

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION



**FILED**  
SEP - 6 2011  
*[Signature]*  
CLERK

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PAYDAY FINANCIAL, LLC, et al.,

Defendants.

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Case No. *11-3017*

**PLAINTIFF'S EXHIBITS IN SUPPORT OF ITS  
MOTION FOR TEMPORARY RESTRAINING ORDER  
AND OTHER EQUITABLE RELIEF AND AN ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

**VOLUME ONE  
PX01 - PX06**

**EXHIBITS TO PLAINTIFF'S MEMORANDUM**

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Declaration of Linda Broome. . . . . PX 01  
Declaration of Mary Cole . . . . . PX 02  
Declaration of Lindsay Scarlett. . . . . PX 03  
Declaration of Leslie Jones. . . . . PX 04  
Declaration of Shatina Edwards. . . . . PX 05  
Declaration of Chad Hildebrand. . . . . PX 06  
Declaration of Victoria Budich . . . . . PX 07

# **EXHIBIT 1**

**DECLARATION OF LINDA BROOME  
PURSUANT TO 28 U.S.C. § 1746**

I, Linda Broome, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. I am over the age of 50, live in Arlington, Texas, and work in Irving, Texas as the Human Resources Manager for Business Interiors, a company with approximately 145 employees.
2. I have worked in the Human Resources field for over 25 years, and have been the Human Resources Manager for Business Interiors for 20 years. Including myself, there are 3 employees that handle garnishments who work in the Human Resources and Accounting Department of Business Interiors.
3. On or about July 28, 2010, I received a wage garnishment package, through the United States Postal Service, from Sherrie Ward, an Account Specialist for Payday Financial, LLC/Lakota Cash ("Lakota Cash") located at P.O. Box 128, Timber Lake, South Dakota 57656. The package was for one of Business Interiors' employees and contained various documents; however, no court order authorizing garnishment was included.
4. The package contained a number of materials relating to wage garnishment, including a "IMPORTANT NOTICE TO EMPLOYER," a form entitled "WAGE GARNISHMENT," which included a "WAGE GARNISHMENT WORKSHEET," an "EMPLOYER CERTIFICATION," and a copy of what was purportedly the employee's loan application to Lakota Cash. A true and correct copy of this package is attached as **Attachment A**. Please note that the employee's personal information has been redacted from the attachment to protect his privacy.

5. The "IMPORTANT NOTICE TO EMPLOYER" states, among other things, that one of Business Interiors' employees owes a delinquent debt to Lakota Cash. It further alleges that "The Indian Commerce Clause of the United States Constitution and the Laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order." Additionally the letter states that they "closely follow the general principals of the Debt Collection Improvement Act of 1996." I found these statements to be peculiar. It is my understanding and experience from previously processing wage garnishments as part of my duties at Business Interiors that all wage garnishments, excluding those from the federal government, must be accompanied by a court order. Additionally, in the State of Texas, wage garnishment requests typically come from the Office of the Attorney General. The letter from Lakota Cash further states that Lakota Cash previously notified the employee that this action was going to take place and has provided the employee with the opportunity to dispute the debt.
6. The "WAGE GARNISHMENT" form alleges that, as of July 28, 2010, the employee owed Lakota Cash \$485.00, and instructs Business Interiors to withhold a portion of the employees pay each pay period and forward those amounts to Payday Financial, LLC. The form further explains that Business Interiors should process the wage garnishment request within 10 days.
7. Around August 2, 2010, I called Lakota Cash and asked to speak with a manager. A woman that identified herself as Sherrie Ward took my call and I told her the standard procedure for garnishing wages in the state of Texas. I told Ms. Ward

that I was surprised to receive such a request since Texas law does not allow debt collectors to garnish wages for repayment of consumer debt. Ms. Ward apologized and further explained that the employee who sent the package was not familiar with Texas laws. At my request, Ms. Ward promised to respond to my call in writing.

8. On August 2, 2010, I received a follow up e-mail message from Ms. Ward stating that the garnishment request for the employee was withdrawn. A true and correct copy of the follow up e-mail message is attached as **Attachment B**.
9. To date, Business Interiors has not garnished the employee's wages for the benefit of Payday Financial, LLC/Lakota Cash.
10. After receiving the garnishment package from Lakota Cash, I contacted the Federal Trade Commission regarding my concerns that the garnishment package did not seem legitimate.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28<sup>th</sup> day of March, 2011 in Irving, TX.

  
\_\_\_\_\_  
Linda Broome

# **ATTACHMENT A**



Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (605) 865-3100 - (866) 971-4477

## IMPORTANT NOTICE TO THE EMPLOYER

07/28/10

To: Business Interiors

Attn: Payroll Dept. / Human Resources

One of your employees has been identified as owing a delinquent debt to Payday Financial, LLC/Lakota Cash. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. While not applicable to tribal entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA). The employee has previously consented to such garnishment and we have notified the employee that this action was going to take place, providing the employee with the opportunity to dispute the debt. and/or make payment arrangements.

The items listed below substantiate our position in perusing a garnishment on your employee [REDACTED]. Please forward this to the individual responsible for this process. If person is no longer employed please return to sender.

Enclosed you will find the following documents:

1. E-signed customer contract
2. Garnishment letter and work sheet
3. Time Stamp for this document

Please fill out the employer's section and return the original to the address above within ten business days. If you have any questions please contact me at our toll free number 866-971-4477 Ext7002 or my email is [sherrie@lakotacash.com](mailto:sherrie@lakotacash.com).

Sincerely,

Sherrie Ward

Account Specialist

**WAGE GARNISHMENT**

**RE:** Employee Name:



Employee Social Security No.:



**TO:** Employer:

Business Interiors

Employer Fax Number:



<p><b>FROM: Payday Financial, LLC</b></p> <p style="text-align: center;"><b>Lakota Cash</b></p>	<p>Mailing Address:</p> <p>PO Box 128</p> <p>Timber Lake, South Dakota 57656</p>
<p>Contact Name:</p> <p><b>Sherrie Ward</b></p>	<p>Telephone No.:</p> <p><b>866-971-4477</b></p>
<p>Fax Number:</p> <p><b>605-865-3102</b></p>	<p>Telephone Number Extension</p> <p><b>7002</b></p>

<p>Amount Due:</p> <p><b>\$485.00</b></p>	<p>As of Date:</p> <p><b>07/28/10</b></p>	<p><i>Note:</i> The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by Payday Financial, LLC.</p>
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**Section 1:** YOU, the Employer, are hereby assigned to deduct from all disposable pay paid by you to the employee the wage garnishment amount described above in amount due of this garnishment. You are to begin deductions on the first pay day after you receive this wage garnishment. If the first pay day is within 10 days after you receive this, you may begin deductions on the second pay day after you receive this. You are to continue deductions until amount noted above is paid in full.

Please, mail checks to: **Payday Financial, LLC**

Mailing address for check payments: **P.O. Box 128 Timber Lake, South Dakota 57656**

**Section 2: WAGE GARNISHMENT AMOUNT.**

(a) The wage garnishment amount is \$\_\_\_\_.00 to be garnished from the next pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(b) The wage garnishment amount is \$\_\_\_\_.00 per pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(c) The wage garnishment amount for each pay period is the lesser of:

(1) 15 % of the Employee's disposals pay (*not to exceed 15%*)

(2) 25 % of the Employee's disposable pay less the amounts withheld under the withholding with priority

Equivalent to 15% of disposable income or 25% of disposable income if there is an additional garnishment or wage assignment already in place i.e.: bankruptcy, child support, tax levies etc...

**Note:** The Employer may use the attached wage garnishment worksheet to calculate the wage garnishment amount.

**IMPORTANT NOTICE TO EMPLOYER**

1. **Disposable pay.** For purposes of the wage garnishment, "disposable pay" means the employee's compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions under CRST Tribal Law include Federal, State, and local taxes. State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A wage garnishment worksheet is included with the wage garnishment to assist the employer in calculating disposable pay and the wage garnishment amount.
2. **Multiple Withholding.** If in addition to the wage garnishment you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%.
3. **Pay cycles.** An employer is not required to vary its normal pay and disbursement cycles to comply with the wage garnishment.

**WAGE GARNISHMENT WORKSHEET**

**Notice to Employers:** The Employer may use a copy of this worksheet each pay period to calculate the wage garnishment amount to be deducted from the debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) or 2(b) of the wage garnishment assignment specifies the dollar amount to be garnished, the employer does not need to complete this worksheet.

Debtor Name:	Employee Social Security No.:
[REDACTED]	[REDACTED]

**Pay Period Frequency**

(Select One): Weekly or less      Bi-weekly      Semi-monthly      Monthly

**DISPOSABLE PAY COMPUTATION**

1.	Gross amount paid to employee	
2.	Amounts withheld:	
	a. Federal income tax	
	b. F.I.C.A. (social security)	
	c. Medicare	
	d. State tax (including income tax, unemployment, disability)	
	e. City/Local tax	
	f. Health insurance premiums	
	g. Involuntary retirement or pension plan payments	
3.	Total allowable deductions [Add lines a - g]	
4.	<b>DISPOSABLE PAY</b> [Subtract line 3 from line 1]	

**WAGE GARNISHMENT AMOUNT COMPUTATION**

If the employee's wages are not subject to any withholding orders, skip to line 8.

5.	25% of disposable pay [Multiple line 4 by .25]	
6.	Total amounts withheld under wage withholding with priority. See section 2(c).	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(c) (1) of the assignment by line 4. (The percentage from section 2(c) (1) of the assignment may not exceed 15%). Example: If the percentage from section 2(c)(1) of the assignment is 15%, multiply .15 by line 4.	
9.	Amount equivalent to 30 times the federal minimum wage (\$7.25) Or your states federal minimum wage	

If the employee is paid, line 9 is: Weekly or less \$154.50 - Bi-Weekly 309.00 - Semi-monthly \$334.75 - Monthly \$669.50	
10. Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	
11. <b>WAGE GARNISHMENT AMOUNT</b> Line 7, 8, or 10, whichever amount is the smallest	

**EMPLOYER CERTIFICATION**

**NOTICE TO EMPLOYERS: THE EMPLOYER MUST COMPLETE AND RETURN THIS CERTIFICATION TO PAYDAY FINANCIAL, LLC WITHIN 10 DAYS OF RECEIPT.**

*To be completed by creditor agency:*

Date of this assignment: July 28, 2010

Payday Financial, LLC  Lakota Cash	Mailing address (include street address, city, state, zip code):  P.O. Box 128 Timber Lake, South Dakota 57656
Employee name: [REDACTED]	Employee Social Security No.: [REDACTED]

***The remainder of the employer certification is to be completed by employer:***

Employer:	Employer taxpayer identifying number:
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***Please provide the following information for employees no longer employed:***

Employment termination date:	Employee's current employer (if known)
Employee's last known address and telephone no. (if known)	

**Note: If the employee is no longer employed with this employer, the employer will need to complete the rest of this certification. Sign and date this certification and return to Payday Financial, LLC.**

Please check one of the following:

- In process of sending garnished payment  
NOTE: when submitting payment please use reference # XXXXXXXXXX
- Employee is no longer with the company
- Unable to garnish wages. (List reason) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Date) \_\_\_\_\_

Disbursement Date: March 30, 2010 Payment Date: April 8, 2010	Customer#: [REDACTED] Type of Contract: Standard Loan
Lakota Cash PO Box 128 Timber Lake, SD 57656 Phone: 8663005339 Fax: 8663002767 Email: customerservice@lakotacash.com	Name: [REDACTED] Address: [REDACTED] Address: [REDACTED] Phone: [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

\*Items removed here to protect customers privacy\*

**GOVERNING LAW:** This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND GARNISHMENT** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you hereby consent and agree to the potential garnishment of wages by us or our assigns or service agents to ensure

repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential garnishment of wages, and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**GARNISHMENT OPT-OUT PROCESS.** You may choose to opt out the Garnishment provision, but only by following the process set-forth below. If you do not wish to be subject to this Garnishment Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Garnishment Provision. If you choose to opt out of the Garnishment Provisions, then your choice will apply only to the Garnishment Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.**

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU**

**ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third

parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court

with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with any court having jurisdiction.

6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. **NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER.** In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

#### ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

**1. CONSENT TO ELECTRONIC COMMUNICATIONS:**

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

**2. ACH AUTHORIZATION:**

By electronically signing this Loan Agreement below, you certify that you have fully read and understood the ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with, and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

**3. AGREEMENT TO TERMS AND CONDITIONS OF LOAN AGREEMENT INCLUDING WAIVER OF JURY TRIAL AND ARBITRATION:**

By electronically signing this Loan Agreement by typing your name below, (a) you acknowledge that the Loan Agreement was filled in before you did so and that you have reviewed the entire Loan Agreement including the CHOICE OF TRIBAL LAW AND CHOICE OF TRIBAL COURT, TRUTH-IN-LENDING DISCLOSURES, the WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, our PRIVACY POLICY, and TERMS AND CONDITIONS (b) you acknowledge that your right to file suit against us for any claim or dispute regarding this Loan Agreement is limited by the WAIVER OF JURY TRIAL AND ARBITRATION provisions, (c) you represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for bankruptcy, and (d) you acknowledge that you have read and understood all of the terms of this Loan Agreement including the provisions mentioned above and you agree to comply with, and be bound by, all of those terms.

Lender:

PAYDAY FINANCIAL, LLC/LAKOTA CASH

Borrower's E-Signature: [REDACTED]

Please type name as found on the application: [REDACTED]

Borrower:

First Name: [REDACTED]

Last Name: [REDACTED]

SSN# [REDACTED]

Date: March 30, 2010

***PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.***

***Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8663005339 or via e-mail to [customerservice@lakotacash.com](mailto:customerservice@lakotacash.com)***

ESignature History			
Customer Name	[REDACTED]	Loan Amount	485.0000
Customer Address	[REDACTED]	Due Date	4/9/2010
City State Zip	[REDACTED]	Application Date	3/30/2010
Home Phone	[REDACTED]	Origination Date	3/30/2010
Work Phone	[REDACTED]	Store ID	26305000001

Appl#	ESig ID	ESig Desc	OrderNo	Doc ID	ESignature	IPAddress	ESigDate	isActive
38927406	1	Disclosure Signature	1	1438	[REDACTED]	[REDACTED]	3/30/2010 4:21:00 PM	True

Print Now

# **ATTACHMENT B**

**Linda Broome**

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**From:** Sherrie Ward [sherrie@lakotacash.com]  
**Sent:** Monday, August 02, 2010 12:14 PM  
**To:** Linda Broome  
**Subject:** [REDACTED] withdrawl  
**Attachments:** Sherrie W.vcf

The garnishment for [REDACTED] SSN ending in [REDACTED] has been withdrawn. We hereby release your company from garnishment action on this client. Please adjust your records accordingly. We at Payday Financial/ Lakota Cash thank you for your assistance and cooperation. Should you have any questions or concerns please contact us at the numbers above or email [sherrie@lakotacash.com](mailto:sherrie@lakotacash.com).

Thank you,  
Sherrie W.



**Confidentiality Statement & Notice:** This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and intended only for the use of the individual or entity to whom it is addressed as it may contain confidential and legally privileged information subject to the attorney/client privilege. E-mail transmission is not intended to waive the attorney-client privilege or any other privilege. Any review, retransmission, dissemination to unauthorized persons or other use of the original message and any attachments is strictly prohibited. If you received this electronic transmission in error, please reply to the above-referenced sender about the error and permanently delete this message. Thank you for your cooperation.

# **EXHIBIT 2**

**DECLARATION OF MARY COLE**  
**Pursuant to 28 U.S.C. § 1746**

I, Mary Cole, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. I live in Helena, Montana and am over 21 years of age. I work as a Quality Assurance Specialist dealing with Healthy Montana Kids, a health coverage plan administered by the Montana Department of Public Health and Human Services. I have worked in this capacity for about 5 years.
2. In July 2010 I found Big Sky Cash's website through an online search.
3. On September 2, 2010, I applied for a loan through [www.bigskycash.com](http://www.bigskycash.com). The Big Sky Cash website prompted me to submit information necessary to apply for a loan, including my social security number, home and work phone numbers, name of my employer, two references, and my bank account and routing numbers.
4. At the time that I signed up for the loan, I authorized Big Sky Cash to electronically withdraw a \$140 finance charge from my bank account every two weeks starting on September 22, 2010. This authorization for ACH debits was part of my loan application and required for me to obtain the loan.
5. Throughout the loan application process, I never spoke to a representative from the company on the phone; all interaction was online. I also did not receive a print-out copy of my online loan application or a contract.
6. On or around September 3, 2010, I received a \$500 deposit to my bank account from Big Sky Cash.
7. From September 22, 2010 through sometime in early November 2010, Big Sky Cash withdrew about 3 payments of \$140 from my account every two weeks.

These payments proved to be a tremendous strain on my finances, so I started to research the legality of the high interest rates Big Sky Cash was charging me.

8. In early November 2010, I reached out to numerous government agencies including the Montana Department of Finance and the Montana Banking Commission. I also filed a complaint with the Better Business Bureau around November 2010.
9. The resources I obtained from these offices informed my decision to put a one-time stop on my bank account at Rocky Mountain Credit Union, from which Big Sky Cash had withdrawn payments. At the time I put this stop into place, November 2010, I had paid Big Sky Cash about \$400.
10. On November 15, 2010, I sent Big Sky Cash a letter in which I advised the company that I researched internet payday loan laws in the state of Montana and learned that their internet payday loan activity was illegal. I stated that in the State of Montana a lender may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the loan. I also affirmed that a lender may charge a fee not to exceed \$30 in the event that there are insufficient funds or inadequate authorization for electronic deduction on the date of presentment.
11. In the letter I also revoked any and all ACH debit authorization from the company to withdraw payments from my personal bank accounts. I informed the company that I had closed my bank account, when in reality I had only put a stop on the account. I revoked any and all wage assignments I may or may not have signed

with the company. I also prohibited the company from contacting my employer for collection purposes.

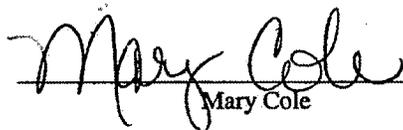
12. I also stated in this letter that I was willing to pay the principal amount of the loan under the condition that Big Sky Cash provide me with a physical address where I could send payments. I requested that the company provide me with their license number that enables them to offer loans to Montana residents. Finally, I prohibited Big Sky Cash and its affiliates from contacting me by telephone, and I demanded that the company respond to my letter within five days in writing. A true and correct copy of the letter is attached as **Attachment A**.
13. I received an email from Big Sky Cash in response to my letter stating that the company operated as a sovereign nation and the laws of the state of Montana did not apply to them.
14. In January 2011, I emailed Big Sky Cash and requested that the company send me a copy of my loan application because I had not yet received a copy. On January 25, 2011, Big Sky Cash emailed me a copy of my loan application. A true and correct copy of the loan application is attached as **Attachment B**.
15. On January 26, 2011, Big Sky Cash unsuccessfully attempted to debit \$678 from my bank account at Rocky Mount Credit Union. I was notified by my bank of this attempted debit. I filled out a Written Statement of Unauthorized Debit with my bank the same day indicating that I had previously revoked authorization from Big Sky Cash to debit my account before the debit was initiated. A true and correct copy of the Written Statement of Unauthorized Debit is attached as **Attachment C**.

