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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SEAN L. GILBERT, et al.,  
Plaintiffs,  
v.  
MONEYMUTUAL, LLC, et al.,  
Defendants.

Case No. [13-cv-01171-JSW](#)

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
SETTING FINAL APPROVAL  
HEARING**

Re: Dkt. No. 478

United States District Court  
Northern District of California

Now before the Court for consideration is Plaintiffs’ motion for preliminary approval of class action settlement. The Court has considered Plaintiffs’ motion, the supplemental brief submitted on February 14, 2020, and the lack of opposition. The Court concludes the motion can be resolved on the papers, and it VACATES the hearing set for February 28, 2020. *See* N.D. Civ. L.R. 7-1(b).

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Agreement, and for purposes of the Action, the Court has subject matter and personal jurisdiction over the Settling Parties, including all Settlement Class Members.

2. The Court preliminarily approves the Settlement as being within the realm of reasonableness to the Settlement Class, subject to further consideration at the Final Approval Hearing described below.

3. On February 28, 2018, the Court entered an Order certifying the following class on all claims except for the UCL-Fraud claim: “All California residents who received a ‘payday loan’ from an UNLICENSED LENDER on or after February 11, 2009 by using any website

1 affiliated with or in response to an email from MoneyMutual, LLC or Selling Source, LLC or one  
 2 of its subsidiaries. Any lender owned by an American Indian Tribe during the entire Class Period  
 3 is excluded.” (See Dkt. No. 257).

4 4. Subsequently and pursuant to Court order, Plaintiffs provided class notice by email  
 5 and Internet advertising to 562,202 class members. Requests for exclusion were made by two  
 6 class members: Kalikhia Miller and Peter Castillo. Plaintiffs have represented that these  
 7 individuals are not members of the “Damages Subclass” described below.

8 5. In the motion for preliminary approval, based on financial issues with Defendants’  
 9 ability to pay any large judgment, Plaintiffs requested that the Court modify the class definition  
 10 for the Settlement Class and divide that class into an Injunction Class and a Damages Subclass.  
 11 The Court finds good cause to grant that request and will provisionally modify and certify the  
 12 classes for settlement purposes as described in paragraphs 6 and 7. For reasons articulated in the  
 13 Plaintiffs’ supplemental brief, the Court also finds good cause to include the UCL-Fraud claim in  
 14 the settlement Subclass that is releasing claims.

15 6. The Injunction Class is: “All California residents who received a ‘payday loan’  
 16 from the one of the 109 UNLICENSED LENDERS on or after February 11, 2009 by using any  
 17 website affiliated with or in response to an email from MoneyMutual, LLC or Selling Source,  
 18 LLC or one of its subsidiaries.”<sup>1</sup>

19 7. The Damages Subclass is: “All members of the Injunction Class who received a  
 20 loan from and paid money to the CASH YES or RARE MOON Lenders. The only Cash Yes  
 21 Lender is ‘Cash Yes.’ The Rare Moon Lenders are VIP PDL SERVICES, LLC aka VIP Loan  
 22 Shop, SCS PROCESSING, LLC aka Everest Cash Advance, ACTION PDL SERVICES, LLC aka  
 23 Action Payday, BD PDL SERVICES, LLC aka Bottom Dollar Payday aka BD PDL Services.com  
 24 LLC, INTEGRITY PDL SERVICES, LLC aka Integrity Payday Loans aka IPL Today, Fast  
 25 EFNDS, LLC aka Fast Efunds, and MB Marketing, LLC.” The Damages Subclass represents a

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26  
 27 <sup>1</sup> This class represents in large part the originally certified class with the payday loan  
 28 companies specifically identified and counted and the tribal lenders are excluded from the list.

1 subclass or the originally certified class, which is limited to those individuals who are documented  
2 as actually paying money to payday loan companies.<sup>2</sup>

3 8. The Injunction Class is provisionally certified pursuant to Rule 23(b)(2). The  
4 Damages Subclass is provisionally certified pursuant to Rule 23(b)(3).

5 9. The Court concludes that for settlement purposes (a) the Settlement Classes are so  
6 numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are  
7 questions of law and fact common to the Settlement Classes; (c) the claims of Representatives  
8 Plaintiffs Sean L. Gilbert, Keeya Malone, Kimberly Bilbrew and Charmaine B. Aquino are typical  
9 of those of the Classes; (d) Representative Plaintiffs Sean L. Gilbert, Keeya Malone, Kimberly  
10 Bilbrew and Charmaine B. Aquino and Representative Plaintiffs' Counsel Jeffrey Wilens and  
11 Jeffrey Spencer have fairly and adequately represented and protected the interests of the  
12 Settlement Classes; (e) a class action is superior to other available methods for the fair and  
13 efficient adjudication of the controversy; and (f) the common questions of law and fact  
14 predominate over any individual questions.

