

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

Bradstreet & Associates, LLC,

Defendant.

The State of Minnesota by its Attorney General, Lori Swanson, for its Complaint against Defendant Bradstreet & Associates, LLC (“Bradstreet”), alleges as follows:

INTRODUCTION

1. Bradstreet is a Minnesota debt buyer that purchased demand deposit account overdraft debt (“DDA overdraft debt”) that originated with several large national banks. “DDA overdraft debt” consists of charged-off fees and principal that bank customers allegedly owe on overdrawn checking or savings accounts. Bradstreet purchased the DDA overdraft debt from a Florida debt buyer, which bought the debt from Wells Fargo and US Bank. DDA overdraft debt is different than debt incurred on a credit card or line of credit, such as a “reserve line of credit,” in which a bank loans funds to a consumer and may charge interest on the amount advanced. The account agreements between Wells Fargo and US Bank, on the one hand, and consumers, on the other hand, authorize the banks to charge *certain* fees to consumers on DDA overdraft debt but do not authorize the banks to charge *interest* on this debt. Both banks indicate that interest may not lawfully be charged for DDA overdraft debt under their contracts with consumers and

that they did not charge such interest. Unless a higher interest rate is otherwise provided for by contract, Minnesota usury law caps the allowable interest rate on the DDA overdraft debt being collected by Bradstreet at six percent. Bradstreet, however, routinely charged up to 21.75 percent annual interest on DDA overdraft debts that originated with the two banks, both through direct collections and in some cases by obtaining court judgments after representing to courts that the higher rate of interest was due and owing. In some cases, the interest Bradstreet charged substantially increased the debt allegedly owed, sometimes by more than twice the charge-off balance on the account. The State of Minnesota, by its Attorney General, brings this government enforcement action seeking to stop Bradstreet's illegal practices and to obtain restitution for Minnesota consumers.

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Ch. 8, including Minn. Stat. §§ 8.01 and 8.31 (2012), and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

3. Bradstreet is a Minnesota limited liability company, with its registered office at 2355 Southdale Center, Edina, Minnesota 55435, and its principal executive office at 12500 18th Avenue North, Plymouth, Minnesota 55435. Bradstreet was formed in 2010 by its principal, Mark Roering.

4. In addition to purchasing DDA debt directly from the Florida debt buyer, Bradstreet is the assignee of thousands of DDA debts purchased by its predecessor, Bridgestone & Associates, LLC ("Bridgestone"). Bridgestone's registered office and principal executive office were at 12500 18th Avenue North, Plymouth, Minnesota 55435. Bridgestone was formed

in 2009 by its principal, Mark Roering, who testified that he closed Bridgestone and reopened the business as Bradstreet in 2010.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, and 334.01 to 334.21 (2012).

6. This Court has personal jurisdiction over Bradstreet through its presence in Minnesota. Bradstreet does business in Minnesota and has committed acts causing injury to Minnesota citizens.

7. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2012) because the cause of action arose, in part, in Hennepin County.

FACTUAL BACKGROUND

I. **THE ACCOUNT AGREEMENTS BETWEEN THE ORIGINAL BANKS AND CONSUMERS ALLOW THE BANKS TO CHARGE FEES BUT DO NOT ALLOW THE BANKS TO CHARGE INTEREST FOR THE DDA OVERDRAFT DEBTS THAT BRADSTREET BOUGHT FROM THE FLORIDA DEBT BUYER.**

8. “Demand deposit account,” or “DDA,” overdraft debt arises from fees and overdrawn balances on accounts in which a consumer may withdraw money without notice. When a bank customer presents a check or makes a debit card purchase or withdrawal for which there are not sufficient funds in the account, the bank may process the check and cover the purchase or withdrawal and then impose hefty fees, often called “overdraft fees.” In 2010, the average fee for a covered overdraft (e.g., so-called “overdraft fees”) was \$35, according to a 2011 study published by the Pew Health Group entitled *Hidden Risks: The Case for Safe and Transparent Checking Accounts*. Banks also often impose a smaller daily or periodic fee for each period in which the checking or savings account remains in arrears. Because these fees

typically continue to accrue while the account is in arrears, the amount of the fees can quickly balloon.

9. Banks usually charge off overdrawn demand deposit account balances and related fees after passage of a certain amount of time and close the bank account. Some banks then bundle thousands of charged-off accounts into large electronic portfolios of other similar accounts and sell them to debt buyers for pennies on the dollar. The electronic portfolios contain limited information about customers who supposedly owe these overdraft debts. A Florida debt buyer called United Credit Recovery, LLC (“UCR”) purchased billions of dollars of such debt from banks, including US Bank and Wells Fargo. The DDA overdraft debt purchased by UCR, for as little as two or three cents on the dollar, includes money allegedly owed by customers for DDA overdraft fees as well as principal. In many cases, the fees may comprise the majority or a significant portion of the amount allegedly owed.

10. Bradstreet, and its predecessor Bridgestone, purchased from UCR thousands of demand deposit account debts of Minnesota consumers that originated with US Bank and that are comprised of charged-off overdraft fees and balances. The debt that was purchased by Bradstreet did not include any charges for interest and US Bank’s contract with Minnesota consumers did not allow for the imposition of interest. Bradstreet and Bridgestone paid UCR approximately \$646,000 to purchase US Bank DDA overdraft debt with an estimated face value of more than \$9 million, or approximately three to seven cents on the dollar. Bradstreet and Bridgestone purchased at least seven different US Bank portfolios from UCR, with the first purchase on or about September 24, 2009 and the last purchase on or about April 24, 2012. US Bank has no financial interest in the DDA overdraft debt being collected by Bradstreet.