16. On January 27, 2011, I received an email from Big Sky Cash notifying me that the debit was not honored by my bank. They further encouraged me to quickly resolve the situation and to contact a workout department representative immediately to make new payment arrangements. A true and correct copy of this email is attached as **Attachment D**.
17. After Big Sky Cash's unsuccessful withdrawal attempt, I had my bank put a permanent stop on my account for any payments to Big Sky Cash and its affiliates.
18. In late January 2011, I filed a complaint with the Federal Trade Commission and the Montana Attorney General's office.
19. In February or March 2011, I contacted Big Sky Cash via email and insisted that the company work with me to develop a payment plan. I told the company that I would pay \$25 every two weeks, and the company agreed to this payment schedule.
20. Since I reached out to the Big Sky Cash in February or March 2011, I have adhered to this payment schedule. The company does not withdraw the payments from my account; rather, my bank sends payments to Big Sky Cash. I keep track of the payments that I make to the company, but I have not worked out a date on which my obligation will be satisfied.
21. Since I worked out this payment plan, I occasionally receive emails from a company that identifies itself as "BSC" demanding money.

22. Over the course of my experience with Big Sky Cash, I have received three collection calls to my work phone number. On all three occasions the caller said he or she was calling from "BSC."
23. The last call to my work number came in early May 2011. I told the caller that she could not contact me at work. I also emailed the company to insist that representatives cease calling me at work. Big Sky Cash responded to my email informing me that they had a new database with customer information and that they would indicate in this new database that representatives were not to call me at work.
24. Since the call I received in early May 2011, I have not received any more collection calls from Big Sky Cash or BSC.

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

Executed this 24 day of June, 2011 in Helena, Montana.

  
\_\_\_\_\_  
Mary Cole

# **ATTACHMENT A**

09/05/2010

Mary T Cole

[Redacted] Helena MT [Redacted]  
[Redacted]

Big Sky Cash Advance  
800-509-0907

Re: acct# [Redacted] *Heard from Raymond*

After researching Internet payday loan laws in the State of Montana, I have found that your Internet payday loan activity is actually illegal. I have also learned the following laws apply to payday loans in the State of Montana in general,

**A lender may not charge fees unless authorized by law.**

1. A lender may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the loan.

2. If there are insufficient funds to pay a check or authorization for electronic deduction on the date of the presentment, a lender may charge a fee not to exceed \$30.00. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. This fee is the lender's exclusive charge for late payment.

**"you cannot be prosecuted in criminal court for collection of this loan".**

~~I hereby revoke any and all A/C Debit authorizations with your company from debiting any of my personal accounts per Federal Regulation E Section 205.10. I authorize transfers. I have closed my account with the (bank name) to protect my interests in this matter. Per instruction from the Montana Department of Finance. I also revoke any and all wage assignments I may or may not have signed with your company. I no longer authorize you, your company, or your affiliates to attach any part of my wages or contact my employer for your collection purposes. I have notified my employer about this matter so any attempts to do so on your part will be rejected.~~

I demand that any contact be made through US Postal mail or email only. I will need everything in writing to keep accurate records of all communication as per instruction from my Attorney General Office. I also prohibit you or your affiliates to contact me via telephone at my place of employment or my home telephone number. I also prohibit you from calling my references listed on my loan.

Due to the fact that Internet payday loan lenders must be licensed in the state of Montana to be a legal and binding contract, your company should NOT issue loans to Montana residents at all. I am requesting that you send me your license number which enables you to offer loans to Montana residents.

*The legal amount that could have been charged to my loan is the principal amount, even if your Internet payday loan were legal anywhere in the U.S. I am willing to pay the principle amount of the loan only, however, this is only if you provide me with a physical address where I can send payments.*

*I must also inform you that I will be filing complaints with the Better Business Bureau, the Federal Trade Commission, and the Montana Attorney General Office.*

*I expect a response from your company no later than 5 days from the above date regarding this matter. This response may only come via US Postal mail or email. No telephone contact is permitted.*

*Sincerely,*

*Mary T Cole*

*CC:*

*Better Business Bureau*

*Montana Attorney General*

*Federal Trade Commission*

*Attach this quote from Electronic Funds Transfer Act in the end.*

*907. Preauthorized transfers*

*(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.*

*(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.*

*[Codified to 15 U.S.C. 1693e]*

# **ATTACHMENT B**

**Hagan, Emily**

**From:** Cole, Mary [REDACTED]  
**Sent:** Thursday, April 07, 2011 4:56 PM  
**To:** Budich, Victoria Leftwich  
**Subject:** FW: Loan Documents

**Follow Up Flag:** Follow up  
**Flag Status:** Red

Here is one email I received which really doesn't show the info I was telling you about. I am still looking for the other info that I have on them. Do you have a fax where I can some of the stuff if I don't have it in email I may have it in my folder printed off.

Thanks!

Mary Cole  
[REDACTED]  
Helena MT [REDACTED]

-----Original Message-----

**From:** noreply@bigskycash.com [mailto:noreply@bigskycash.com]  
**Sent:** Tuesday, January 25, 2011 1:10 PM  
**To:** Cole, Mary  
**Subject:** Loan Documents

**Applicant:** MARY COLE  
**Loan ID:** Big \$ky Cash [REDACTED]  
**Application**

<[http://bigskycash.com/imgdir/live/themes/OPM/skins/nms/blackbox/bigskycash.com/media/image/bsc\\_sml.gif](http://bigskycash.com/imgdir/live/themes/OPM/skins/nms/blackbox/bigskycash.com/media/image/bsc_sml.gif)>

Date : 09/02/2010

src: bigskycash.com 32971

Personal Information

**Applicant Name:** MARY COLE      **Applicants Address:**

[REDACTED]  
Helena MT [REDACTED]

**DOB:** [REDACTED]

**SS#:** [REDACTED]

**Home Phone #:** [REDACTED]      **Length at address:**

Unspecified

**Fax Number:** N/A

**E-Mail address:** [REDACTED]

**Cell Number:**

**Drivers License:** [REDACTED]

Employment / Income Information

**Employer:** STATE OF MONTANA      **Income comes from?** employment

**Your work phone:** [REDACTED]      **Paid how often:** Bi Weekly

**Length of Employment:** 3 months      **Monthly take Home pay\*:** \$3,500.00

**Position:** Data Analyst      **Net pay each pay check\*:** \$1,615.00

**Shift/Hours:**      **Next four pay dates:** 09-08-2010 & 09-22-2010 & 10-06-2010 & 10-20-2010

**Direct Deposit?** TRUE

Checking Account Information

**Bank Name:** RMCU      **ABA/Routing:** [REDACTED]

**Account Number:** [REDACTED]      **Account Type:**

PERSONAL REFERENCES

**Ref #1 name:** Maranda Bricker      **Ref #2 name:** Malinda Cummings

**Ref #1 phone:** [REDACTED]      **Ref #2 phone:** [REDACTED]

**Ref #1 relationship:** Extended Family      **Ref #2 relationship:**

\*or other source of income periodically deposited to your account. However, alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

NOTICE: We adhere to the Patriot Act and we are required by law to adopt procedures to

request and retain in our records information necessary to verify your identity. Agreement to Arbitrate All Disputes: By signing below or electronically signing and to induce us, , to process your application for a loan, you and we agree that any and all claims, disputes or controversies that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers and employees, that arise out of your application for one or more loans, the Loan Agreements that govern your repayment obligations, the loan for which you are applying or any other loan we previously made or later make to you, this Agreement To Arbitrate All Disputes, collection of the loan or loans, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, including disputes as to the matters subject to arbitration, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum (NAF) in effect at the time the claim is filed. This agreement to arbitrate all disputes shall apply no matter by whom or against whom the claim is filed. Rules and forms of the NAF may be obtained and all claims shall be filed at any NAF office, on the World Wide Web at www.arb-forum.com, or at National Arbitration Forum, P.O. Box 50191, Minneapolis, Minnesota 55405. If you are unable to pay the costs of arbitration, your arbitration fees may be waived by the NAF. The cost of a participatory hearing, if one is held at your or our request, will be paid for solely by us if the amount of the claim is \$15,000 or less. Unless otherwise ordered by the arbitrator, you and we agree to equally share the costs of a participatory hearing of the claim is for more than \$15,000 or less than \$75,000. Any participatory hearing will take place at a location near your residence. This arbitration agreement is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. It shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Judgment upon the award may be entered by any party in any court having jurisdiction. This Agreement to Arbitrate All Disputes is an independent agreement and shall survive the closing, funding, repayment and/or default of the loan for which you are applying. NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND HAVE A JUDGE OR JURY DECIDE THE DISPUTES BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION UTILIZING THE PRINCIPLES OF FEDERAL INDIAN LAW, THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND THE LAWS OF THE CHEYENNE RIVER SIOUX TRIBE.

Agreement Not To Bring, Join Or Participate In Class Actions: To the extent permitted by law, by signing below or electronically signing you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the costs we incur, including our court costs and attorney's fees, in seeking such relief. This agreement is not a waiver of any of your rights and remedies to pursue a claim individually and not as a class action in binding arbitration as provided above. This agreement not to bring, join or participate in class action suites is an independent agreement and shall survive the closing, funding, repayment, and/or default of the loan for which you are applying.

Borrower's Electronic Signature to the above Agreements Appears Below

By signing below or electronically signing this Application you certify that all of the information provided above is true, complete and correct and provided to us, , for the purpose of inducing us to make the loan for which you are applying. You also agree to the Agreement to Arbitrate All Disputes and the Agreement Not To Bring, Join Or Participate in Class Actions. You authorize to verify all information that you have provided and acknowledge that this information may be used to verify certain past and/or current credit or payment history information from third party source(s). may utilize DataX or other similar consumer-reporting agency for these purposes. We may disclose all or some of the nonpublic personal information about you that we collect to financial service providers that perform services on our behalf, such as the servicer of your short term loan, and to financial institutions with which we have joint marketing arrangements. Such disclosures are made as necessary to effect, administer and enforce the loan you request or authorize and any loan you may request or authorize with other financial institutions with regard to the processing, funding, servicing, repayment and collection of your loan. (This Application will be deemed incomplete and will not be processed by us unless signed by you below.)

(X) MARY COLE            (X) MARY COLE            (X) 09/02/2010  
 Electronic Signature of Applicant    Printed Name of Applicant    Date

Terms

APPLICATION SUPPLEMENT

SHORT TERMS LOANS PROVIDE THE CASH NEEDED TO MEET IMMEDIATE SHORT-TERM CASH FLOW PROBLEMS. THEY ARE NOT A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS FOR WHICH OTHER KINDS OF FINANCING (SUCH AS CREDIT CARDS, AN OVERDRAFT LOAN OR A LOAN FROM FRIENDS OR FAMILY) MAY BE MORE APPROPRIATE AND AFFORDABLE. YOU MAY WANT TO DISCUSS YOUR FINANCIAL SITUATION WITH A NONPROFIT CREDIT COUNSELING SERVICE AVAILABLE TO CONSUMERS EXPERIENCING FINANCIAL PROBLEMS IN YOUR COMMUNITY.

YOU WILL BE CHARGED ADDITIONAL FEES IF YOU RENEW THIS LOAN. As an example, suppose you borrow \$200 for 14 days at an APR of 782.14%. The Finance Charge would be \$60.00. If you did not repay the loan at maturity but chose instead to renew the balance by obtaining a new loan in the same amount and for an additional 14-day period, you would incur an additional Finance Charge of \$60.00. So, if you renew the \$200 loan 4 times, the total Finance Charge you would be required to pay would be \$300.00. Moreover, if there were insufficient funds in your bank account on the date we attempted to effect an ACH debit entry to pay all or part of what you owe, you would incur a Return Item Fee of \$25.00. Your bank may also impose fees for returning ACH debit entries unpaid and, if this practice persists, may even cancel your deposit account.

PRIVACY POLICY: To view our Privacy Policy please click here <[http://bigskycash.com/?page=info\\_privacy](http://bigskycash.com/?page=info_privacy)> . The Privacy Policy can be viewed at [http://bigskycash.com/?page=info\\_privacy](http://bigskycash.com/?page=info_privacy).

RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY THE END OF BUSINESS ON THE BUSINESS DAY AFTER THE LOAN PROCEEDS ARE DEPOSITED INTO YOUR CHECKING ACCOUNT.

To submit your cancellation form click here <[http://bigskycash.com/?page=docs\\_cancellation](http://bigskycash.com/?page=docs_cancellation)> . The cancellation form can be viewed at [http://bigskycash.com/?page=docs\\_cancellation](http://bigskycash.com/?page=docs_cancellation).

LOAN NOTE AND DISCLOSURE

bigskycash.com

Borrower's Name: MARY COLE  
Cash- [REDACTED]

Date: 09/02/2010

ID#: Big \$ky

Parties: In this Loan Note and Disclosure (Note) you are the person named as Borrower above. We are the lender (the Lender). All references to we, us or ourselves means the Lender. Unless this Note specifies otherwise or unless we notify you to the contrary in writing, all notices and documents you are to provide to us shall be provided to at the fax number and address specified in this Note and in your other loan documents. The Account: You have deposit account, No. 183079 (Account), at RMCU (Bank). You authorize us to effect a credit entry to deposit the proceeds of the Loan (the Amount Financed indicated below) to your Account at the Bank.

TRUTH IN LENDING DISCLOSURE: The disclosures below are provided to you so that you may compare the cost of this loan to other loan products you might obtain in the United States. Provision of these disclosures is not a consent to application of state law to , the Loan, or to the Loan Agreement.

ANNUAL PERCENTAGE RATE

The cost of your credit as a yearly rate (e)

537.89%

FINANCE CHARGE

The dollar amount the credit will cost you.

\$140.00

Amount Financed

The amount of credit provided to you or on your behalf.

\$500.00

Total of Payments

The amount you will have paid after you have made the scheduled payment.

\$640.00

Your Payment Schedule will be: 1 payment of \$640.00 due on 2010-09-22 , if you decline\* the option of renewing your loan. If your pay date falls on a weekend or holiday and you have direct deposit, your account will be debited on the business day prior to your normal pay date. If renewal is accepted you will pay the finance charge of \$140.00 only, on 2010-09-22 You will accrue new finance charges with every renewal of your loan. On the due date resulting from a fourth renewal and every renewal due date thereafter, your loan must be paid down by \$50.00. This means your Account will be debited the finance charge plus \$50.00 on the due date. This will continue until your loan is paid in full.

\*To decline the option of renewal you must sign the Account Summary page and fax it or scan and email it back to our office at least 1 before your loan is due.

Security: You are giving a security interest in the ACH / EFT Authorization.

Prepayment: You may prepay your loan only in increments of \$50.00. If you prepay your loan in advance, you will not receive a refund of any Finance Charge.(e) The Annual Percentage Rate is estimated based on the anticipated date the proceeds will be deposited to or paid on your account, which is 09/03/2010.

Itemization Of Amount Financed of \$500.00; Given to you directly: \$500.00; Paid on your account \$0

See below and your other contract documents for any additional information about prepayment, nonpayment and default.

Promise To Pay: You promise to pay to us or to our order and our assignees, on the date indicated in the Payment Schedule, the Total of Payments, unless this Note is renewed. If this Note is renewed, then on the Due Date, you will pay the finance charge shown above. This Note will be renewed on the due date unless at least 1 day(s) before the due date either you tell us you do not want to renew the Note or we tell you that the Note will not be renewed. Information regarding the renewal of your loan will be sent to you prior to any renewal showing the new due date, finance charge and all other disclosures. As used in the Note, the term Business Day means a day other than Saturday, Sunday or legal holiday, that is open for business. This Note may be renewed four times without having to make any principal payments on the Note. If this Note is renewed more than four times, then on the due date resulting from your fourth renewal, and on the due date resulting from each and every subsequent renewal, you must pay the finance charge required to be paid on that due date and make a principal payment of \$50.00. Any payment due on the Note shall be made by us effecting one or more ACH debit entries to your Account at the Bank. You authorize us to effect this payment by these ACH debit entries. The ACH/EFT Authorizations set forth in this Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the total of payments, plus any late or NSF fee incurred, is fully satisfied. You may only revoke the above authorization by contacting us directly, and only after you have satisfied your indebtedness to us. However, if you revoke this authorization, you authorize us to prepare and submit ACH debit(s) and/or a check(s) drawn on your Account to repay your loan when it comes due. If there are insufficient funds on deposit in your Account to effect the ACH debit entry or to pay the check or otherwise cover the loan payment on the due date, you promise to pay us all sums you owe by submitting your credit card information or mailing a Money Order payable to: . We do not accept personal checks, however, if you send us a check, you authorize us to perform an ACH debit on that account in the amount specified.

Return Item Fee: If sufficient funds are not available in the Account on the due date to cover the ACH debit entry or check, you agree to pay us a Return Item Fee of \$25.00.

Prepayment: The Finance Charge consists solely of a loan fee that is earned in full at the time the loan is funded. Although you may pay all or part of your loan in advance without penalty, you will not receive a refund or credit of any part or all of the Finance Charge.

Governing Law: This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our account in South Dakota, and your loan is repayable to that same account in South Dakota. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

Arbitration of All Disputes: You and we agree that any and all claims, disputes or controversies between you and us, any claim by either of us against the other (or the employees, officers, directors, agents, servicers or assigns of the other) and any claim arising from or relating to your application for this loan, regarding this loan or any other loan you previously or may later obtain from us, this Note, this agreement to arbitrate all disputes, your agreement not to bring, join or participate in class actions, regarding collection of the loan, alleging fraud or misrepresentation, whether under common law or pursuant to federal, state or local statute, regulation or ordinance,

including disputes regarding the matters subject to arbitration, or otherwise, shall be resolved by binding individual (and not joint) arbitration by and under the Code of Procedure of the National Arbitration Forum (NAF) in effect at the time the claim is filed. No class arbitration. All disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION. This agreement to arbitrate all disputes shall apply no matter by whom or against whom the claim is filed. Rules and forms of the NAF may be obtained and all claims shall be filed at any NAF office, on the World Wide Web at www.arb-forum.com, by telephone at 800-474-2371, or at National Arbitration Forum, P.O. Box 50191, Minneapolis, Minnesota 55405. Your arbitration fees will be waived by the NAF in the event you cannot afford to pay them. The cost of any participatory, documentary or telephone hearing, if one is held at your or our request, will be paid for solely by us as provided in the NAF Rules and, if a participatory hearing is requested, it will take place at a location near your residence. This arbitration agreement is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. It shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Judgment upon the award may be entered by any party in any court having jurisdiction.

NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND HAVE A JUDGE OR JURY DECIDE THE DISPUTES BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION UTILIZING THE PRINCIPLES OF FEDERAL INDIAN LAW, THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND THE LAWS OF THE CHEYENNE RIVER SIOUX TRIBE.

Agreement Not To Bring, Join Or Participate In Class Actions: To the extent permitted by law, you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us, our employees, officers, directors, servicers and assigns. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney's fees and court costs we incur in seeking such relief. This agreement does not constitute a waiver of any of your rights and remedies to pursue a claim individually and not as a class action in binding arbitration as provided above.

Survival: The provisions of this Loan Note And Disclosure dealing with the Agreement To Arbitrate All Disputes and the Agreement Not To Bring, Join Or Participate In Class Actions shall survive repayment in full and/or default of this Note.

