequently these issues should not be considered by this Court. Fed. R. Civ. P. 56(a).

Based on the foregoing, the Defendants respectfully request this Honorable Court to deny the Plaintiff's *Motion for Summary Judgement*.

Respectfully submitted this the 15th day of September, 2017.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via electronic mail on the following counsel of record on September 15, 2017:

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/s/Dale Danks, Jr.