15 10. Excluded from the Settlement Class are: (a) all members who are or were during  
16 the above class period employees of Defendants; (b) Kalikhia Miller and Peter Castillo, who  
17 previously excluded themselves from the certified class; and (c) all persons who exclude  
18 themselves from the class settlement.

19 11. Jeffrey Wilens of the Lakeshore Law Center and Jeffrey Spencer of Spencer Law  
20 Firm are confirmed to be class counsel.

21 12. Sean L. Gilbert, Keeya Malone, Kimberly Bilbrew and Charmaine B. Aquino are  
22 confirmed to be class representatives on the Injunction Class and Damages Subclass.

23 13. The Court acknowledges that Defendants would not have entered into the  
24 Settlement without adequate assurance that the status quo would be preserved in the event that the  
25 Settlement is not approved, the approval of the Settlement is reversed on appeal or the Effective  
26

27 <sup>2</sup> Plaintiffs represent that information about actual payments was only available for the Cash  
28 Yes and Rare Moon Lenders because the information had to be subpoenaed from existing third parties and most of the lenders went out of business several years ago.

1 Date is not reached for any reason, Defendants shall not be estopped or otherwise precluded from  
2 moving to decertify the previously class or otherwise defend against the Action.

3 14. The Court approves as modified both as to form and to content, the Class Notices  
4 annexed to the Class Action Settlement Agreement as Exhibits 2 and 3. With the parties consent,  
5 those notices shall be modified as follows:

6 The notices shall include the following language: “PLEASE DO NOT  
7 TELEPHONE THE COURT OR THE CLERK’S OFFICE TO  
8 INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM  
9 PROCESS”.

9 The notices use the language at Section 5 of the Northern District’s  
10 Procedural Guidance for Class Action Settlements and shall provide  
11 that all objections shall be sent to the Court at the following address:  
12 “Class Action Clerk, United States District Court for the Northern  
13 District of California, Ronald V. Dellums Federal Building &  
14 United States Courthouse, 1301 Clay Street, Suite 400S, Oakland,  
15 CA 94612.”

16 Paragraph 16 of the long form notice shall be modified as set forth  
17 in the supplemental brief on page 6:23-7:1.

18 15. Notice is only required to the Damages Subclass. The Court finds that the  
19 proposed mailing by United States Postal Service and triple emailing of the Summary Notice  
20 (Exhibit 3) to each of the Subclass Members, combined with the publication of the Long-Form  
21 Notice (Exhibit 2) on a dedicated website (Claims Website) meets the requirements of Rule 23(c)  
22 (2) and due process. The foregoing methods are the best notice practicable under the  
23 circumstances and shall constitute due and sufficient notice to all persons entitled to such Notice.

24 16. The Court approves, as to form and content, the Claim Form and Request for  
25 Exclusion Form, exhibits 4 and 5 respectively, to the Settlement Agreement. The Claim Form  
26 shall be included in any Long-Form Class Notice that is mailed to a physical address of a Subclass  
27 Member and an electronic version will be available on the Claims Website.

28 17. CPT Group, Inc. will perform the functions of a Settlement Administrator.

18. No later than March 16, 2020, Plaintiffs will provide the Settlement Administrator  
with a Microsoft Excel spreadsheet in electronic form containing the name, last known address  
and social security number for each Subclass member (Subclass List).

19. By March 26, 2020, the Settlement Administrator shall update the Subclass List

1 using the National Change of Address Database.

2           20. By March 31, 2020, the Settlement Administrator, the Settlement Administrator  
3 shall cause the Summary Class Notice including a link to the online Claim Form to be emailed to  
4 the last known email addresses of each Subclass Member. The same email will be sent every 15  
5 days for a total of three such emails. If the Settlement Administrator receives notice that an email  
6 address is not valid, it need not send additional emails to that subclass member.

7           21. By March 31, 2020, the Settlement Administrator will cause the Summary Class  
8 Notice to be mailed to the last known mail addresses of each Subclass Member. Any mailed Class  
9 Notices that are “returned to sender” with a forwarding address shall be promptly re-mailed to the  
10 specified address. If there is no forwarding address, the Settlement Administrator will use “skip-  
11 tracing” methods to develop a valid mailing address and then will mail the Summary Class Notice  
12 to that address.

13           22. Upon request of any Subclass member, the Settlement Administrator shall mail a  
14 copy of the Long-Form Class Notice and Claim Form to the address provided by the member.