No Bankruptcy: By signing below or electronically signing you represent that you have not recently filed for bankruptcy and you do not plan to do so.

NOTICE: We adhere to the Patriot Act and we are required by law to adopt procedures to request and retain in our records information necessary to verify your identity.

By signing or electronically signing this Loan Note you certify that all of the information provided above is true, complete and correct and provided to us, , for the purpose of inducing us to make the loan for which you are applying. By signing below or electronically signing you also agree to the Agreement to Arbitrate All Disputes and the Agreement Not To Bring, Join Or Participate in Class Actions. By signing or electronically signing this application you authorize to verify all information that you have provided and acknowledge that this information may be used to verify certain past and/or current credit or payment history information from third party source(s). may utilize DataX or other similar consumer-reporting agency for these purposes. We may disclose all or some of the nonpublic personal information about you that we collect to financial service providers that perform services on our behalf, such as the servicer of your short term loan, and to financial institutions with which we have joint marketing arrangements. Such disclosures are made as necessary to effect, administer and enforce the loan you request or authorize and any loan you may request or authorize with other financial institutions with regard to the processing, funding, servicing, repayment and collection of your loan. (This Application will be deemed incomplete and will not be processed by us unless signed by you below.)

(X) MARY COLE            09/02/2010  
Electronic Signature            Date

MARY COLE

9168

Print Name Social Security Number  
INSTRUCTIONS: YOU WILL BE ADVISED OF YOUR APPROVAL VIA PHONE OR EMAIL.

v.1.1.27

AUTHORIZATION AGREEMENT bigskycash.com  
Borrower's Name: MARY COLE Date: 09/02/2010 ID#: Big \$ky Cash- [REDACTED]

PRIVACY POLICY. Protecting your privacy is important to and our employees. We want you to understand what information we collect and how we use it. In order to provide our customers with short-term loans as effectively and conveniently as possible, we use technology to manage and maintain customer information. The following policy serves as a standard for all employees for collection, use, retention, and security of nonpublic personal information related to our short-term programs.

WHAT INFORMATION WE COLLECT. We may collect nonpublic personal information about you from the following sources: Information we receive from you on applications or other loan forms, such as your name, address, social security number, assets and income; Information about your loan transactions with us, such as your payment history and loan balances; and Information we receive from third parties, such as consumer reporting agencies and other lenders, regarding your credit worthiness and credit history. Nonpublic personal information is nonpublic information about you that we obtain in connection with providing a short-term loan to you. For example, as noted above, nonpublic personal information includes your name, social security number, payment history, and the like.

WHAT INFORMATION WE DISCLOSE. We are permitted by law to disclose nonpublic personal information about you to third parties in certain circumstances. For example, we may disclose nonpublic personal information about your short-term loans to consumer reporting agencies and to government entities in response to subpoenas. Moreover, we may disclose all of the nonpublic personal information about you that we collect, as described above, to financial service providers that perform services on our behalf, such as the servicer of your short-term loan, and to financial institutions with which we have joint marketing arrangements. Such disclosures are made as necessary to effect, administer, and enforce the loan you request or authorize. If you become an inactive customer, we will continue to adhere to the privacy policies and practices described in this notice.

OUR SECURITY PROCEDURES. We also take steps to safeguard customer information. We restrict access to nonpublic personal information about you to those of our and our marketers/servicers employees who need to know that information to provide short-term loans to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

1. BY SIGNING OR ELECTRONICALLY SIGNING BELOW YOU VERIFY BANK, RESIDENCE, AND EMPLOYMENT INFORMATION as printed in item 5 and 6.
2. UNLESS the authorization in item 6 below is properly and timely revoked, THERE WILL BE A \$25.00 FEE ON ANY ACH DEBIT ENTRY ITEMS THAT ARE RETURNED AT TIME OF COLLECTION.
3. YOU AUTHORIZE US to contact you at your place of employment or residence at any time up to 9:00 p.m., your local time.
4. YOU REPRESENT that you have NOT RECENTLY FILED FOR BANKRUPTCY and you DO NOT PLAN TO DO SO.
5. YOU REPRESENT that your employer remains: STATE OF MONTANA  
and your residence remains: [REDACTED] Helena, MT [REDACTED]
6. You authorize us, , or our servicer, agent, or affiliate to initiate one or more ACH debit entries (for example, at our option, one debit entry may be for the principal of the loan and another for the finance charge) to your Deposit Account indicated below for

payments that come due each pay period and/or each due date concerning every renewal, with regard to the loan for which you are applying. If your pay date falls on a weekend or holiday and you have direct deposit, your account will be debited the business day prior to your normal pay date. You REPRESENT that your Depository Institution named below, called BANK, which will receive and debit such entry to your Bank Account, remains:

Bank Name  
RMCU  
Routing/ABA No.  
[REDACTED]  
Account No.  
[REDACTED]

Please See Item 7, below, if any Information has changed.

This Authorization becomes effective at the time we make you the loan for which you are applying and will remain in full force and effect until your indebtedness to us for the Total of Payments, plus any late or NSF Fees incurred is fully satisfied. This authorizes us to make debit entries with regard to any other loan you may have received with us. You may only revoke this authorization to effect an ACH debit entry to your Account(s) by giving written notice of revocation to us, which must be received no later than 1 day(s) prior to the due date of your loan. However, if you timely revoke this authorization to effect ACH debit entries before the loan(s) is paid in full, you authorize us to prepare and submit one or more ACH debits or checks drawn on your Account(s) on or after the due date of your loan. This authorization to prepare and submit a check on your behalf may not be revoked by you until such time as the loan(s) is paid in full. In addition, you understand and acknowledge that in the event you terminate the ACH debit authorization, any loans made by us to you may, at our sole and absolute discretion, become immediately due and payable.

7.

If there is any change in your Bank Information in item 6 above, you MUST PROVIDE US WITH A NEW BLANK CHECK FROM YOUR CHECKING ACCOUNT MARKED VOID. You authorize us to correct any missing or erroneous information that you provide by calling the bank or capturing the necessary information from that check.

8. Payment Options:

1. Renewal. Your loan will be renewed on every\* due date unless you notify us of your desire to pay in full or to pay down your principal amount borrowed. You will accrue a new fee every time your loan is renewed. Any fees accrued will not go toward the principal amount owed.

\*On your fifth renewal and every renewal thereafter, your loan will be paid down by \$50.00. This means your account will be debited for the finance charge plus \$50.00, this will continue until your loan is paid in full.

2. Pay Down. You can pay down your principal amount by increments of \$50.00. Paying down will decrease the fee charge for renewal. To accept this option you must notify us of your request via email to CustomerService@bigskycash.com or fax to 1-800-509-0907, at least 1 day(s) before your loan is due.

3. Pay Out. You can payout your full balance, the principal plus the fee for that period. To accept this option you must notify us of your request via email to CustomerService@bigskycash.com or fax to 1-800-509-0907. The request must be received at least 1 day(s) before your loan is due.

9.

BY SIGNING OR ELECTRONICALLY SIGNING BELOW, YOU ACKNOWLEDGE READING AND AGREEING TO THE STATEMENTS IN ITEMS 2, 3, 4, 5, THE AUTHORIZATIONS IN ITEMS 6 AND 7, THE PAYMENT OPTIONS IN ITEM 8, THE PRIVACY POLICY LOCATED AT [http://bigskycash.com/?page=info\\_privacy](http://bigskycash.com/?page=info_privacy), AND THE TERMS OF USE LOCATED AT [http://bigskycash.com/?page=info\\_terms](http://bigskycash.com/?page=info_terms).

(x) MARY COLE 09/02/2010  
Electronic Signature Date

(x)  
MARY COLE  
9168

Print Name            Social Security Number

site: bigskycash.com

# **ATTACHMENT C**

**Written Statement of Unauthorized Debit**

Name Mary Teresa Cole

Account Number [REDACTED]

Amount of Debit \$ 678.00

Date of Debit 01/26/2011

Party Debiting the Account Big Sky Cash

**Statement**

I (the undersigned) hereby attest that (i) I have reviewed the circumstances of the above electronic (ACIT) debit to my account, (ii) the debit was not authorized, and (iii) the following, to the best of my ability to identify, is the reason for the conclusion:

- I did not authorize the party listed above to debit my account. (R10; R05 if CCD/CTX to consumer account.)
- I revoked authorization I had given to the party to debit my account before the debit was initiated. (R07 for recurring PPD/WEB entries only).
- My account was debited before the date I authorized. (R10)
- My account was debited for an amount different than I authorized. (R10)
- My check was improperly processed electronically (check one of the following):

***For ARC, POP and BOC Entries Only***

- I have opted to not have my check converted. (R10)
- The debit was not properly authorized by the party listed above in accordance with requirement of the *ACH Rules*. (R10)
- The check was ineligible to be initiated as an ARC, POP or BOC entry. (R10)
- The amount of the ARC, POP or BOC entry was not accurately obtained from the check. (R10)
- Both the check and ARC, POP or BOC entry to which it relates have been presented for payment. (R37)

***For RCK Entries Only***

- The check was ineligible to be initiated as an RCK entry. (R51)
- Notice was not provided by the party listed above in accordance with the requirements of the *ACH Rules*. (R51)
- Signatures on the check to which the RCK entry relates were not authentic or authorized, or the check was altered. (R51)
- The amount of the RCK entry was not accurately obtained from the check. (R51)
- Both the RCK entry and the check to which the RCK entry relates have been presented for payment. (R53)

**Signature**

I am an authorized signer, or otherwise have authority to act, on the account identified in this statement. I attest that the debit above was not originated with fraudulent intent by me or any person acting in concert with me.

I have read this statement in its entirety and attest that the information provided on this statement is true and correct.

Account Holder Signature Mary T. Cole Date 1/26/11

Printed Name Mary T. Cole

I have received a copy of this signed form.

CU Rep. Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_

# **ATTACHMENT D**

**Cole, Mary**

---

**From:** noreply@bigskycash.com  
**Sent:** Thursday, January 27, 2011 2:02 PM  
**To:** Cole, Mary  
**Subject:** http://www.bigskycash.com Payment Failed: Please Respond



**P.O. Box 128  
Timber Lake, SD 57656**

THE WORKOUT DEPARTMENT HANDLES DELINQUENT ACCOUNTS FOR BIG SKY CASH.  
THIS IS AN ATTEMPT TO WORKOUT ARRANGEMENTS ON YOUR DELINQUENT ACCOUNT  
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

01/27/2011

**MARY COLE**  
[REDACTED]

Helena, MT [REDACTED]

Loan ID Number: [REDACTED]

Dear MARY COLE,

Big \$ky Cash regrets to inform you that our ACH debit was not honored by your bank, and was returned marked for review.

Such matters are taken seriously at Big \$ky Cash. We encourage you to quickly resolve this situation. Please contact a workout department representative immediately and make new payment arrangements.

You may contact us at

**(800) 509-0807**

Or, email us at

[workoutdept@bigskycash.com](mailto:workoutdept@bigskycash.com)

You may also write to us at

**Payday Financial, LLC  
P.O. Box 128,  
Timber Lake, SD 57656**

Please include your loan ID number with any correspondence.

Once your account has been paid in full, you will again be able to take advantage of our short-term loan program.

Thank you for your prompt attention to this matter.

Sincerely,

Workout Department

You must notify this office within 30 days after receiving this notice, that you dispute the validity of the debt or any portion thereof or the office will assume the debt is valid. This communication is from the workout department. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

# **EXHIBIT 3**

**DECLARATION OF LINDSAY SCARLETT  
PURSUANT TO 28 U.S.C. § 1746**

I, Lindsay Scarlett, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. I am 24 years old, live in Millersville, Pennsylvania, and work as a Payroll Accountant with Housing Development Corporation in Lancaster, PA, a company with approximately 110 employees.
2. I have worked in the payroll field for over 2 years and have been the Payroll Accountant for Housing Development Corporation for 2 years. As a Payroll Accountant, part of my responsibility is processing wage garnishments. I am the only employee that handles garnishments in the payroll office of Housing Development Corporation.
3. On or about May 26, 2010, I received a wage garnishment package, via the United States Postal Service, from Sherrie Ward, an Account Specialist for Payday Financial, LLC/ Lakota Cash ("Lakota Cash") located at P.O. Box 128, Timber Lake, South Dakota 57656. The package was for one of Housing Development Corporation's employees and contained various documents; however, no court order authorizing garnishment was included.
4. The package contained a number of materials relating to wage garnishment, including an "IMPORTANT NOTICE TO EMPLOYER," a form entitled "WAGE GARNISHMENT," which included a "WAGE GARNISHMENT WORKSHEET," an "EMPLOYER CERTIFICATION," and a copy of what was purportedly the employee's loan application to Lakota Cash. A true and correct copy of this package is attached as **Attachment A**. Please note that the

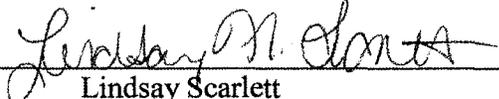
employee's personal information has been redacted from the attachment to protect his privacy.

5. The "IMPORTANT NOTICE TO EMPLOYER" states, among other things, that one of Housing Development Corporation's employees owes a delinquent debt to Lakota Cash. It further alleges that "The Indian Commerce Clause of the United States Constitution and the Laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order." This made me very uncomfortable. I have never processed a wage garnishment without a court order and I felt that this request was not legitimate. The letter further states that Lakota Cash previously notified the employee that this action was going to take place and has provided the employee with the opportunity to dispute the debt.
6. The "WAGE GARNISHMENT" form alleges that, as of May 26, 2010, the employee owed Lakota Cash \$380.00, and instructs Housing Development Corporation to withhold a portion of the employees pay each pay period and forward those amounts to Payday Financial, LLC.
7. The form further explains how Housing Development Corporation should process the wage garnishment request within 10 days. The form is very official-looking, and if it weren't for the missing court order, I would have processed the garnishment request instead of filing a complaint with the Federal Trade Commission.
8. In my two years working in the payroll field, I have processed many wage garnishments. But, other than requests from government agencies, I have never

seen a request to garnish wages that was not accompanied by a court order, and certainly never one where the creditor or debt collector asserted that they had the right to garnish wages without first obtaining a court order. Therefore, the package from Lakota Cash made me suspicious.

9. The following day I tried to call Ms. Ward, the Account Specialist for Lakota Cash, at the phone number listed in the garnishment package. I was unable to reach her. I was transferred to several different people at Lakota Cash before finally being connected to someone who identified herself as Ms. Ward. Ms. Ward assured me that the garnishment was lawful and legitimate based upon the Indian Commerce Clause and that “they processed garnishments like this all the time.” I told Ms. Ward that I would not process the garnishment without a court order. Ms. Ward continued to impress upon me the legitimacy of the garnishment and directed me to their website [www.lakotacash.com](http://www.lakotacash.com). I stated again that there would be no garnishment without a court order and Ms. Ward said she understood and that Lakota Cash would not contact me again.
10. On or about June 7, 2010, I received a follow up letter from Ms. Ward asking me about the status of the garnishment of the employee’s wages. I immediately called Ms. Ward and left a message reminding her that we had already discussed the matter and that without a court order, there would be no garnishment. A true and correct copy of the follow up letter is attached as **Attachment B**.
11. To date, Housing Development Corporation has not garnished any employee’s wages for the benefit of Payday Financial, LLC/Lakota Cash.

I declare under penalty of perjury that the foregoing is true and correct. Executed  
this 18 day of March in Lancaster, PA.

  
Lindsay Scarlett

# **ATTACHMENT A**

1012 East Street



Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (605) 865-3100 - (866) 971-4477

## IMPORTANT NOTICE TO THE EMPLOYER

05/26/10

To: Housing development Corp

Attn: Payroll Dept. / Human Resources

One of your employees has been identified as owing a delinquent debt to Payday Financial, LLC/Lakota Cash. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. While not applicable to tribal entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA). The employee has previously consented to such garnishment and we have notified the employee that this action was going to take place, provdng the employee with the opportunity to dispute the debt, and/or make payment arrangements.

The items listed below substantiate our position in perusing a garnishment on your employee [REDACTED]

[REDACTED] Please forward this to the individual responsible for this process. If person is no longer employed please return to sender.

Enclosed you will find the following documents:

1. E-signed customer contract
2. Time Stamp for signing of this document
3. Garnishment letter and work sheet

Please fill out the employer's section and return the original to the address above within ten business days. If you have any questions please contact me at our toll free number 866-971-4477 Ext7002 or my direct line 605-865-3100, email is [sherrie@lakotacash.com](mailto:sherrie@lakotacash.com).

Sincerely,

Sherrie Ward

Account Specialist

CC 44 2009 10 789  
ETC

**WAGE GARNISHMENT**

**RE:** Employee Name:



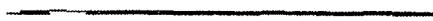
Employee Social Security No.:



**TO:** Employer:

Housing development Corp

Employer Fax Number:



**FROM:** Payday Financial, LLC

Lakota Cash

Mailing Address:

P. O. Box 128

Timber Lake, South Dakota 57656

Contact Name:

Sherrie Ward

Telephone No.:

605-865-3355

Fax Number:

605-865-3102

Telephone Number Extension

7002

Amount Due:	As of Date:	<i>Note:</i> The amount due may be increased as a result of additional interest, penalties, and other costs assessed by Payday Financial, LLC.
\$380.00	05/26/2010	

**Section 1:** YOU, the Employer, are hereby assigned to deduct from all disposable pay paid by you to the Employee the Wage Garnishment Amount described above in Amount Due of this Garnishment. You are to begin deductions on the first pay day after you receive this Wage Garnishment. If the first pay day is within 10 days after you receive this, you may begin deductions on the second pay day after you receive this. You are to continue deductions until amount noted above is paid in full.

Please, mail checks to:

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Mailing address for check payments: P.O. Box 128 Timber Lake, South Dakota 57656

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**Section 2: WAGE GARNISHMENT AMOUNT.**

(a) The Wage Garnishment Amount is \$\_\_\_\_.00 to be garnished from the next pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

(b) The Wage Garnishment Amount is \$\_\_\_\_.00 per pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

(c) The Wage Garnishment Amount for each pay period is the lesser of:

(1) 15 % of the Employee's disposals pay (*not to exceed 15%*)

(2) 25% of the Employee's disposable pay less the amounts withheld under the withholding with priority

Equivalent to 15% of disposable income or 25% of Disposable income if there is an additional garnishment or wage assignment already in place i.e.: bankruptcy, child support, tax levies etc...

**Note:** The Employer may use the attached Wage Garnishment Worksheet to calculate the Wage Garnishment Amount.

**IMPORTANT NOTICE TO EMPLOYER**

1. **Disposable pay.** For purposes of the Wage Garnishment, "disposable pay" means the employee's compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions under CRST Tribal Law include Federal, State, and local taxes, State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A Wage Garnishment Worksheet is included with the Wage Garnishment to assist the employer in calculating disposable pay and the wage garnishment amount.
2. **Multiple Withholding.** If in addition to the Wage Garnishment you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%.

3. Pay cycles. An employer is not required to vary its normal pay and disbursement cycles to comply with the Wage Garnishment.

**WAGE GARNISHMENT WORKSHEET**

**Notice to Employers:** The Employer may use a copy of this Worksheet each pay period to calculate the Wage Garnishment Amount to be deducted from the debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) or 2(b) of the Wage Garnishment Assignment specifies the dollar amount to be garnished, the employer does not need to complete this Worksheet.

Debtor Name:  [REDACTED]	Employee Social Security No.:  [REDACTED]
--------------------------------	---

**Pay Period Frequency**

(Select One): Weekly or less      Bi-weekly      Semi-monthly      Monthly

**DISPOSABLE PAY COMPUTATION**

1.	Gross Amount paid to Employee	
2.	Amounts Withheld:	
	a. Federal income tax	
	b. F.I.C.A. (social security)	
	c. Medicare	
	d. State tax (including income tax, unemployment, disability)	
	e. City/Local tax	
	f. Health insurance premiums	
	g. Involuntary retirement or pension plan payments	
3.	Total allowable deductions [Add lines a - g]	
4.	<b>DISPOSABLE PAY</b> [Subtract line 3 from line 1]	

**WAGE GARNISHMENT AMOUNT COMPUTATION**

If the Employee's wages are not subject to any withholding orders, skip to line 8.

5.	25% of Disposable Pay [Multiple line 4 by .25]	
6.	Total Amounts Withheld Under Wage Withholding with Priority. See section 2(c).	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(c) (1) of the Assignment by line 4. (The percentage from section 2(c) (1) of the Assignment may not exceed 15%). Example: If the percentage from section 2(c)(1) of the Assignment is 15%, multiply .15 by line 4.	
9.	Amount equivalent to 30 times the Federal Minimum wage (\$6.55) Or your States Federal Minimum Wage  If the employee is paid, line 9 is:  Weekly or less \$154.50 - Bi-Weekly 309.00 - Semi-monthly \$334.75 - Monthly \$669.50	
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	
11.	<b>WAGE GARNISHMENT AMOUNT</b> Line 7, 8, or 10, whichever amount is the smallest	

**EMPLOYER CERTIFICATION**

**NOTICE TO EMPLOYERS: THE EMPLOYER MUST COMPLETE AND RETURN THIS CERTIFICATION TO PAYDAY FINANCIAL, LLC WITHIN 10 DAYS OF RECEIPT.**

*To be completed by Creditor Agency:*

Date of this Assignment:

May 26, 2010

<p>Payday Financial, LLC  Lakota Cash</p>	<p>Mailing Address (include street address, city, state, zip code):  P.O. Box 128 Timber Lake, South Dakota 57656</p>
---	---

Employee Name: [REDACTED]	Employee Social Security No.: [REDACTED]
------------------------------	---

*The remainder of the Employer Certification is to be completed by Employer:*

Employer:	Employer Taxpayer Identifying Number:
-----------	---------------------------------------

(Date) \_\_\_\_\_

(2) Check one of the following:

(a) The above named Employee is currently employed with this Employer, or

(b) The above named Employee is no longer employed by this Employer.

*Please provide the following information for employees no longer employed:*

Employment Termination Date:	Employee's current employer (if known)
Employee's last known address and telephone no. (if known)	

**Note: If the Employee is no longer employed with this Employer, the Employer will need to complete the rest of this Certification. Sign and date this Certification and return to Payday Financial, LLC.**

Please check one of the following:

In process of sending garnished payment

NOTE: when submitting payment please use reference # [REDACTED]

Employee is no longer with the company

Unable to garnish wages. (List reason) \_\_\_\_\_

<b>Disbursement Date: January 13, 2010</b> <b>Payment Date: January 28, 2010</b>	<b>Customer #:</b> [REDACTED] <b>Type of Contract: Standard Loan</b>
<b>Lakota Cash</b> <b>PO Box 128</b> <b>Timber Lake, SD 57656</b> <b>Phone: 8663005339</b> <b>Fax: 8663002767</b> <b>Email: customerservice@lakotacash.com</b>	<b>Name:</b> [REDACTED] <b>Address:</b> [REDACTED] <b>Address:</b> [REDACTED] <b>Phone:</b> [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

\*Items removed here to protect customers privacy\*

**GOVERNING LAW:** This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.



**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via

ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND GARNISHMENT** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you hereby consent and agree to the potential garnishment of wages by us or our assigns or service agents to ensure repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential garnishment of wages, and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**GARNISHMENT OPT-OUT PROCESS.** You may choose to opt out the Garnishment provision, but only by following the process set-forth below. If you do not wish to be subject to this Garnishment Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Garnishment Provision. If you choose to opt out of the Garnishment Provisions, then your choice will apply only to the Garnishment Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator" ) for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.
2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE**

#### **ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with any court having jurisdiction.
6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely

governed by the law of the Cheyenne River Sioux Tribe.

7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER. In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

#### ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

**1. CONSENT TO ELECTRONIC COMMUNICATIONS:**

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

**2. ACH AUTHORIZATION:**

By electronically signing this Loan Agreement below, you certify that you have fully read and understood the ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with, and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

**3. AGREEMENT TO TERMS AND CONDITIONS OF LOAN AGREEMENT INCLUDING WAIVER OF JURY TRIAL AND ARBITRATION:**

By electronically signing this Loan Agreement by typing your name below, (a) you acknowledge that the Loan Agreement was filed in before you did so and that you have reviewed the entire Loan Agreement including the CHOICE OF TRIBAL LAW AND CHOICE OF TRIBAL COURT, TRUTH-IN-LENDING DISCLOSURES, the WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, our PRIVACY POLICY, and TERMS AND CONDITIONS (b) you acknowledge that your right to file suit against us for any claim or dispute regarding this Loan Agreement is limited by the WAIVER OF JURY TRIAL AND ARBITRATION provisions, (c) you represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for bankruptcy, and (d) you acknowledge that you have read and understood all of the terms of this Loan Agreement including the provisions mentioned above and you agree to comply with, and be bound by, all of those terms.

Lender:

PAYDAY FINANCIAL, LLC

Borrower's E-Signature: [REDACTED]

Please type name as found on the application: [REDACTED]

Borrower:

First Name: [REDACTED]

Last Name: [REDACTED]

SSN # [REDACTED]

Date: January 12, 2010

***PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.***

***Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8663005339 or via e-mail to customerservice@lakotacash.com***

ESigHistory

Page 1 of 1

ESignature History			
Customer Name	[REDACTED]	Loan Amount	485.0000
Customer Address	[REDACTED]	Due Date	1/29/2010
City State Zip	[REDACTED]	Application Date	1/12/2010
Home Phone	[REDACTED]	Origination Date	1/13/2010
Work Phone	[REDACTED]	Store ID	2630500001

Appl#	ESig ID	ESig Desc	OrderNo	Doc ID	ESignature	IPAddress	ESigDate	IsActive
37262004	1	Disclosure Signature	1	1438	[REDACTED]	[REDACTED]	1/12/2010 1:15:00 PM	True

Print Now

POSTNET  
80122  
77000  
5110207

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

Payday Financial, LLC  
PO Box 128  
Timber Lake, SD 57656

Housing Development Corp  
Attn: Payroll  
439 East 81st St.  
Lancaster, PA 17602

Called the week of  
June 17<sup>th</sup> at home  
to check on  
payment I expected that  
would be processed at that time  
I was there that day



# **ATTACHMENT B**

# Lakota Cash

Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (605) 865-3100 - (866) 971-4477

Called 6-7-10  
about this letter. I want  
to speak w/ Kelsie  
speaking w/ "Sherrie"  
JCI

Housing Development Corporation/ Payroll Department  
439 East King Street  
Lancaster PA 17602

Dear Employer,

We have previously sent you a letter requesting garnishment for your employee [REDACTED] and we have yet to hear from you. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. The Cheyenne River Sioux Tribe has it's own judiciary system and consumer protection laws. While not applicable to tribal entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA)

Enclosed is a Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. The employee has previously consented to such garnishment and we have notified the employee that this action was going to take place, providing the employee with the opportunity to dispute the debt. and/or make payment arrangements.

Please check one of the following reasons and return as soon as possible so we can cease any further actions.

- o In process of sending garnished payment
- o Need garnishment documents re-sent
- o Employee is no longer with the company
- o Unable to garnish

Please sign and return form \_\_\_\_\_ Date \_\_\_\_\_

If you have questions regarding this matter, please contact us at 866-971-4477 M-F 7:00 AM to 6:00 PM & Sat 9:00 AM to 12:00 PM MT.

Thank you,

Sherrie Ward

[sherrie@lakotacash.com](mailto:sherrie@lakotacash.com)

866-971-4477 ext. 7002

Lakota Cash

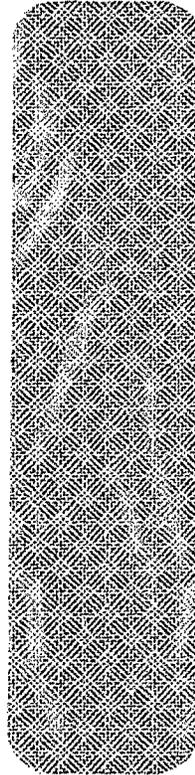
She said they will not contact us again.

6/1/2010

Payday Financial, LLC  
PO Box 128  
Timber Lake, SD 57656

ncpost®  
06/01/2010  
USPOSTAGE  
\$00.44<sup>9</sup>  
ZIP 57656  
04TL10211477

RECEIVED  
JUN 04 2010  
BY



1750233004 0019

# **EXHIBIT 4**

**DECLARATION OF LESLIE JONES  
PURSUANT TO 28 U.S.C. § 1746**

I, Leslie Jones, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. I am 63 years old, live in Lockhart, Texas, and work as a garnishment specialist with Whole Foods Markets Services, Inc.
2. I work in the Corporate Payroll Office of Whole Foods, located in Austin, Texas. I have worked in the payroll field for over 14 years: three years on the collection side with a furniture company in Virginia Beach, Virginia and the last eleven years for Whole Foods. Including myself, there are two employees that handle garnishments in the Corporate Payroll Office of Whole Foods. Thirty-five employees work in the Corporate Payroll Office altogether.
3. I have also served on the Texas Attorney General's employer taskforce on child support issues for the last four years.
4. On or about December 30, 2009, I received a letter from Sherrie Ward, which indicated that she is an account specialist for Lakota Cash. The phone number listed on the notice is 605-865-3100 and her email address is sherrie@lakotacash.com.
5. The letter contained a number of materials relating to wage garnishment, including a "LETTER TO EMPLOYER & IMPORTANT NOTICE TO EMPLOYER," a form entitled "WAGE GARNISHMENT," a "WAGE GARNISHMENT WORKSHEET," an "EMPLOYER CERTIFICATION," and a copy of what was purportedly the Lakota Cash loan application of a Whole Foods employee to Lakota Cash. A true and correct copy of this package is attached as

**Attachment A.** Please note that the employee's personal information has been redacted from the attachment to protect his privacy.

6. The "WAGE GARNISHMENT" form alleges that, as of November 24, 2009, the employee owed Lakota Cash \$420. The loan application indicates that Lakota Cash funded the borrower \$420 on October 27, 2009.
7. The "LETTER TO EMPLOYER & IMPORTANT NOTICE TO EMPLOYER" states, among other things, that one of Whole Food's employees owes a delinquent debt to Lakota Cash. It further alleges that "The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order." The letter goes on to state that the employee consented to such garnishment and that they previously notified the employee that the garnishment was going to take place, giving the employee an opportunity to dispute the debt. The document further explains how Whole Foods is to withhold a portion of the employee's pay each pay period and forward those amounts to Lakota Cash.
8. In my 13 years working in the payroll field, I have processed many wage garnishments. On average, I receive over 150 garnishment requests each week. I have seen forms and requests like Lakota Cash's before, but always in connection with a government debt. So, the letter from Lakota Cash made me suspicious.
9. After I received the garnishment request, I immediately called Ms. Ward, the account specialist identified on the cover letter. I explained to her that Whole

Foods would only process the garnishment request if it was accompanied by a court order.

10. To date, Whole Foods has not garnished any of the employee's wages for the benefit of Lakota Cash, and has no plans to do so in the foreseeable future without a court order. Around December 2010, I stopped receiving wage garnishment requests from Lakota Cash; however instead, in the past six months I have received two wage assignment notices from Lakota Cash. After each request, I call Lakota Cash to remind them that without a court order, there will be no wage garnishment or wage assignment. Lakota Cash has yet to follow up with a court order on any wage assignment sent to my office.
11. I believe that Lakota Cash was trying to bypass their need to obtain a legal judgment and the steps required to obtain a Writ of Garnishment to collect on the delinquent loan amount. Given the language used in Lakota Cash's wage garnishment materials, I am concerned that a payroll employee with less experience than I have could be fooled into processing a Lakota Cash request for wage garnishment or wage assignment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28 day of June, 2011 in Austin, Texas.

  
\_\_\_\_\_  
Leslie Jones

# **ATTACHMENT A**

Lakota Cash 

Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57676 (605) 865-3100 - (866) 971-4477

1193439

12/30/09

To: Whole Foods Markets

Attn: Payroll Dept. / Human Resources

We have tried unsuccessfully to locate the person responsible for initiating a garnishment. The items

Listed below substantiate our position in perusing a garnishment on your employee Benjamin, Skinner.

Please forward this to the individual responsible for this process. If person is no longer employed please return to sender.

Enclosed you will find the following documents:

1. E-signed customer contract
2. Time stamp for signing of this document
3. Garnishment letter and work sheet

Please fill out the employers section and return the original to the address above within ten business days. If you have any questions please contact me at our toll free number 866-971-4477 Ext7002 or my direct line 605-865-3100, email is [sherrie@lakotacash.com](mailto:sherrie@lakotacash.com).

Sincerely,

Sherrie Ward

Account Specialist

**LETTER TO EMPLOYER & IMPORTANT NOTICE TO EMPLOYER**

Dear Employer,

One of your employees has been identified as owing a delinquent debt to Payday Financial, LLC/Lakota Cash. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. While not applicable to tribal entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA). The employee has previously consented to such garnishment and we have previously notified the employee that this action was going to take place and have provided the employee with the opportunity to dispute the debt.

As both a businessperson and a taxpayer you can understand and appreciate the importance of ensuring that duly owed debts do not go unpaid. Your cooperation in complying with the enclosed Wage Garnishment Assignment will assist in our efforts to collect the delinquent debt owed to Payday Financial, LLC/Lakota Cash. A Wage Garnishment Worksheet is enclosed to assist you in determining the proper amount to withhold.

Please read the enclosed documents carefully. They contain important information concerning your responsibilities to comply with this Wage Garnishment. If you have any questions, please call the contact name listed on the wage garnishment sheet.

Thank you for your cooperation.

***Payday Financial, LLC  
P.O Box 128  
Timber Lake, South Dakota 57656***

**WAGE GARNISHMENT**

**RE:** Employee Name: \_\_\_\_\_ Employee Social Security No.: \_\_\_\_\_  
 \_\_\_\_\_

**TO:** Employer: \_\_\_\_\_ Employer Fax Number: \_\_\_\_\_  
 \_\_\_\_\_  
 Whole Foods Markets

<b>FROM: Payday Financial, LLC</b> Lakota Cash	Mailing Address: P. O. Box 128 Timber Lake, South Dakota 57656
Contact Name: Sherrie Ward	Telephone No.: 605-865-3355
Fax Number: 605-865-3102	Telephone Number Extension 7002

Amount Due: \$420.00	As of Date: 11/24/2009	<i>Note:</i> The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by Payday Financial, LLC.
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**Section 1:** YOU, the Employer, are hereby assigned to deduct from all disposable pay paid by you to the Employee the Wage Garnishment Amount described above in Amount Due of this Garnishment. You are to begin deductions on the first pay day after you receive this Wage Garnishment. If the first pay day is within 10 days after you receive this, you may begin deductions on the second pay day after you receive this. You are to continue deductions until amount noted above is paid in full.

Please, mail checks to:

Mailing address for check payments: **P.O. Box 128 Timber Lake, South Dakota 57656**

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**Section 2: WAGE GARNISHMENT AMOUNT.**

(a) The Wage Garnishment Amount is \$ \_\_\_\_.00 to be garnished from the next pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

(b) The Wage Garnishment Amount is \$ \_\_\_\_.00 per pay period in accordance with an agreement between the Creditor Agency and the Employee.

-OR-

(c) The Wage Garnishment Amount for each pay period is the lesser of:

(1) 15 % of the Employee's disposals pay (*not to exceed 15%*)

(2) 25% of the Employee's disposable pay less the amounts withheld under the withholding with priority

**Note: The Employer may use the attached Wage Garnishment Worksheet to calculate the Wage Garnishment Amount.**

**IMPORTANT NOTICE TO EMPLOYER**

1. Disposable pay. For purposes of the Wage Garnishment, "disposable pay" means the employee's compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions under CRST Tribal Law include Federal, State, and local taxes, State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A Wage Garnishment Worksheet is included with the Wage Garnishment to assist the employer in calculating disposable pay and the wage garnishment amount.
2. Multiple Withholding. If in addition to the Wage Garnishment you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%.
3. Pay cycles. An employer is not required to vary its normal pay and disbursement cycles to comply with the Wage Garnishment.

**WAGE GARNISHMENT WORKSHEET**

**Notice to Employers:** The Employer may use a copy of this Worksheet each pay period to calculate the Wage Garnishment Amount to be deducted from the debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) or 2(b) of the Wage Garnishment Assignment specifies the dollar amount to be garnished, the employer does not need to complete this Worksheet.

Debtor Name:  [REDACTED]	Employee Social Security No.:  [REDACTED]
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**Pay Period Frequency**

(Select One): Weekly or less      Every other week      Two times per month  
 Monthly Other

**DISPOSABLE PAY COMPUTATION**

1.	Gross Amount paid to Employee	
2.	Amounts Withheld:	
	a. Federal income tax	
	b. F.I.C.A. (social security)	
	c. Medicare	
	d. State tax (including income tax, unemployment, disability)	
	e. City/Local tax	
	f. Health insurance premiums	
	g. Involuntary retirement or pension plan payments	
3.	Total allowable deductions [Add lines a - g]	
4.	<b>DISPOSABLE PAY</b> [Subtract line 3 from line 1]	

**WAGE GARNISHMENT AMOUNT COMPUTATION**

**If the Employee's wages are not subject to any withholding orders, skip to line 8.**

5.	25% of Disposable Pay [Multiple line 4 by .25]	
6.	Total Amounts Withheld Under Wage Withholding with Priority. See section 2(c).	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(c) (1) of the Assignment by line 4. (The percentage from section 2(c)	

	(1) of the Assignment may not exceed 15%). Example: If the percentage from section 2(c)(1) of the Assignment is 15%, multiply .15 by line 4.	
9.	Amount equivalent to 30 times the Federal Minimum wage (\$6.55) If the employee is paid Line 9 is Weekly or less 154.50 2x per month 334.75 Every other week 309.00 Monthly 669.50	
10.	Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	
11.	<b>WAGE GARNISHMENT AMOUNT</b> Line 7, 8, or 10, whichever amount is the smallest	

**EMPLOYER CERTIFICATION**

**NOTICE TO EMPLOYERS: THE EMPLOYER MUST COMPLETE AND RETURN THIS CERTIFICATION TO PAYDAY FINANCIAL, LLC WITHIN 10 DAYS OF RECEIPT.**

*To be completed by Creditor Agency:*

Date of this Assignment:

11/23/2009

Payday Financial, LLC Lakota Cash	Mailing Address (include street address, city, state, zip code): P.O. Box 128 Timber Lake, South Dakota 57656
Employee Name:  [REDACTED]	Employee Social Security No.:  [REDACTED]

*The remainder of the Employer Certification is to be completed by Employer:*

Employer:	Employer Taxpayer Identifying Number:
-----------	---------------------------------------

(Date) \_\_\_\_\_

(2) Check one of the following:

- (a) The above named Employee is currently employed with this Employer, or
- (b) The above named Employee is no longer employed by this Employer.