15           23. By March 31, 2020, Class Counsel will post on their existing website, which has  
16 provided information to class members in the past, a link to the official Claims Website set up by  
17 the Settlement Administrator.

18           24. By March 31, 2020, the Settlement Administrator shall set up a public interactive  
19 website (Claims Website) which will be used to assist Subclass members in submitting claims and  
20 to host copies of the relevant court documents, including the Settlement Agreement, Preliminary  
21 Approval Order, Long-Form Class Notice, a printable version of the Claim Form, and an  
22 electronic version of the Claim Form.

23           25. By no later than April 23, 2020, Plaintiffs shall file their motion for attorneys’ fees,  
24 costs, and incentive awards.

25           26. Plaintiffs shall file the motion for final approval of the settlement by May 14, 2020.

26           27. Subclass Members shall have until August 26, 2020 to submit claims, either by  
27 mailing the paper version to the Settlement Administrator or completing the online claims  
28 submission process. The date of postmark for mailing and the date of electronic submission for

1 online submissions shall control.

2 28. To be a valid claim, the claimant's name (or prior name in the case of a legal name  
3 change) and social security number must match the corresponding name and social security  
4 number on the Subclass List. If there is a discrepancy, the Settlement Administrator shall notify  
5 the claimant by email at the address provided on the Claim Form and give him or her 30 days to  
6 resolve the discrepancy by presenting proof that he or she is the proper claimant. The Settlement  
7 Administrator shall notify counsel for the Parties of any discrepancy and once any supporting  
8 proof is presented, collectively they will rule on whether the claim is valid. The claimant will be  
9 notified of the ruling by the Settlement Administrator, which shall be final, although the claimant  
10 will have the right to petition the Court for relief.

11 29. If any Party learns of a change of address for any Subclass member, that Party shall  
12 notify the other Parties and Settlement Administrator, so the contact information can be updated.

13 30. If any settlement checks to claimants are returned to sender with a forwarding  
14 address, the Settlement Administrator shall re-mail the checks to the specified address.

15 31. If any settlement checks are returned to sender without a forwarding address, the  
16 Settlement Administrator shall use "skip-tracing" methods to develop a valid address and then will  
17 re-mail the compensation/refund check to that address.

18 32. If despite the foregoing efforts, some settlement checks are not cashed or deposited  
19 within nine months of issuance, the Settlement Administrator shall submit those funds to the State  
20 Controller's Office under law as unclaimed property.

21 33. The Parties will take no action to encourage Class Members to opt out of this  
22 settlement.

23 34. In connection with the filing of the Motion for Final Approval, Plaintiffs or the  
24 Settlement Administrator, as appropriate, shall submit declaration(s) under penalty of perjury  
25 regarding the following: (a) confirming that the Class Notice was mailed and emailed to each  
26 Subclass Member (and re-mailed as necessary); (b) identifying how many Subclass Members are  
27 known not to have received the Notice; (c) confirming the required information and Notice was  
28 published on the Claims Website; (d) identifying any Subclass Members who have submitted

1 requests for exclusion; (e) identifying the number of Subclass Members who have submitted  
2 claims and the anticipated payout to each member.

3 35. Any Settlement Class Member may enter an appearance in the Action, at his or her  
4 own expense, individually or through counsel of his or her own choice. If a Settlement Class  
5 Member does not enter an appearance, Class Counsel will represent the Settlement Class Member.

6 36. Any Subclass member, except Plaintiffs, may be excluded from or “opt out” of this  
7 Settlement. Class members who are only members of the Injunction Class cannot opt out of that  
8 class. If a Subclass Member “opts out”, he or she will be excluded from the Settlement, and will  
9 not receive any benefits of the Settlement, and will not be bound by the releases imposed under the  
10 Settlement. The “opt-out” procedure will be as follows:

11 a) Each Subclass member who wishes to exclude himself or herself from this  
12 Settlement must submit a Request to Opt-Out to the Settlement Administrator. The Class Member  
13 can use the Request for Exclusion form provided on the Claims Website or use his or her own  
14 sheet of paper. The Request for Exclusion form shall be substantially similar to Exhibit 5. A  
15 Settlement Classes Member who submits a Request to Opt-Out is not eligible to recover a share of  
16 the Class Settlement Amount, or object to the settlement, but will retain all of his or her rights  
17 against the Defendants.

18 b) For a Request to Opt-Out to be accepted it must be timely and valid. To be timely  
19 it must be delivered to the Settlement Administrator at the address specified in the Class Notice by  
20 May 28, 2020. If the Request to Opt-Out is submitted electronically on the Claims Website, then  
21 the date of submission will control. If the Request to Opt-Out is mailed, the postmark date will  
22 control. If the Request to Opt-Out is delivered personally, the date of receipt will control. To be  
23 valid, the Request to Opt-Out shall identify the Class Member by name, address and phone  
24 number and must contain a statement that the Settlement Classes Member requests to be excluded  
25 from the Settlement Subclass.