*Please provide the following information for employees no longer employed:*

Employment Termination Date:	Employee's current employer (if known)
Employee's last known address and telephone no. (if known)	

**Note: If the Employee is no longer employed with this Employer, the Employer will need to complete the rest of this Certification. Sign and date this Certification and return to Payday Financial, LLC.**

**Loan Contract # 35319176**

Disbursement Date: October 26, 2009 Payment Date: November 6, 2009	Customer #: [REDACTED] Type of Contract: Standard Loan
Lakota Cash PO Box 128 Timber Lake, SD 57656 Phone: 8663005339 Fax: 8663002767 Email: <a href="mailto:customerservice@lakotacash.com">customerservice@lakotacash.com</a>	Name: [REDACTED] Address: [REDACTED] Address: Bronx, NY 10454 Phone: [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

Items Deleted Here to protect Customers Privacy

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.**

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator" ) for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted

by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable

statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with any court having jurisdiction.

6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER. In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

## ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

### 1. CONSENT TO ELECTRONIC COMMUNICATIONS:

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

### 2. ACH AUTHORIZATION:

By electronically signing this Loan Agreement below, you certify that you have fully read and understood the ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with, and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

**3. AGREEMENT TO TERMS AND CONDITIONS OF LOAN AGREEMENT INCLUDING WAIVER OF JURY TRIAL AND ARBITRATION:**

By electronically signing this Loan Agreement by typing your name below, (a) you acknowledge that the Loan Agreement was filled in before you did so and that you have reviewed the entire Loan Agreement including the CHOICE OF TRIBAL LAW AND CHOICE OF TRIBAL COURT, TRUTH-IN-LENDING DISCLOSURES, the WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, our PRIVACY POLICY, and TERMS AND CONDITIONS (b) you acknowledge that your right to file suit against us for any claim or dispute regarding this Loan Agreement is limited by the WAIVER OF JURY TRIAL AND ARBITRATION provisions, (c) you represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for bankruptcy, and (d) you acknowledge that you have read and understood all of the terms of this Loan Agreement including the provisions mentioned above and you agree to comply with, and be bound by, all of those terms.

Lender:

PAYDAY FINANCIAL, LLC

Borrower's E-Signature: [REDACTED]

Please type name as found on the application: [REDACTED]

Borrower:

First Name: [REDACTED] Last Name: [REDACTED] SSN #: [REDACTED] Date: October 23, 2009

***PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.***

***Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8663005339 or via e-mail to customerservice@lakotacash.com***

ESignature History			
Customer Name	[REDACTED]	Loan Amount	420.0000
Customer Address	[REDACTED]	Due Date	11/13/2009
City State Zip	bronx, NY - 10454	Application Date	10/27/2009
Home Phone	[REDACTED]	Origination Date	10/27/2009
Work Phone	[REDACTED]	Store ID	[REDACTED]

Appl#	ESig ID	ESig Desc	OrderNo	Doc ID	ESignature	IPAddress	ESigDate	IsActive
35367330	1	Disclosure Signature	1	1438	[REDACTED]	[REDACTED]	10/27/2009 12:54:00 PM	True

Print Now

# **EXHIBIT 5**

**DECLARATION OF SHATINA EDWARDS  
PURSUANT TO 28 U.S.C. § 1746**

I, Shatina Edwards, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. I am 39 years old and reside in Douglasville, Georgia. I'm a Registered Nurse employed by Piedmont Newnan Hospital located in Newnan, Georgia. I have worked in this position for over one year.
2. Around March 30, 2011, I researched payday loan websites and came across [www.lakotacash.com](http://www.lakotacash.com). While on their website, I filled out a loan questionnaire detailing my financial and contact information and shortly thereafter received a phone call from a Lakota Cash representative. The representative said that I was approved for a \$500 loan, and including Lakota Cash's fee, my total balance would be \$617.04. I decided to take the loan.
3. The representative further explained that in two weeks, when the loan was due, I could either pay back the \$617.04 in full or I could make biweekly payments to pay it back. Later that day, I went to their website and electronically signed my loan agreement. The following day, Lakota Cash deposited \$500 into my bank account.
4. During the initial phone call on March 30<sup>th</sup>, the Lakota Cash representative said the biweekly payments would be \$150, totaling \$300 per month; however, over the course of four months, the company deducted various amounts out of my bank account. Lakota Cash would sometimes deduct \$150, and other times \$160 to \$175. I was not told why there was a difference.

5. Every two weeks, Lakota Cash automatically debited \$150-175 from my bank account. The payments went on for roughly four months before I started questioning the debits. It was my understanding that when I had paid back \$617.04, Lakota Cash would stop debiting my bank account.
6. As of June 3, 2011, I believed my loan to Lakota Cash was paid in full. Around June 10, 2011, Lakota Cash debited another \$175 from my account. I reviewed my bank statements and found that I had paid Lakota Cash \$790, which was \$172.96 more than the \$617.04 agreement.
7. On June 10, 2011, I called the Lakota Cash customer service number, listed on their website, to discuss the matter. The representative that took my call stated that none of my payments went toward paying back the loan, and that I would have to make an additional \$617.04 payment to be considered paid in full. The representative further explained that the \$790 I had paid over the past 4 months was a fee to keep my account open. None of that money went to pay either the principal or the fee for taking out the loan. A true and correct copy of my payments to Lakota Cash is attached as **ATTACHMENT A**.
8. I was shocked to learn that paying the loan back over time would involve \$790 in only account fees. If I knew this information on March 30, 2011, I would have never paid the loan back in installments; I would have paid it back in full. When I tried to explain this to the Lakota Cash representative, she hung up on me. I called back and demanded to speak with a manager. I was transferred to a man who identified himself as "Michael." As I tried to explain the situation to

Michael, his response was, "well that's what you get for not reading." He further stated that since my account was not paid in full, it would be immediately transferred to collections, where they would pursue legal action against me as well as garnish my wages. I have taken out other payday loans, but I have never experienced a situation like this before.

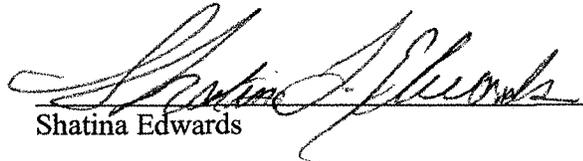
9. A few days later, I contacted my bank and closed all of my accounts and blocked all withdrawals from Lakota Cash. At this point I had already repaid \$790 to Lakota Cash and I didn't think it is fair for me to pay them another \$617.04.
10. On July 14, 2011, I received an email message from my payroll office regarding Lakota Cash. The message stated that Payday Financial, LLC sent a notice of wage garnishment, and that I would see a payroll deduction effective immediately until the garnishment request was satisfied. A true and correct copy of the email from my payroll office is attached as **ATTACHMENT B**.
11. On July 19, 2011, I followed up with Ms. Orr in my employer's payroll office. She stated that the company's decision to potentially honor the wage garnishment was based upon the Indian Commerce Clause referenced in the Wage Garnishment Package from Payday Financial, LLC. I asked Ms. Orr to allow me to produce my Lakota Cash payment records. She stated that the legal department of the hospital was going to review the garnishment request and that my Lakota Cash payment records would also be reviewed. Ms. Orr further stated that during the review process a portion of my paycheck would be withheld, but not yet sent to Lakota Cash. Ms. Orr also provided me with a copy of the Wage Garnishment

Package mailed to her, from Payday Financial, LLC. A true and correct copy of the wage garnishment package is attached as **ATTACHMENT C**.

12. That same day, I called the phone number listed on the cover letter of the Wage Garnishment Package, and spoke with someone who identified herself as "Melanie." Melanie agreed to provide me with a copy of my Lakota Cash payment history. A true and correct copy of my payment history is attached as **ATTACHMENT D**. Melanie also agreed to provide me with a copy of my original Lakota Cash loan contract. A true and correct copy of the contract is attached as **ATTACHMENT E**.
13. On July 26, 2011, I received an update from Ms. Orr in my employer's human resources office. Ms. Orr stated that my employer decided against the garnishment and that the money put aside would be sent to me.
14. To date, none of my wages were garnished, and I have not had any further contact with Lakota Cash.

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

Executed this 1 day of August, 2011 in Douglasville, Georgia.

  
Shatina Edwards

# ATTACHMENT A

SHATINA EDWARDS BANK STATEMENTS  
 "X" is by all transactions from  
 'Lakota Cash'



JPMorgan Chase Bank, N.A.  
 P O Box 659754  
 San Antonio, TX 78265-9754

March 17, 2011 through April 18, 2011  
 Account Number: [REDACTED]

**CUSTOMER SERVICE INFORMATION**

Web site: Chase.com  
 Service Center: 1-800-935-9935  
 Hearing Impaired: 1-800-242-7383  
 Para Espanol: 1-877-312-4273  
 International Calls: 1-713-262-1679

[REDACTED]

SHATINA L EDWARDS  
 [REDACTED]  
 DOUGLASVILLE GA 30134-1551



**CHECKING SUMMARY** Chase Checking

	AMOUNT
Beginning Balance	[REDACTED]
Deposits and Additions	[REDACTED]
Checks Paid	[REDACTED]
ATM & Debit Card Withdrawals	[REDACTED]
Electronic Withdrawals	[REDACTED]
Fees and Other Withdrawals	[REDACTED]
Ending Balance	[REDACTED]

**DEPOSITS AND ADDITIONS**

DATE	DESCRIPTION	AMOUNT
03/17	Piedmont Newman Reg Salary PPD ID: 1205077249	[REDACTED]
03/31	Fed Wire Credit Via: United Banker's Bank/091001322 B/O: Lakota Cash Timber Lake SD 57656 Ref: Chase Nyc/Ctr/Bnf=Shatina L Edwards Douglasville, GA 301341551/Ao-000000007074 Rfb=O/B United Bkrs Imad: 033111E78Q1C000354 Tr: 4210109090F	500.00
03/31	Piedmont Newman Reg Salary PPD ID: 1205077249	[REDACTED]
04/14	Piedmont Newman Reg Salary PPD ID: 1205077249	[REDACTED]
04/18	ATM Check Deposit	[REDACTED]
04/18	ATM Check Deposit	[REDACTED]
<b>Total Deposits and Additions</b>		[REDACTED]

3  
 Genal  
 sum → \*  
 amount





April 19, 2011 through May 17, 2011  
 Account Number: [REDACTED]

**ATM & DEBIT CARD WITHDRAWALS** (continued)

DATE	DESCRIPTION	AMOUNT
05/11	Card Purchase With Pin 05/11 Kroger 3251 Highway Douglasville GA Card 8682	[REDACTED]
05/11	Card Purchase With Pin 05/11 Douglasville PC 7100 Douglasvill GA Card 8682	[REDACTED]
05/12	Card Purchase 05/11 Witcher Statio00297143 Newman GA Card 8682	[REDACTED]
05/12	Card Purchase With Pin 05/12 Marshalls Marshalls Douglasville GA Card 8682	[REDACTED]
05/12	Card Purchase With Pin 05/12 Ross Store #520 Douglasville GA Card 8682	[REDACTED]
05/13	Card Purchase 05/11 Mcdonak's M7377 of Douglasville GA Card 8682	[REDACTED]
05/13	Card Purchase 05/13 Comcast Cable Comm 800-Comcast CA Card 8682	[REDACTED]
05/13	Card Purchase 05/12 Sunny Beauty Supply Douglasville GA Card 8682	[REDACTED]
05/13	Card Purchase With Pin 05/13 5 And 20 Liquor Stor Douglasvill GA Card 8682	[REDACTED]
05/16	Card Purchase 05/12 Cbwirless Wbpay 888-391-3925 OH Card 8682	[REDACTED]
05/16	Card Purchase 05/12 Regal Nails Douglasville GA Card 8682	[REDACTED]
05/16	Card Purchase 05/13 Racetrac417 000041 Douglasvill GA Card 8682	[REDACTED]
05/16	Card Purchase 05/14 Witcher Statio00297143 Newman GA Card 8682	[REDACTED]
05/16	Card Purchase With Pin 05/14 Wai-Mart Super Certe Douglasvill GA Card 8682	[REDACTED]
05/16	Card Purchase 05/15 Witcher Statio00297143 Newman GA Card 8682	[REDACTED]
05/16	Card Purchase With Pin 05/16 Quality Food Depot # Douglasvill GA Card 8682	[REDACTED]
05/16	ATM Withdrawal 05/16 3269 Highway 5 Douglasville GA Card 8682	[REDACTED]
05/17	Card Purchase 05/14 Panasonic Service Pl 812-2584100 IN Card 8682	[REDACTED]
05/17	Card Purchase 05/16 Longhom Steak000501 Douglasvill GA Card 8682	[REDACTED]
05/17	Card Purchase With Pin 05/16 Qt 758 Douglasville GA Card 8682	[REDACTED]
05/17	Card Purchase With Pin 05/17 Kmart 7146 Douglasvill GA Card 8682	[REDACTED]
05/17	Recurring Card Purchase 05/16 Nfl*Www.Netflix.Com/ Netflix.Com CA Card 8682	[REDACTED]
<b>Total ATM &amp; Debit Card Withdrawals</b>		[REDACTED]

**ELECTRONIC WITHDRAWALS**

DATE	DESCRIPTION	AMOUNT
04/29	04/29 Online Wire Transfer Via: Fifth Third Cinci/042000314 A/C: Tina Douglasville GA 30134 US Ref:/Bnl/Money Xfer/Time/10:11 Imad: 0429B1Qgc04C003812 Tr: 0790400119Es	[REDACTED]
* 04/29	Lakota Cash Loanpaymnt 26305B17887810 Web ID: 1261292826	150.00
04/29	State Farm Ro 24 Cpc-Client 27 S 1186313027 Web ID: 9000300815	[REDACTED]
04/29	Gpc Gpc Ebill 2434047124Dou Web ID: 1580257110	[REDACTED]
04/29	Fingerhut Direct Fingerhut 00000231935703 Web ID: 5168670001	[REDACTED]
05/03	Select Laundry, Billing PPD ID: 1000128594	[REDACTED]
05/03	Jcpenney Cc Jcp Epay 276587775 Web ID: 9069872103	[REDACTED]
05/09	Walmart Cc Wm Epay 276591026 Web ID: 9069872103	[REDACTED]
05/12	05/12 Online Payment 1103466384 To US Department of Education	[REDACTED]
05/13	05/13 Online Payment 1103466383 To Pheaa	[REDACTED]
05/13	Four Seasons Cas Loan 1435226842 Web ID: 1002003850	[REDACTED]
* 05/13	Lakota Cash Loanpaymnt 26305B18056388 Web ID: 1261292826	150.00
05/13	Four Seasons Cas Loan 1435226842 Web ID: 1002003850	[REDACTED]
05/13	Hsbc Rs Online Pmt 000000688729323 Web ID: 1000000077	[REDACTED]
05/16	Sprint8006396111 Achbillpay 323956587 Web ID: 2521616695	[REDACTED]
05/16	Gpc Gpc Ebill 2434047124Dou Web ID: 1580257110	[REDACTED]
<b>Total Electronic Withdrawals</b>		[REDACTED]



May 18, 2011 through June 16, 2011  
 Account Number: [REDACTED]

**ATM & DEBIT CARD WITHDRAWALS** (continued)

DATE	DESCRIPTION	AMOUNT
06/06	Card Purchase 06/04 Sea Breeze Douglasville GA Card 8682	[REDACTED]
06/06	Card Purchase 06/05 Marathon Oil 114330 Douglasville GA Card 8682	[REDACTED]
06/07	Card Purchase 06/06 Witcher Statio00297143 Newnan GA Card 8682	[REDACTED]
06/08	Card Purchase 06/07 Witcher Statio00297143 Newnan GA Card 8682	[REDACTED]
06/09	Card Purchase 06/08 Shell Oil 5754456470 Douglasvill GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Dollar-General 3697 Douglasville GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Douglasville PC 7100 Douglasvill GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Dollar Tree #00269 Douglasville GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Wal-Mart #1488 Douglasville GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Sunny Beauty Supply Douglasville GA Card 8682	[REDACTED]
06/09	Card Purchase With Pin 06/09 Lowe's #730 Douglasville GA Card 8682	[REDACTED]
06/10	Card Purchase 06/08 Ohio Board of Nursin 614-466-394 OH Card 8682	[REDACTED]
06/10	Card Purchase 06/09 Witcher Statio00297143 Newnan GA Card 8682	[REDACTED]
06/10	Card Purchase 06/09 Five Guys-GA # 033 Douglasville GA Card 8682	[REDACTED]
06/10	Card Purchase With Pin 06/10 Wal-Mart Super Cente Douglasvill GA Card 8682	[REDACTED]
06/13	Card Purchase 06/09 Cbwiriss Wbpay 888-391-3925 OH Card 8682	[REDACTED]
06/13	Card Purchase 06/09 Texaco Xpress Lube10 Douglasvill GA Card 8682	[REDACTED]
06/13	Card Purchase 06/09 Sally Beauty #2668 Douglasville GA Card 8682	[REDACTED]
06/13	Card Purchase 06/10 Racetrac417 000041 Douglasvill GA Card 8682	[REDACTED]
<b>Total ATM &amp; Debit Card Withdrawals</b>		[REDACTED]

**ELECTRONIC WITHDRAWALS**

DATE	DESCRIPTION	AMOUNT
* 05/27	Lakota Cash Loanpaymnt 26305B18220184 Web ID: 1261292826	\$150.00
05/27	Comcast Comcast 0010363823 Web ID: C822010000	[REDACTED]
05/27	Gpc Gpc Ebill 2434047124Dou Web ID: 1580257110	[REDACTED]
06/02	Select Laundry, Billing PPD ID: 1000128594	[REDACTED]
06/03	Jcpenny Cc Jcp Epay 280050981 Web ID: 9069872103	[REDACTED]
06/07	Walmart Cc Wm Epay 285789770 Web ID: 9069872103	[REDACTED]
06/09	06/09 Online Payment 2085611874 To Pheaa	[REDACTED]
06/09	Fingerhut Direct Fingerhut 000000239656371 Web ID: 5168670001	[REDACTED]
* 06/10	Lakota Cash Loanpaymnt 26305B18394413 Web ID: 1261292826	175.00
06/10	State Farm Ro 24 Cpc-Client 27 S 1186313027 Web ID: 9000300815	[REDACTED]
06/10	Comcast Comcast 0010363823 Web ID: C822010000	[REDACTED]
06/10	Gpc Gpc Ebill 2434047124Dou Web ID: 1580257110	[REDACTED]
06/13	Sprint8006396111 Achbillipay 323956587 Web ID: 2521616695	[REDACTED]
<b>Total Electronic Withdrawals</b>		[REDACTED]

# ATTACHMENT B

**Budich, Victoria Leftwich**

---

**From:** Shatina Edwards [REDACTED]  
**Sent:** Tuesday, July 19, 2011 8:29 AM  
**To:** Budich, Victoria Leftwich  
**Subject:** FW: Payroll deduction- Shatina Edwards

*Shatina Edwards RN, EMT-P*

---

**From:** Rebecca Orr  
**Sent:** Thursday, July 14, 2011 3:56 PM  
**To:** Shatina Edwards  
**Subject:** Payroll deduction

Shatina, please be advised that we received a notice of a wage garnishment from Payday Financial, LLC. This deduction will begin immediately and will continue until the requested amount has been satisfied. Should you have questions or concerns do not hesitate to give me a call or respond to this email.

Respectfully,

*Rebecca Orr*

Payroll/Accounting Department  
678-854-2459 - Phone  
678-854-2429 - Fax  
1959 - Ext.

---

This e-mail communication, including any attached files may contain material that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. This communication is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient or the person responsible for delivering this communication to the intended recipient, you are prohibited from retaining, using, disseminating, forwarding, printing or copying this communication. If you have received this communication in error, please immediately notify the sender via return e-mail or telephone.

This email has been scanned and found to be virus free. If this message contains a virus please contact [postmaster@piedmont.org](mailto:postmaster@piedmont.org)

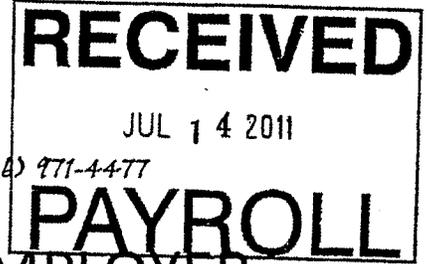
# ATTACHMENT C

COPY



Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (605) 865-3100 - (866) 971-4477



# IMPORTANT NOTICE TO THE EMPLOYER

7/06/11

To: Piedmont Newnan Hospital

Attn: Payroll Dept. / Human Resources

One of your employees has been identified as owing a delinquent debt to Payday Financial, LLC/Lakota Cash. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit the preauthorized garnishment of the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Preauthorized Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. While not applicable to tribal member owned entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA). The employee has previously consented to such garnishment and we have notified the employee that this action was going to take place, providing the employee with the opportunity to dispute the debt, opt out of the preauthorized garnishment process, and/or make payment arrangements.

The items listed below substantiate our position in perusing a preauthorized garnishment on your employee **Edwards, Shatina**. Please forward this to the individual responsible for this process. If person is no longer employed please return to sender.

Enclosed you will find the following documents:

1. E-signed customer contract
2. Time Stamp for signing of this document
3. Garnishment letter and work sheet

Please fill out the employer's section and return the original to the address above within ten business days. If you have any questions please contact me at our toll free number 605-865-3580 or my email is [megans@lakotacash.com](mailto:megans@lakotacash.com).

Sincerely,

Megan Swan

Account Specialist

**NOTICE:** We are not affiliated with ANY debt consolidation company, nor are we affiliated with any other payday loan company. If you believe you have been contacted by someone whom you think is misrepresenting themselves as an agent for this company, or have any questions, please feel free to contact us at the toll-free number: 605-865-3580.

**RECEIVED**  
 JUL 14 2011  
**PAYROLL**

**PREAUTHORIZED WAGE GARNISHMENT**

**RE:** Employee Name:  
 \_\_\_\_\_  
 Edwards, Shatina \_\_\_\_\_

Employee Social Security No.:  
 \_\_\_\_\_  
 [REDACTED]

**TO:** Employer:  
 \_\_\_\_\_  
 Piedmont Newnan Hospital

Employer Fax Number:  
 \_\_\_\_\_

<p><b>FROM: Payday Financial, LLC</b>                   Lakota Cash</p>	<p>Mailing Address:                   PO Box 128                  Timber Lake, South Dakota 57656</p>
<p>Contact Name:                   Megan Swan</p>	<p>Telephone No.:                   605-865-3580</p>
<p>Fax Number:                   605-865-3102</p>	<p>Telephone Number Extension</p>

<p>Amount Due:   <b>\$ 617.50</b></p>	<p>As of Date:                   6/29/2011</p>	<p><i>Note:</i> The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by Payday Financial, LLC.</p>
---	--	---

**Section 1:** YOU, the Employer, are hereby assigned to deduct from all disposable pay paid by you to the employee the preauthorized wage garnishment amount described above in amount due of this preauthorized garnishment. You are to begin deductions on the first pay day after you receive this wage garnishment. If the first pay day is within 10 days after you receive this, you may begin deductions on the second pay day after you receive this. You are to continue deductions until amount noted above is paid in full.

Please, mail checks to: **Payday Financial, LLC**

Mailing address for check payments: **P.O. Box 128 Timber Lake, South Dakota 57656**

**Section 2: PREAUTHORIZED WAGE GARNISHMENT AMOUNT.**

(a)The preauthorized wage garnishment amount is \$\_\_\_\_.00 to be garnished from the next pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(b)The preauthorized wage garnishment amount is \$\_\_\_\_.00 per pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(c)The preauthorized wage garnishment amount for each pay period is the lesser of:

- (1) 15 % of the Employee's disposals pay (*not to exceed 15%*)
  
- (2) 25 % of the Employee's disposable pay less the amounts withheld under the withholding with priority

Equivalent to 15% of disposable income or 25% of disposable income if there is an additional garnishment or wage assignment already in place i.e.: bankruptcy, child support, tax levies etc...

**Note: The Employer may use the attached wage garnishment worksheet to calculate the wage garnishment amount.**

**IMPORTANT NOTICE TO EMPLOYER**

1. **Disposable pay.** For purposes of the preauthorized wage garnishment, "disposable pay" means the employee's compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions under CRST Tribal Law include Federal, State, and local taxes. State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A wage garnishment worksheet is included with the preauthorized wage garnishment to assist the employer in calculating disposable pay and the wage garnishment amount.
2. **Multiple Withholding.** If in addition to the preauthorized wage garnishment you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%.
3. **Pay cycles.** An employer is not required to vary its normal pay and disbursement cycles to comply with the preauthorized wage garnishment.

**PREAUTHORIZED WAGE GARNISHMENT WORKSHEET**

**Notice to Employers:** The Employer may use a copy of this worksheet each pay period to calculate the preauthorized wage garnishment amount to be deducted from the debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) or 2(b) of the preauthorized wage garnishment assignment specifies the dollar amount to be garnished, the employer does not need to complete this worksheet.

The remainder of the employer certification is to be completed by employer:

Employer: <u>Piedmont Newnan Hospital</u> <u>P.O. Box 997</u> <u>Newnan, GA 30264</u>	Employer taxpayer identifying number: 
---	---

Please provide the following information for employees no longer employed:

Employment termination date:	Employee's current employer (if known)
Employee's last known address and telephone no. (if known)	

Note: If the employee is no longer employed with this employer, the employer will need to complete the rest of this certification. Sign and date this certification and return to Payday Financial, LLC.

Please check one of the following:

- In process of sending garnished payment  
NOTE: when submitting payment please use reference # 595-52-4609
- Employee is no longer with the company
- Unable to garnish wages. (List reason) \_\_\_\_\_

(Signature) Rebecca Orr

(Date) 7/14/11

<b>Disbursement Date:</b> 3/31/2011 <b>Payment Date:</b> 4/15/2011	<b>Customer #:</b> [REDACTED] <b>Type of Contract:</b> Standard Loan
<b>Lakota Cash</b> PO Box 128 Timber Lake, SD 57656 Phone: (866)300-5339 Fax: (866)300-2767 Email: customerservice@lakotacash.com	<b>Name:</b> Edwards, Shatina <b>Address:</b> [REDACTED] Address: Douglasville, GA 30134 <b>Phone:</b> [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

\*Items removed here to protect customers privacy\*

**GOVERNING LAW:** This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND GARNISHMENT** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you hereby consent and agree to the potential preauthorized garnishment of wages by us or our assigns or service

agents to ensure repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential preauthorized garnishment of wages, and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**PREAUTHORIZED GARNISHMENT OPT-OUT PROCESS.** You may choose to opt out the Preauthorized Garnishment provision, but only by following the process set-forth below. If you do not wish to be subject to this Preauthorized Garnishment Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Garnishment Provision. After the ten day deadline, you may choose to opt out of the Preauthorized Garnishment Provisions, however you must CALL the Lakota Cash Customer Service Department at 605-865-3580 (emails cannot be accepted due to security reasons) and indicate your desire to opt out of the Preauthorized Garnishment Provisions. Within three business days, you will receive an email verifying your choice to opt out of the Preauthorized Garnishment Provision. Your choice will apply only to the Preauthorized Garnishment Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.**

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter

collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory

damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with the Cheyenne River Sioux Tribal Court having jurisdiction.

6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER. In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

#### ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

##### 1. CONSENT TO ELECTRONIC COMMUNICATIONS:

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

##### 2. ACH AUTHORIZATION:

By electronically signing this Loan Agreement below, you certify that you have fully read and understood the ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with,

and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

**3. AGREEMENT TO TERMS AND CONDITIONS OF LOAN AGREEMENT INCLUDING WAIVER OF JURY TRIAL AND ARBITRATION:**

By electronically signing this Loan Agreement by typing your name below, (a) you acknowledge that the Loan Agreement was filled in before you did so and that you have reviewed the entire Loan Agreement including the CHOICE OF TRIBAL LAW AND CHOICE OF TRIBAL COURT, TRUTH-IN-LENDING DISCLOSURES, the WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, our PRIVACY POLICY, and TERMS AND CONDITIONS (b) you acknowledge that your right to file suit against us for any claim or dispute regarding this Loan Agreement is limited by the WAIVER OF JURY TRIAL AND ARBITRATION provisions, (c) you represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for bankruptcy, and (d) you acknowledge that you have read and understood all of the terms of this Loan Agreement including the provisions mentioned above and you agree to comply with, and be bound by, all of those terms.

Lender:

PAYDAY FINANCIAL, LLC/LAKOTA CASH

Borrower's E-Signature: Edwards, Shatina

Please type name as found on the application: Edwards, Shatina

Borrower:

First Name: Shatina

Last Name: Edwards

Date: March 31, 2011

***PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.***

***Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8663847129 or via e-mail to [customerservice@lakotacash.com](mailto:customerservice@lakotacash.com)***

ESignature History			
Customer Name	Edwards, Shatina	Loan Amount	665.00
Customer Address	[REDACTED]	Due Date	4/15/2011
City State Zip	Douglasville, GA - 30134	Application Date	3/31/2011
Home Phone	[REDACTED]	Origination Date	3/31/2011
Work Phone	[REDACTED]	Store ID	26305000003

Appl#	ESig ID	ESig Desc	OrderNo	Doc ID	ESignature	IPAddress	ESigDate	IsActive
48121150	1	Disclosure Signature	1	2572	shatina l edwards	[REDACTED]	3/31/2011 7:28:00 AM	True

[Print Now](#)

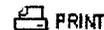
# ATTACHMENT D

**Budich, Victoria Leftwich**

**From:** [REDACTED]  
**Sent:** Thursday, July 21, 2011 3:44 PM  
**To:** Budich, Victoria Leftwich  
**Subject:** Fwd: Renewal Payment History  
**Attachments:** Melanie\_M.vcf

-----Original Message-----  
**From:** melanie <melaniem@lakotacash.com>  
**To:** [REDACTED]  
**Sent:** Tue, Jul 19, 2011 10:21 am  
**Subject:** Renewal Payment History

Top of Form



Customer Application/Payment History								
Customer Information			Application Information					
SSN	[REDACTED]		Open		Paid Off		Other	
Name	Edwards, Shatina		<b>Status</b>	<b>Count</b>	<b>Status</b>	<b>Count</b>	<b>Status</b>	<b>Count</b>
Customer Since	3/31/2011		Standard	0	Standard	1	Denied	0
			Renewal	0	Renewal	4	Incomplete	0
			BKY	0	BKY/Chg Off/NSF	0	Pending Appl	0
			Chg Off	0			Void	0
			NSF	1			Withdrawn	0

Appl#	Appl Status	Origination Date	Principal Amount	Status	Appl Type	Store#																		
49828523	Approved	6/9/2011	475.00	Returned Item	Renewed Application	26305000003																		
49457551	Approved	5/26/2011	500.00	Loan Paid Off	Renewed Application	26305000003																		
<table border="1"> <thead> <tr> <th>Pmt#</th> <th>Pmt Date</th> <th>Pmt Amount</th> <th>Pmt Mode</th> <th>Pmt Type</th> <th>Store#</th> </tr> </thead> <tbody> <tr> <td>39858475</td> <td>6/10/2011</td> <td>175.00</td> <td>ACH</td> <td>Renewal Payment</td> <td>26305000003</td> </tr> <tr> <td>39858474</td> <td>6/10/2011</td> <td>475.00</td> <td>Renewal</td> <td>Renewal Payment</td> <td>26305000003</td> </tr> </tbody> </table>							Pmt#	Pmt Date	Pmt Amount	Pmt Mode	Pmt Type	Store#	39858475	6/10/2011	175.00	ACH	Renewal Payment	26305000003	39858474	6/10/2011	475.00	Renewal	Renewal Payment	26305000003
Pmt#	Pmt Date	Pmt Amount	Pmt Mode	Pmt Type	Store#																			
39858475	6/10/2011	175.00	ACH	Renewal Payment	26305000003																			
39858474	6/10/2011	475.00	Renewal	Renewal Payment	26305000003																			
49077672	Approved	5/12/2011	500.00	Loan Paid Off	Renewed Application	26305000003																		
<table border="1"> <thead> <tr> <th>Pmt#</th> <th>Pmt Date</th> <th>Pmt Amount</th> <th>Pmt Mode</th> <th>Pmt Type</th> <th>Store#</th> </tr> </thead> <tbody> <tr> <td>39517309</td> <td>5/27/2011</td> <td>150.00</td> <td>ACH</td> <td>Renewal Payment</td> <td>26305000003</td> </tr> <tr> <td>39517308</td> <td>5/27/2011</td> <td>500.00</td> <td>Renewal</td> <td>Renewal Payment</td> <td>26305000003</td> </tr> </tbody> </table>							Pmt#	Pmt Date	Pmt Amount	Pmt Mode	Pmt Type	Store#	39517309	5/27/2011	150.00	ACH	Renewal Payment	26305000003	39517308	5/27/2011	500.00	Renewal	Renewal Payment	26305000003
Pmt#	Pmt Date	Pmt Amount	Pmt Mode	Pmt Type	Store#																			
39517309	5/27/2011	150.00	ACH	Renewal Payment	26305000003																			
39517308	5/27/2011	500.00	Renewal	Renewal Payment	26305000003																			
					Renewed																			

48752135	Approved	4/28/2011	500.00	Loan Paid Off	Application	26305000003
<b>Pmt#</b>	<b>Pmt Date</b>	<b>Pmt Amount</b>	<b>Pmt Mode</b>	<b>Pmt Type</b>	<b>Store#</b>	
39214174	5/13/2011	150.00	ACH	Renewal Payment	26305000003	
39214173	5/13/2011	500.00	Renewal	Renewal Payment	26305000003	
48456036	Approved	4/14/2011	500.00	Loan Paid Off	Application	26305000003
<b>Pmt#</b>	<b>Pmt Date</b>	<b>Pmt Amount</b>	<b>Pmt Mode</b>	<b>Pmt Type</b>	<b>Store#</b>	
38890801	4/29/2011	150.00	ACH	Renewal Payment	26305000003	
38890800	4/29/2011	500.00	Renewal	Renewal Payment	26305000003	
48121150	Approved	3/31/2011	500.00	Loan Paid Off	Application	26305000003
<b>Pmt#</b>	<b>Pmt Date</b>	<b>Pmt Amount</b>	<b>Pmt Mode</b>	<b>Pmt Type</b>	<b>Store#</b>	
38591649	4/15/2011	165.00	ACH	Renewal Payment	26305000003	
38591648	4/15/2011	500.00	Renewal	Renewal Payment	26305000003	
38244095	3/31/2011	0.00	Charges	CashPlus Benefit Fee	26305000003	

Bottom of Form

**Lakota Cash**

**Melanie M**  
 Lakota Cash, LLC  
 Assistant Supervisor



(866) 971-4477 x7047 Work  
 melaniem@lakotacash.com  
[www.lakotacash.com](http://www.lakotacash.com)

Confidentiality Statement & Notice: This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and intended only for the use of the individual or entity to whom it is addressed as it may contain confidential and legally privileged information subject to the attorney/client privilege. E-mail transmission is not intended to waive the attorney-client privilege or any other privilege. Any review, retransmission, dissemination to unauthorized persons or other use of the original message and any attachments is strictly prohibited. If you received this electronic transmission in error, please reply to the above-referenced sender about the error and permanently delete this message. Thank you for your cooperation.

# ATTACHMENT E

**Budich, Victoria Leftwich**

**From:** [REDACTED]  
**Sent:** Thursday, July 21, 2011 3:43 PM  
**To:** Budich, Victoria Leftwich  
**Subject:** Fwd: Loan Contract  
**Attachments:** Melanie\_M.vcf

Okay Victoria, I decided to recheck my spam after speaking with you and I do have the contract sent in fact 2 different contracts and I will send all that was sent to me by that company on 7/19. Ps: I get tons of spam !

-----Original Message-----  
**From:** melanie <melaniem@lakotacash.com>  
 [REDACTED]  
**Sent:** Tue, Jul 19, 2011 10:19 am  
**Subject:** Loan Contract

Top of Form

**Loan Contract # 48121150**

Disbursement Date: April 1, 2011 Payment Date: April 15, 2011	Customer #: [REDACTED] Type of Contract: Standard Loan
Lakota Cash PO Box 128 Timber Lake, SD 57656 Phone: 8669966985 Fax: 8663002767 Email: customerservice@lakotacash.com	Name: Shatina Edwards Address: [REDACTED] Address: Douglasville, GA 30134 Phone: [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By utilizing our website, you are conducting business on the Cheyenne River Indian Reservation, and subjecting yourself exclusively to the laws and jurisdiction of the Cheyenne River Sioux Tribe, a sovereign Native American Nation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

In order to complete your transaction with us, you must electronically sign this Loan Agreement at the end of the Loan Agreement. We will then approve or deny the Loan Agreement. Consummation of this Loan Agreement occurs when it is funded by us from our bank on the Cheyenne River Indian Reservation. We will use commercially reasonable efforts to effect a credit entry by depositing the proceeds from this Loan Agreement into your bank account listed below, unless any of the proceeds of this Loan Agreement are applied to any outstanding obligation to us. Unavoidable delays as a result of

bank holidays, the processing schedule of your individual bank, the untimely receipt of pay stubs, if such pay stubs are required, inadvertent processing errors, "acts of God", and/or "acts of terror" may extend the time for the deposit. In the event that the disbursement is delayed, the Disbursement Date will automatically adjust to reflect the date when proceeds entered your Bank Account. If there is a delay in disbursement, we will email you a confidential written notice to the email address provided in your application advising you of the delay and of the adjusted annual percentage rate, as well as any other material changes in the terms of the loan that may be caused by the delay. After the notice is sent to you, you will have the option of rescinding the Loan in accordance with the "RESCISSION" provision listed below, which describes, among other things, the time and manner within which notice of rescission must be given to be effective. Failure to give such notice as and when set out in the "RESCISSION" provision will be deemed to constitute acceptance by you of the delayed disbursement date and the revised terms of the Loan Agreement.