26 c) The Settlement Administrator shall provide all Parties with copies of all opt-out  
27 notices received by it within 5 days of the expiration of the deadline to opt-out.

28 d) If over five percent of the Subclass Members opt out of this Settlement, Defendants

1 may withdraw from this Settlement, but are not under an obligation to do so. If Defendants opt to  
2 withdraw from the Settlement, all orders entered under this Agreement will be vacated, and the  
3 Parties will be returned to the status quo ante regarding the Action, as if the parties had never  
4 entered into the Agreement.

5 37. Any Settlement Class member, either of the Injunction Class or the Damages  
6 Subclass, except Plaintiffs, may object to this Settlement. The procedure for objecting to the  
7 Settlement will be as follows:

8 a) Any Settlement Class Member who objects to the proposed Settlement, the  
9 incentive award, or the amount of fees and/or expenses claimed by Class Counsel may file a  
10 written objection or may appear personally or through counsel at the Final Approval Hearing (as  
11 defined below) and object to the approval of any of these provisions.

12 b) To object or have papers or briefs considered by the Court, the objecting Settlement  
13 Class Member may electronically file with or mail to the Court a written objection along with any  
14 papers for the Court to consider by May 28, 2020. A Settlement Class Member may also appear  
15 personally or through counsel and be heard at the Final Approval Hearing at the Court's  
16 discretion.

17 c) Any objecting Settlement Class Member should but is not required to serve counsel  
18 for all Parties (at the addresses specified on the Class Notice) by May 28, 2020.

19 38. The Court will hold the hearing on Plaintiffs' motions for final approval and for  
20 Plaintiffs' motion for attorneys' fees, costs, and incentive fees (the "Fairness Hearing" or "Final  
21 Approval Hearing") on June 19, 2020 at 9:00 a.m., in Department 5 of the United States District  
22 Court, Northern District of California, 1301 Clay Street, Oakland, CA 94612, to determine  
23 whether the proposed Settlement should be finally approved as fair, reasonable and adequate,  
24 whether a judgment should be entered pursuant to such Settlement, and whether attorneys' fees  
25 and cost and incentive award should be awarded, respectively, to Class Counsel and  
26 Representative Plaintiffs, and, if so, in what amount. The Court may continue the Final Approval  
27 Hearing without further notice to Settlement Class Members.

28 39. Any Settlement Class Member may appear and be heard at the Final Approval



United States District Court  
Northern District of California

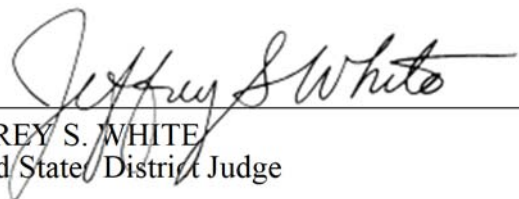
1 Hearing as to any reason why the proposed Settlement should or should not be approved as fair,  
2 reasonable and adequate or why a judgment should or should not be entered approving such  
3 Settlement. However, no Settlement Class Member shall be entitled to object to the approval of  
4 the terms and conditions of the proposed Settlement, or, if approved, the judgment to be entered  
5 approving the Settlement, unless that Settlement Class Member previously submitted an objection  
6 as set forth above, except as permitted at the Court’s discretion.

7 40. Pending final determination of whether this Court should approve the Settlement,  
8 all proceedings in the Action are stayed until further order of the Court, except as may be  
9 necessary to effectuate the Settlement or comply with the terms of the Settlement. Pending final  
10 determination of whether this Court should approve the Settlement, no Settlement Class Member  
11 or any person purporting to act on behalf of Settlement Class Member(s) may, directly, on a  
12 representative basis or in any other capacity, commence or prosecute against any of the Released  
13 Persons any action, arbitration or proceeding in any court, arbitration forum, or tribunal asserting  
14 any of the Settled Claims. The terms Released Persons and Settled Claims are defined in the  
15 Agreement.

16 41. The Court retains jurisdiction to consider all further applications arising out of or  
17 connected with the proposed Settlement. The Court may approve the Settlement with such  
18 modifications as may be agreed to by the parties, if appropriate, without further notice to the  
19 Settlement Class Members.

20 **IT IS SO ORDERED.**

21 Dated: February 19, 2020

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23 \_\_\_\_\_  
24 JEFFREY S. WHITE  
25 United States District Judge  
26  
27  
28