You promise to pay us the Total of Payments according to the terms of our disclosures set forth below on the date stated in the Payment Schedule below ("Payment Date"), unless you elect to refinance your loan. If you agree to refinance your loan, you will be charged a new finance charge based on the loan amount being refinanced. If you qualify and you do not repay the full amount of principal and interest on the Payment Date, your loan will be automatically renewed until your next pay date. This means that you will be charged a new finance charge based on the loan amount being refinanced. Additional payment of principal may be required in addition to the fees due for the renewal of the loan. A new finance charge will be applied to every refinance of the loan. You grant us a security interest in your ACH/EFT Authorization in the amount of the Total of Payments (the "ACH/EFT") which we may negotiate on the Payment Date or thereafter. Pre-computed interest is calculated from the Disbursement Date based upon your promise, as a condition of the Loan Agreement, to pay us as scheduled. Interest is pre-computed and charged from the Disbursement Date until the Payment Date, as set forth in the disclosures below. No interest will accrue after the Payment Date. All payments will be applied first to interest and then to principal. The annualized rate of that interest charged, and the amount of interest charged, are set forth below as, respectively, the Annual Percentage Rate and the Finance Charge. Pursuant to the ACH/EFT Authorization, you have directed us, our successors and assigns to initiate one or more ACH/EFT debit entries to Your Bank Account to deduct the Total of Payments from Your Bank Account on the Payment Date or thereafter and for certain fees that may be assessed in the event of dishonor when presentment is made to your bank on your ACH/EFT Authorization. If you are in default, you authorize us, our servicer or our agent, including attorneys and third party collection agencies, to continue initiating one or more ACH/EFT debit entries to your bank account, or any other bank account in your name, up to and less than the amount owed until all amounts that you owe are paid in full, including any principal, interest, fee, or the return fee.

## CONSENT TO ELECTRONIC COMMUNICATIONS

The following terms and conditions govern electronic communications in connection with this Loan Agreement and the transaction evidenced hereby (the "Consent"). By electronically signing this Loan Agreement below, you are confirming that you have agreed to the terms and conditions of the Consent and that you have downloaded or printed a copy of this Consent for your records. You agree that:

- Any disclosure, notice, record or other type of information that is provided to you in connection with your transaction with us, including but not limited to, this Loan Agreement, this Consent, the Truth in Lending disclosures set forth below (but not required by the Cheyenne River Sioux Tribe), change-in-term notices, fee and transaction information, statements, delayed disbursement letters, notices of adverse action, state mandated brochures and disclosures, terms and conditions and transaction information ("Communications"), may be sent to you electronically by posting the information at our web site, [www.lakotacash.com](http://www.lakotacash.com), or by sending it to you by e-mail.
- We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so.
- You may obtain a copy of any Communication by contacting us at **PO Box 128, Timber Lake, SD 57656** or by calling us at **8669966985**. You also can withdraw your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper

or non-electronic form, we may elect to terminate this Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent; or by the expiration of any minimum term mandated by law, whichever is later.

- You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change.
- In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer (SSL) protocol. SSL provides a secure channel to send and receive data over the Internet through HS encryption capabilities. Netscape 4.7+ and above and Microsoft Internet Explorer 5.01+ and above support this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). To download transaction information into Quicken or Microsoft Money, you will need the equipment and software required by their respective operating instructions. We do not provide ISP services. You must have your own Internet service provider.
- We may amend (add to, delete or change) these terms by providing you with advance notice.

By electronically signing this Loan Agreement below, you are confirming that: (1) your system meets the requirements set forth above; (2) you agree to receive Communications electronically; and (3) you are able to access and print or store information presented at this website.

**GOVERNING LAW:** This Loan Agreement has been negotiated and executed on the Cheyenne River Indian Reservation and is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

**TRUTH IN LENDING DISCLOSURES:** The disclosures below are provided to you as a courtesy so that you may compare the cost of this loan to other loan products you might obtain in the United States. Provision of these disclosures is not a consent to application of federal or state law to us, to the loan, or to the Loan Agreement.

**FEDERAL TRUTH-IN-LENDING DISCLOSURES**

<b>ANNUAL PERCENTAGE RATE</b>	<b>FINANCE CHARGE</b>	<b>Amount Financed</b>	<b>Total of Payments</b>
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
<b>782.14%</b>	<b>\$150.00</b>	<b>\$500.00</b>	<b>\$650.00</b>
<b>Your Payment Schedule will be:</b>			
<b>One Payment in the Amount of</b>	<b>\$650.00</b>	<b>is due April 15, 2011</b>	
<b>Late or NSF Charge:</b>	If your payment is late by more than two (2) days, or if your payment is returned by your depository institution due to insufficient funds, closed account, stopped payment or for any other reason, you will be charged a fee of \$30.00.		
<b>Security:</b>	You are giving a security interest in the ACH/EFT Authorization.		
<b>Demand Feature:</b>	This obligation is payable on demand if you withdraw your consent to electronic		

communications.

**Prepayment:**

If you pay off early, you will not be entitled to a refund of the finance charge. However, you may rescind this Loan Agreement by 5 p.m. Eastern Time on the next business day following the date your loan is funded at no charge, provided the Amount Financed is repaid in full.

See the terms of this Loan Agreement for any additional information about nonpayment, default and lack of prepayment penalties.

**Itemization of Amount Financed:** Amount given to you directly: \$500.00. Amount paid on Deferred Deposit Transaction No. with us: \$ 0.00

**ACH/EFT AUTHORIZATION:** You hereby voluntarily authorize us, and our successors, agents and assigns, to initiate an automatic credit and debit entry to Your Bank Account: Name of bank and state: JPMORGAN CHASE BANK, NA, OH; Account type: Checking; Bank routing and transit number: [REDACTED] and Account Number: [REDACTED]

You agree that we will initiate an ACH/EFT debit entry to Your Bank Account for the Total of Payments on April 15, 2011 (the Payment Date), and re-initiate a debit entry for the same amount if the ACH/EFT is dishonored.

You voluntarily agree to the electronic re-presentation by us and our successors, agents, or assigns (including attorneys and collections agencies) of any funds owed and that are returned to us for any reason. Such electronic re-presentation may be for less than the original amount owed us or in any increments totaling the amount due, including the maximum permissible non-sufficient funds fee charged by us. You agree to pay all fees related to the collection of your account. This includes, without limitation, all attorneys' fees, collection fees, and other costs incurred during the collection process.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the debit entry authorized herein is for repayment of a single payment installment loan and shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information. You agree that this ACH/EFT Authorization is subject to our approving the Loan Agreement.

The ACH/EFT Authorizations set forth in this Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any Late or NSF fee incurred, is fully satisfied. You may only revoke the above authorizations by contacting us directly, and only after you have satisfied your indebtedness to us.

If you revoke the authorization to effect an ACH/EFT debit entry before the loan is paid in full, you authorize us to prepare and submit one or more checks drawn on your Account or any account in your name on or after the due date of your loan. Such checks may or may not have an electronic image of your signature. This authorization to prepare and submit a check on your behalf may not be revoked by you until such time as the loan is paid in full. In addition, you understand and acknowledge that in the event you terminate ACH/EFT debit authorization, any loans made by us to you may, at our sole and absolute discretion, become immediately due and payable.

**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND PREAUTHORIZED WAGE WITHHOLDING:** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your

financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via Wage Withholding or ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you hereby consent and agree to the potential preauthorized Wage Withholding by us or our assigns or service agents to ensure repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential preauthorized Wage Withholding and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**PREAUTHORIZED WAGE WITHHOLDING OPT-OUT PROCESS.** You may choose to opt out the Preauthorized Wage Withholding provision, but only by following the process set-forth below. If you do not wish to be subject to this Preauthorized Wage Withholding Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Wage Withholding Provision. After the ten day deadline, you may choose to opt out of the Preauthorized Wage Withholding Provisions, however you must CALL the Lakota Cash Customer Service Department at 866-971-4477 (emails cannot be accepted due to security reasons) and indicate your desire to opt out of the Preauthorized Wage Withholding Provisions. Within three business days, you will receive an email verifying your choice to opt out of the Preauthorized Garnishment Provision. Your choice will apply only to the Preauthorized Wage Withholding Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**SEVERABILITY:** The individual authorizations, provisions, terms, covenants, and conditions contained in this Loan Agreement shall survive any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any authorization, provision, term, covenant, or condition of this Loan Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Loan Agreement, or the application of such authorization, provision, term, covenant, or condition to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each authorization, provision, term, covenant, condition, and provision shall be valid and enforced to the fullest extent permitted by law.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator" ) for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or

any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the Cheyenne River Sioux Tribal arbitration individual and/or organization you have selected. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select a Cheyenne River Sioux Tribal arbitration. If you fail to notify us, then we have the right to select a Cheyenne River Sioux Tribal arbitration organization or Tribal Member at our discretion. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to

reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by the Cheyenne River Sioux Tribal Court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with the Cheyenne River Sioux Tribal Court having jurisdiction.

6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. **NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN CHEYENNE RIVER SIOUX TRIBAL COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER.** In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

#### ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

**1. CONSENT TO ELECTRONIC COMMUNICATIONS:**

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

**2. TELEPHONE COMMUNICATIONS/MESSAGING:**

You authorize us, our assigns, successors or our servicing agents to send a SMS text message to you at any mobile number at which we reasonably believe we can contact you, for any lawful purpose, including but not limited to: (1) suspected fraud or identity theft; (2) obtaining information necessary for us to service your account; (3) collecting on your account; (4) notifying you as to important issues regarding your account, or (5) and other purpose. Telephone numbers you authorize us, our assigns, successors or our servicing agents to text message to include any numbers provided to us, our assigns, successors or our servicing agents and numbers from which you call us on, our assign, successors or our servicing agents. You agree to pay any fee(s) or change(s) that you may incur for incoming and outgoing messages from or to us or assigns, successors, or our servicing agents, without reimbursement from us or them. You authorize us, our assigns successors or surviving agents to send recorded messages to any phone numbers provided to us, our assigns, successors or service agents.

**3. ACH AUTHORIZATION:**

By electronically signing this Loan Agreement below, you certify that you have fully read and understood the WAGE WITHHOLDING ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with, and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

Lender:

PAYDAY FINANCIAL, LLC

Borrower's E-Signature: shatina | edwards

Please type name as found on the application: Shatina Edwards

Borrower:

First Name: Shatina

Last Name: Edwards

Date: March 31, 2011

*PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.*

*Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8669966985 or via e-mail to [customerservice@lakotacash.com](mailto:customerservice@lakotacash.com)*

Bottom of Form



Confidentiality Statement & Notice: This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and intended only for the use of the individual or entity to whom it is addressed as it may contain confidential and legally privileged information subject to the attorney/client privilege. E-mail transmission is not intended to waive the attorney-client privilege or any other privilege. Any review, retransmission, dissemination to unauthorized persons or other use of the original message and any attachments is strictly prohibited. If you received this electronic transmission in error, please reply to the above-referenced sender about the error and permanently delete this message. Thank you for your cooperation.

**EXHIBIT 6**

**DECLARATION OF CHAD HILDEBRAND  
PURSUANT TO 28 U.S.C. § 1746**

I, Chad Hildebrand, hereby state that I have personal knowledge of the facts set forth below and if called as a witness, I could and would testify as follows:

1. My name is Chad Hildebrand. I live in Marshfield, Missouri and am over 21 years of age.
2. I work as a security and emergency response coordinator in Springfield, Missouri. I have worked in this field for about seventeen years, but have been with my current company for about four years.
3. On or around July 21, 2010, I came across [www.lakotacash.com](http://www.lakotacash.com) through a Google search. That same day, I filled out an online loan application. I submitted my social security number as well as my bank account number and bank's routing number.
4. Later that day, I received a phone call from a representative from Lakota Cash who wanted to verify that the information I provided in my loan application was accurate. The representative explained to me that Lakota Cash would automatically withdraw payments from my bank account every two weeks. Additionally, during this conversation, the representative told me that I was approved for a loan.
5. After my phone conversation, a representative from Lakota Cash sent me an email with the terms of my loan. The following day, Lakota Cash deposited \$350 into my checking account.
6. Around August 10, 2010, Lakota Cash automatically withdrew a payment of \$65-\$70 from my bank account. A second payment of \$65-\$70 was withdrawn around August 24, 2010. I was under the impression that these payments were going

toward paying down my payday loan. These payments carried on for the next several months. From August to November 2010, I paid Lakota Cash nearly \$455, which I thought covered my loan plus interest. Since I thought my loan was paid in full, I closed my Empire Bank checking account.

7. On November 8, 2010, I received a letter from Lakota Cash. This letter stated that my loan was in default status, that my account balance was \$485 and detailed that I had 10 days to work out a mutually agreed upon payment schedule. Additionally, there was a paragraph in the letter regarding wage garnishment. According to Lakota Cash, as a condition of my loan, I agreed to accept a wage garnishment in the event that I did not pay my loan as agreed. As previously stated, as of early November 2010, I had paid my loan as agreed. Faced with this discrepancy, I fully intended to take a few days to review my records before responding to Lakota Cash's letter. A true and correct copy of the letter from Lakota Cash is attached as **ATTACHMENT A**.
8. Two days later, on November 10, 2010, Lakota Cash sent a Wage Garnishment Package to my employer. My employer immediately notified me of the garnishment request, provided me with a copy of the wage garnishment package, and stated that my company would not honor the request. Furthermore, my human resources department stated that my employer requires all garnishment requests to be accompanied by a court order. Lakota Cash's garnishment request did not have a court order. A true and correct copy of the garnishment package from Lakota Cash is attached as **ATTACHMENT B**.

9. On or around November 10, 2010 I contacted the Missouri Division of Finance, and spoke with Gina Jolly. Ms. Jolly told me that I was not responsible for any further payments to Lakota Cash, and that Lakota Cash is not licensed to lend in Missouri.
10. That same day I called Lakota Cash and I left a voicemail message with Sherri Ward, the Account Specialist listed on the Lakota Cash wage garnishment package, asked her about the wage garnishment, and requested to speak with someone at Lakota Cash as soon as possible.
11. A few hours later, I received an email from Ms. Carol Laib, the Lakota Cash Administrative Supervisor. Ms. Laib's email message indicated that Lakota Cash is exempt from state regulation and that I was obligated to pay Lakota Cash an additional \$485 even though I had already paid \$455. Her email message also included a copy of my original Lakota Cash loan agreement. A true and correct copy of the email from Ms. Laib is attached as **ATTACHMENT C**.
12. After Lakota Cash sent a wage garnishment letter to my employer, I reviewed the contract that the company emailed me, and I noticed that there was a clause in the contract, called the "pre-authorization garnishment opt out process." The clause detailed that I could request that Lakota Cash be prohibited from garnishing my wages. On or around, November 17, 2010, I called the garnishment opt-out phone number, listed on my Lakota Cash contract. According to the contract, Lakota Cash was supposed to email me verification that I had opted out of the wage garnishment process within three days of my phone call, but I never received verification.

13. In the following weeks, my wife, Valerie Hildebrand, started researching Lakota Cash online. She noticed that many other people complained about the company in various online forums. After reading the various online complaints against Lakota Cash, I decided to file a complaint with the Federal Trade Commission.
14. Around January 2011, I started to receive collection calls from Lakota Cash. Initially, these calls came to my cell phone, and for a short period of time, I received collection calls at my place of employment.
15. After receiving numerous collection calls, my wife and I filed a complaint against Lakota Cash with the Missouri Attorney General's office. Shortly thereafter we received a phone call from Deb Lumpkins, a representative from the Missouri Attorney General's office. Ms. Lumpkins informed me that the Missouri Attorney General's office had a number of complaints against Lakota Cash.
16. Since filing my complaint with the Missouri Attorney General's office, I have received no further communication from Lakota Cash.

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

Executed this 20<sup>th</sup> day of August, 2011 in Marshfield, Missouri.



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Chad Hildebrand

# **ATTACHMENT A**

# Lakota Cash

Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (866) 971-4477

Chad Hildebrand



Dear Chad Hildebrand,

As of this date, you remain in default status with Lakota Cash. Although we have previously contacted you, reminding you that you have a delinquent account with us, we have received no response. You must make arrangements to settle your account. Your current balance is \$485.00.

We are willing to work with you and expect that your intention is to keep your obligation with us, but we need to hear from you within 10 days to work out a mutually agreed upon payment schedule. Surely, your continued good credit standing with Lakota Cash is important to you.

Please be aware that as a condition of your loan you agreed to accept a wage garnishment in the event you do not pay your loan as agreed. The wage garnishment is a binding agreement that will require a portion of your earnings be withheld from your paycheck until the debt is paid in full. We urge you to call us so that we can set up a re-payment plan that is compatible with your needs.

Please contact us at 866-971-4477 M-F 7:00 AM to 6:00 PM & Sat 9:00 AM to 12:00 PM MT to set up a payment arrangement.

Thank you,

*Lakota Cash*

11/8/2010

Lakota Cash does not utilize other companies for Customer Service or Collections. If you receive suspicious calls claiming to represent a Payday Loan/Credit Company, do not provide or confirm any information and ask the collector for official documentation to prove the debt. If you believe the call is a scam or the caller is simply abusive or threatening, report it to us at (866) 971-4477.

# **ATTACHMENT B**



Payday Financial, LLC

P.O. Box 128, Timber Lake, SD 57656 (605) 865-3100 - (866) 971-4477

## IMPORTANT NOTICE TO THE EMPLOYER

11/10/2010

To: Associated Wholesale Grocers Inc.

Attn: Payroll Dept. / Human Resources

One of your employees has been identified as owing a delinquent debt to Payday Financial, LLC/Lakota Cash. The Indian Commerce Clause of the United States Constitution and the laws of the Cheyenne River Sioux Tribe permit the preauthorized garnishment of the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Preauthorized Wage Garnishment Assignment directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to Payday Financial, LLC. While not applicable to tribal member owned entities, Payday Financial, LLC follows the general principals of the Debt Collection Improvement Act of 1996 (DCIA). The employee has previously consented to such garnishment and we have notified the employee that this action was going to take place, providing the employee with the opportunity to dispute the debt, opt out of the preauthorized garnishment process, and/or make payment arrangements.

The items listed below substantiate our position in perusing a preauthorized garnishment on your employee, Hildebrand, Chad. Please forward this to the individual responsible for this process. If person is no longer employed please return to sender.

Enclosed you will find the following documents:

1. E-signed customer contract
2. Time Stamp for signing of this document
3. Garnishment letter and work sheet

Please fill out the employer's section and return the original to the address above within ten business days. If you have any questions please contact me at our toll free number 605-865-3580 or my email is [sherrie@lakotacash.com](mailto:sherrie@lakotacash.com).

Sincerely,

Sherrie Ward

Account Specialist

NOTICE: We are not affiliated with ANY debt consolidation company, nor are we affiliated with any other payday loan company. If you believe you have been contacted by someone whom you think is misrepresenting themselves as an agent for this company, or have any questions, please feel free to contact us at the toll-free number: 605-865-3580.



**Section 2: PREAUTHORIZED WAGE GARNISHMENT AMOUNT.**

(a)The preauthorized wage garnishment amount is \$ \_\_.00 to be garnished from the next pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(b)The preauthorized wage garnishment amount is \$ \_\_.00 per pay period in accordance with an agreement between the creditor agency and the employee.

-OR-

(c)The preauthorized wage garnishment amount for each pay period is the lesser of:

- (1) 15 % of the Employee's disposals pay (*not to exceed 15%*)
  
- (2) 25% of the Employee's disposable pay less the amounts withheld under the withholding with priority

Equivalent to 15% of disposable income or 25% of disposable income if there is an additional garnishment or wage assignment already in place i.e.: bankruptcy, child support, tax levies etc...

**Note:** The Employer may use the attached wage garnishment worksheet to calculate the wage garnishment amount.

**IMPORTANT NOTICE TO EMPLOYER**

1. **Disposable pay.** For purposes of the preauthorized wage garnishment, "disposable pay" means the employee's compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions under CRST Tribal Law include Federal, State, and local taxes. State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A wage garnishment worksheet is included with the preauthorized wage garnishment to assist the employer in calculating disposable pay and the wage garnishment amount.
2. **Multiple Withholding.** If in addition to the preauthorized wage garnishment you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%.
3. **Pay cycles.** An employer is not required to vary its normal pay and disbursement cycles to comply with the preauthorized wage garnishment.

**PREAUTHORIZED WAGE GARNISHMENT WORKSHEET**

**Notice to Employers:** The Employer may use a copy of this worksheet each pay period to calculate the preauthorized wage garnishment amount to be deducted from the debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) or 2(b) of the preauthorized wage garnishment assignment specifies the dollar amount to be garnished, the employer does not need to complete this worksheet.

Debtor Name:  Hildebrand, Chad	Employee Social Security No.:  [REDACTED]
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**Pay Period Frequency**

(Select One): Weekly or less      Bi-weekly      Semi-monthly      Monthly

**DISPOSABLE PAY COMPUTATION**

1.	Gross amount paid to employee	
2.	Amounts withheld:	
	a. Federal income tax	
	b. F.I.C.A. (social security)	
	c. Medicare	
	d. State tax (including income tax, unemployment, disability)	
	e. City/Local tax	
	f. Health insurance premiums	
	g. Involuntary retirement or pension plan payments	
3.	Total allowable deductions [Add lines a - g]	
4.	<b>DISPOSABLE PAY</b> [Subtract line 3 from line 1]	

**PREAUTHORIZED WAGE GARNISHMENT AMOUNT COMPUTATION**

If the employee's wages are not subject to any withholding orders, skip to line 8.

5.	15% of disposable pay [Multiple line 4 by .15]	
6.	Total amounts withheld under wage withholding with priority. See section 2(c).	
7.	Subtract line 6 from line 5 [If line 6 is more than line 5, enter zero]	
8.	Multiply the percentage from section 2(c) (1) of the assignment by line 4. (The percentage from section 2(c) (1) of the assignment may not exceed 15%). Example: If the percentage from section 2(c)(1) of the assignment is 15%, multiply .15 by line 4.	
9.	Amount equivalent to 30 times the federal minimum wage (\$7.25) Or your states federal minimum wage	

If the employee is paid, line 9 is: Weekly or less \$154.50 - Bi-Weekly 309.00 - Semi-monthly \$334.75 - Monthly \$669.50	
10. Subtract line 9 from line 4 [if line 9 is more than line 4, enter zero]	
11. <b>PREAUTHORIZED WAGE GARNISHMENT AMOUNT</b> Line 7, 8, or 10, whichever amount is the smallest	

**EMPLOYER CERTIFICATION**

**NOTICE TO EMPLOYERS: THE EMPLOYER MUST COMPLETE AND RETURN THIS CERTIFICATION TO PAYDAY FINANCIAL, LLC WITHIN 10 DAYS OF RECEIPT.**

*To be completed by creditor agency:*

Date of this assignment: November 10, 2010

Payday Financial, LLC  Lakota Cash	Mailing address (include street address, city, state, zip code):  P.O. Box 128 Timber Lake, South Dakota 57656
Employee name:  Hildebrand, Chad	Employee Social Security No.:  

*The remainder of the employer certification is to be completed by employer:*

Employer:	Employer taxpayer identifying number:
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*Please provide the following information for employees no longer employed:*

Employment termination date:	Employee's current employer (if known)
Employee's last known address and telephone no. (if known)	

**Note: If the employee is no longer employed with this employer, the employer will need to complete the rest of this certification. Sign and date this certification and return to Payday Financial, LLC.**

Please check one of the following:

- In process of sending garnished payment  
NOTE: when submitting payment please use reference # 498-90-1148  
Employee is no longer with the company
- Unable to garnish wages. (List reason) \_\_\_\_\_

(Signature) \_\_\_\_\_

PX(☐Date) \_\_\_\_\_

<b>Disbursement Date: 7/21/2010</b> <b>Payment Date: 7/29/2010</b>	<b>Customer #:</b> [REDACTED] <b>Type of Contract: Standard Loan</b>
<b>Lakota Cash</b> <b>PO Box 128</b> <b>Timber Lake, SD 57656</b> <b>Phone: (866)300-5339</b> <b>Fax: (866)300-2767</b> <b>Email: customerservice@lakotacash.com</b>	<b>Name: Hildebrand, Chad</b> <b>Address:</b> [REDACTED] <b>Address:</b> [REDACTED] <b>Phone:</b> [REDACTED]

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.

In this Consumer Loan Agreement (hereinafter, the "Loan Agreement,") the words "you" and "your" mean the borrower who has electronically signed it. The words "we," "us," "our" and "Lender" mean Payday Financial, LLC, a lender organized under and authorized by the laws of the Cheyenne River Sioux Tribe and Indian Commerce Clause of the Constitution of the United States of America.

\*Items removed here to protect customers privacy\*

**GOVERNING LAW:** This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

☐

**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND GARNISHMENT** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you

hereby consent and agree to the potential preauthorized garnishment of wages by us or our assigns or service agents to ensure repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential preauthorized garnishment of wages, and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**PREAUTHORIZED GARNISHMENT OPT-OUT PROCESS.** You may choose to opt out of the Preauthorized Garnishment provision, but only by following the process set-forth below. If you do not wish to be subject to this Preauthorized Garnishment Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Garnishment Provision. After the ten day deadline, you may choose to opt out of the Preauthorized Garnishment Provisions, however you must **CALL** the Lakota Cash Customer Service Department at 605-865-3580 (emails cannot be accepted due to security reasons) and indicate your desire to opt out of the Preauthorized Garnishment Provisions. Within three business days, you will receive an email verifying your choice to opt out of the Preauthorized Garnishment Provision. Your choice will apply only to the Preauthorized Garnishment Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.**

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers,

shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: **(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
3. Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil

procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with the Cheyenne River Sioux Tribal Court having jurisdiction.

6. This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
7. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
8. NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER. In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

**We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance company services. Information we receive from these databases may play a role in whether we extend credit to you.**

## ELECTRONIC SIGNATURES AND CONSENTS

By electronically signing below and providing any additional information as may be requested below, you understand and acknowledge that you are taking the following three (3) separate actions:

### 1. CONSENT TO ELECTRONIC COMMUNICATIONS:

By electronically signing, you are confirming that: (1) your system meets the requirements set forth above in the Consent to Electronic Communications (the "Consent"); (2) you agree to receive all communications electronically and otherwise agree to the terms and conditions of the Consent; and (3) you are able to access and print or store information presented at this website.

### 2. ACH AUTHORIZATION:

By electronically signing this Loan Agreement below, you certify that you have fully read and

understood the ACH AUTHORIZATION provisions of this Loan Agreement, you agree to comply with, and be bound by, their terms and you agree and understand that you are authorizing us to effect both debit and credit entries into your Bank Account to fulfill your obligations under this Loan Agreement.

**3. AGREEMENT TO TERMS AND CONDITIONS OF LOAN AGREEMENT INCLUDING WAIVER OF JURY TRIAL AND ARBITRATION:**

By electronically signing this Loan Agreement by typing your name below, (a) you acknowledge that the Loan Agreement was filled in before you did so and that you have reviewed the entire Loan Agreement including the CHOICE OF TRIBAL LAW AND CHOICE OF TRIBAL COURT, TRUTH-IN-LENDING DISCLOSURES, the WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, our PRIVACY POLICY, and TERMS AND CONDITIONS (b) you acknowledge that your right to file suit against us for any claim or dispute regarding this Loan Agreement is limited by the WAIVER OF JURY TRIAL AND ARBITRATION provisions, (c) you represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for bankruptcy, and (d) you acknowledge that you have read and understood all of the terms of this Loan Agreement including the provisions mentioned above and you agree to comply with, and be bound by, all of those terms.

Lender:

PAYDAY FINANCIAL, LLC/LAKOTA CA

Borrower's E-Signature: Hildebrand, Chad

Please type name as found on the application: Hildebrand, Chad

Borrower:

First Name: Chad

Last Name: Hildebrand

Date: July 21, 2010

***PLEASE NOTE YOU SHOULD PRINT AND RETAIN A COPY OF THIS LOAN AGREEMENT FOR YOUR RECORDS.***

*Any comments or questions may be directed to Lakota Cash Customer Comment Line at the following toll-free number: 8663847129 or via e-mail to customerservice@lakotacash.com*

ESignature History			
Customer Name	Hildebrand, Chad	Loan Amount	455.0000
Customer Address	[REDACTED]	Due Date	7/29/2010
City State Zip	[REDACTED]	Application Date	7/21/2010
Home Phone	[REDACTED]	Origination Date	7/21/2010
Work Phone	[REDACTED]	Store ID	26305000001

Appl#	ESig ID	ESig Desc	OrderNo	Doc ID	ESignature	IPAddress	ESigDate	IsActive
41755394	1	Disclosure Signature	1	2173	Cahd Hildebrand	[REDACTED]	7/21/2010 11:49:00 AM	True

Print Now

# **ATTACHMENT C**



your consent to ongoing electronic communications in the same manner, and ask that they be sent to you in paper or non-electronic form. If you choose to receive Communications in paper or non-electronic form, we may elect to terminate this Loan Agreement and demand payment of the amount then due by the date of your withdrawal of consent; or by the expiration of any minimum term mandated by law, whichever is later.

- You agree to provide us with your current e-mail address for notices at the address or phone number indicated above. If your e-mail address changes, you must send us a notice of the new address by writing to us or sending us an e-mail, using secure messaging, at least five (5) days before the change.
- In order to receive electronic communications in connection with this transaction, you will need a working connection to the Internet. Your browser must support the Secure Sockets Layer (SSL) protocol. SSL provides a secure channel to send and receive data over the Internet through HS encryption capabilities. Netscape 4.7+ and above and Microsoft Internet Explorer 5.01+ and above support this feature. You will also need either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information (e.g., 1 megabyte or more). To download transaction information into Quicken or Microsoft Money, you will need the equipment and software required by their respective operating instructions. We do not provide ISP services. You must have your own internet service provider.
- We may amend (add to, delete or change) these terms by providing you with advance notice.

By electronically signing this Loan Agreement below, you are confirming that: (1) your system meets the requirements set forth above; (2) you agree to receive Communications electronically; and (3) you are able to access and print or store information presented at this website.

**GOVERNING LAW:** This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

**TRUTH IN LENDING DISCLOSURES:** The disclosures below are provided to you so that you may compare the cost of this loan to other loan products you might obtain in the United States. Provision of these disclosures is not a consent to application of state law to us, to the loan, or to the Loan Agreement.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
521.429%	\$105.00	\$350.00	\$455.00
<b>Your Payment Schedule will be:</b>			
<b>One Payment in the Amount of</b>	<b>\$455.00</b>	<b>is due August 12, 2010</b>	
<b>Late or NSF Charge:</b>	If your payment is late by more than two (2) days, or if your payment is returned by your depository institution due to insufficient funds, closed account, stopped payment or for any other reason, you will be charged a fee of \$30.00.		
<b>Security:</b>	You are giving a security interest in the ACH/EFT Authorization.		
<b>Demand Feature:</b>	This obligation is payable on demand if you withdraw your consent to electronic communications.		
<b>Prepayment:</b>	If you pay off early, you will not be entitled to a refund of the finance charge. However, you may rescind this Loan Agreement by 5 p.m. Eastern Time on the next business day following the date your loan is funded at no charge, provided the Amount Financed is repaid in full.		
See the terms of this Loan Agreement for any additional information about nonpayment, default and lack of prepayment penalties.			

Itemization of Amount Financed: Amount given to you directly: \$350.00. Amount paid on Deferred Deposit Transaction No. with us: \$ 0.00

**ACH/EFT AUTHORIZATION:** You hereby voluntarily authorize us, and our successors, agents and assigns, to initiate an automatic credit and debit entry to Your Bank Account: Name of bank and state: **EMPIRE BANK, MO;** Account type: Checking; Bank routing and transit number: [REDACTED]; and Account Number: [REDACTED]

You agree that we will initiate an ACH/EFT debit entry to Your Bank Account for the Total of Payments on August 12, 2010 (the Payment Date), and re-initiate a debit entry for the same amount if the ACH/EFT is dishonored.

You voluntarily agree to the electronic re-presentation by us and our successors, agents, or assigns (including attorneys and collections agencies) of any funds owed and that are returned to us for any reason. Such electronic re-presentation may be for less than the original amount owed us or in any increments totaling the amount due, including the maximum permissible non-sufficient funds fee charged by us. You agree to pay all fees related to the collection of your account. This includes, without limitation, all attorneys' fees, collection fees, and other costs incurred during the collection process.

You authorize us to verify all of the information that you have provided, including past and/or current information. You agree that the debit entry authorized herein is for repayment of a single payment installment loan and shall not recur at substantially regular intervals. If there is any missing or erroneous information in or with your loan application regarding your bank, bank routing and transit number, or account number, then you authorize us to verify and correct such information. You agree that this ACH/EFT Authorization is subject to our approving the Loan Agreement.

The ACH/EFT Authorizations set forth in this Loan Agreement are to remain in full force and effect for this transaction until your indebtedness to us for the Total of Payments, plus any Late or NSF fee incurred, is fully satisfied. You may only revoke the above authorizations by contacting us directly, and only after you have satisfied your indebtedness to us.

If you revoke the authorization to effect an ACH/EFT debit entry before the loan is paid in full, you authorize us to prepare and submit one or more checks drawn on your Account or any account in your name on or after the due date of your loan. Such checks may or may not have an electronic image of your signature. This authorization to prepare and submit a check on your behalf may not be revoked by you until such time as the loan is paid in full. In addition, you understand and acknowledge that in the event you terminate ACH/EFT debit authorization, any loans made by us to you may, at our sole and absolute discretion, become immediately due and payable.

**INSUFFICIENT FUNDS:** If there are insufficient funds on deposit in Your Account to effect an ACH/EFT debit entry on the Payment Date, you agree to pay us a \$30.00 NSF fee, which we may collect via ACH/EFT debit entry to Your Bank Account. You voluntarily authorize us, and our successors and assigns, to initiate a debit entry to Your Bank Account for payment of this fee.

If your payment is returned to us by your financial institution due to insufficient funds or a closed account, you agree that we may recover court costs and reasonable attorney's fees incurred by us.

**LATE CHARGE:** If you fail to make all or any part of a scheduled payment more than two (2) days after its due date, you will be charged a late charge of \$30.00, which we may collect via ACH/EFT debit entry to Your Bank Account.

**DEFAULT, LATE FEES AND GARNISHMENT** You will be in default under this Agreement if You do not pay Us in accordance with the terms of this Agreement. If any payment is late by more than two (2) days after its due date, or if there are insufficient funds on deposit to complete the ACH Debit entry, or your payment is dishonored by your financial institution for any reason including but limited to closed or frozen account, stopped payment, revoked authorization or non-transaction account then You agree to pay an additional late/NSF fee of \$30 in accordance with Cheyenne River Sioux Tribal law, which we or our assigns or service agents may collect via ECheck/ACH debit entry to Your Account. Should you default on this Agreement, you hereby consent and agree to the potential preauthorized garnishment of wages by us

or our assigns or service agents to ensure repayment of this Agreement, fees and costs associated in the collection of outstanding principal and interest. You also expressly agree to the sole application of the Indian Commerce Clause of the US Constitution and the laws of the Cheyenne River Sioux Tribe regarding this Agreement and the potential preauthorized garnishment of wages, and the sole jurisdiction of the Cheyenne River Sioux Tribal Court regarding any and all matters arising therefrom.

**PREAUTHORIZED GARNISHMENT OPT-OUT PROCESS.** You may choose to opt out of the Preauthorized Garnishment provision, but only by following the process set forth below. If you do not wish to be subject to this Preauthorized Garnishment Provision, then you must notify us in writing within (10) calendar days of the date of this Agreement at the following address: Lakota Cash, LLC, PO Box 128, Timber Lake, South Dakota, 57656. Your written notice must include your name, address, Account number or social security number, the date of this Agreement, and a statement that you wish to opt out of this Garnishment Provision. After the ten day deadline, you may choose to opt out of the Preauthorized Garnishment Provisions, however you must CALL the Lakota Cash Customer Service Department at 866-971-4477 (emails cannot be accepted due to security reasons) and indicate your desire to opt out of the Preauthorized Garnishment Provisions. Within three business days, you will receive an email verifying your choice to opt out of the Preauthorized Garnishment Provision. Your choice will apply only to the Preauthorized Garnishment Provisions submitted by you in this transaction.

**ASSIGNMENT:** We may assign or transfer this Loan Agreement or any of our rights hereunder.

**CREDIT BUREAUS:** You agree to allow a search of the databases maintained by certain credit bureaus and consumer information reporting agencies. These databases are national databases of consumers and contain information about transactions with lending institutions.

**TERMS AND CONDITIONS:** You agree to the additional terms and conditions which are made a part of this Loan Agreement.

**WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION, AND ARBITRATION PROVISION.** Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

- For purposes of this Waiver of Jury Trial, Waiver of Class Action, and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, including the Application and Customer Information Sheet, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all federal or state class action claims asserted by you or someone else on your behalf; (j) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (k) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.
- You acknowledge and agree that by entering into this Arbitration Provision: (a) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;** (b) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT, OTHER THAN THE CHEYENNE RIVER SIOUX TRIBAL COURT SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;** and (c) **YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**
- Except as provided in Paragraph 6 below, you agree that all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**
- Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Loan Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Waiver of Jury Trial and Arbitration Provision. You may appear at arbitration via telephone or video conference, and you will not be required to travel to the Cheyenne River Sioux Tribal Nation. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below.
- Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the Cheyenne River Sioux Tribe, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award shall be final and binding on both parties and judgment upon such award may be filed with the Cheyenne River Sioux Tribal Court having jurisdiction.
- This Arbitration Provision is made pursuant to a transaction involving the Indian Commerce Clause of the Constitution of the United States of America, and shall be solely governed by the law of the Cheyenne River Sioux Tribe.
- This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.
- NOTWITHSTANDING THE FOREGOING, THE LENDER RETAINS THE AUTHORITY TO INSTITUTE AN ACTION IN ANY COURT TO RECOVER SUMS DUE THE LENDER BY CUSTOMER HEREUNDER.** In the event Lender, its successors and assignees, initiates collection activity on your account, you agree to be responsible for collection fees, court costs and fees and all reasonable attorney fees.

We utilize the services of consumer transaction databases that track individuals' use of deferred deposit, check cashing, and consumer finance