11. Bradstreet and Bridgestone also purchased from UCR thousands of demand deposit account debts of Minnesota consumers that originated with Wells Fargo and that are comprised of charged-off overdraft fees and balances. The debt that was purchased by Bradstreet did not include any charges for interest and Wells Fargo's contract with Minnesota consumers did not allow for the imposition of interest. Bradstreet and Bridgestone paid UCR approximately \$434,000 to purchase Wells Fargo DDA overdraft debt with an estimated face value of more than \$9 million, or approximately three to six cents on the dollar. Bradstreet and Bridgestone purchased at least nine different Wells Fargo portfolios from UCR, with the first purchase on or about May 4, 2011 and the last purchase on or about April 11, 2012. Wells Fargo has no financial interest in the DDA overdraft debt being collected by Bradstreet.

12. US Bank and Wells Fargo assessed certain fees provided for by contract to overdrawn demand deposit account balances, but they did not charge interest on these debts. Neither US Bank nor Wells Fargo had any contractual right to charge interest on DDA overdraft debts for Minnesota consumers. (As noted above, DDA overdraft debt is different than debt incurred on a credit card or line of credit, such as a "reserve line of credit," in which a bank advances funds to a consumer and may charge interest on the amount advanced if it is contractually authorized. This lawsuit only relates to DDA overdraft debt and not the latter type of credit-related debt.)

13. The Minnesota Attorney General's Office took the deposition of US Bank in September of 2013. US Bank's Senior Vice President, Jacob vanBrandwijk, testified that US Bank charged certain fees to overdrawn demand deposit accounts, but it did not charge interest on these debts and had no contractual basis to do so. He testified as follows:

Q: When you talk about fees being added to an [demand deposit] account that's charged off, help clarify for me pre charge-off fees . . . [a]nd post charge-off fees.

.....

A: Typically, the fees that we look at on a DDA account are pre charge-off fees [T]ypically as an account is overdrawn there are continuous overdraft fees, there are fees for the overdraft itself, and there may be other fees that accrue to the account. So by the time it charges off the balance is not necessarily the same as the balance was the day the customer overdrafted it.

Q: In other words, it could be the principal amount of the overdraft plus any combination or number of fees after the overdraft; is that right?

A: That's correct.

Q: And do the fees . . . continue after the charge-off?

A: Typically we do not. As our institution is concerned, we do not add additional fees. And that's basically the nature of a DDA. It's not an interest bearing item. So it wouldn't continue to accrue interest.

Q: And when you say a DDA is not an interest bearing item, is that to say from the date of the overdraft to the date of the charge-off, while fees may be added, interest would not accrue on the account; is that right?

A: That is correct. That is correct.

.....

Q: And post charge-off certainly the bank would not add or charge interest to DDA accounts; is that right?

A: That is correct. That is correct. And I want to make just kind of a clarification statement if I could on that.

Q: Okay.

A: DDA accounts are by their nature not accounts that accrue interest. All right?

Q: Okay.

A: So because they're not typically imagined as being a deficit type of an account, so there's no provision for a charge of interest on an overdraft amount

14. The Minnesota Attorney General's Office took the deposition of Wells Fargo in October of 2013. Wells Fargo's Collection Manager, Marcus O'Sullivan, testified that Wells Fargo charged fees to overdrawn demand deposit accounts, but it did not charge interest on these debts and had no contractual basis to do so. He testified as follows:

Q: And when credit is extended to a consumer through an overdraft protection plan [e.g. DDA overdraft debt] to cover a purchase that would otherwise be declined for insufficient funds, is it true that while the consumer might incur fees associated with the extension of credit, interest would not accrue through overdraft protection plan credit?

.....

A: Yes, that is correct, no interest.

.....

Q: Do you know if the overdraft checking accounts that we're discussing here are subject to some contractual interest being applied to them over the life of those balances being negative?

A: No.

Q: You don't know or they're not?

A: No interest.

Q: Was there ever any information in these data files transmitted from Wells Fargo to UCR in connection with the sale of overdraft debts on an interest rate that . . . could be applied to the individual accounts?

A: No.

II. BRADSTREET ROUTINELY CHARGED UP TO 21.75 PERCENT ANNUAL INTEREST TO DDA OVERDRAFT DEBTS IT PURCHASED FROM UCR AND WHICH ORIGINATED WITH US BANK OR WELLS FARGO.

15. Notwithstanding that there is no contractual basis to charge interest on the DDA overdraft debt that Bradstreet (or Bridgestone) purchased from UCR and UCR purchased from US Bank or Wells Fargo, Bradstreet charged interest of up to 21.75 percent when demanding

payment from, or seeking to obtain judgments against, Minnesota consumers for these DDA overdraft debts.

16. Bradstreet routinely placed collection calls and sent collection letters to Minnesota consumers demanding payment on US Bank and Wells Fargo DDA overdraft debt for charged-off fees and principal, plus 21.75 percent annual interest from the date the accounts were charged off by the original banks. In many cases, Bradstreet's addition of illegal interest led to exploding balances that were close to, or more than, twice the amount of the original debt. Through its collection letters and collection calls, Bradstreet imposed, demanded, and obtained payments from Minnesota consumers of, interest to which it was not lawfully entitled.

17. Bradstreet routinely filed lawsuits in conciliation courts throughout the State of Minnesota, seeking judgments against Minnesota consumers on US Bank and Wells Fargo DDA overdraft debts for charged-off fees and principal, plus 21.75 percent annual interest from the date the accounts were charged off by the original banks. In many cases, Bradstreet's addition of the unlawful interest led to exploding balances that were close to, or more than, twice the amount of the original debt. Through its lawsuits, Bradstreet obtained judgments against Minnesota consumers with interest to which it was not lawfully entitled.

18. The following is a nonexclusive list of representative examples of Bradstreet's practice of demanding unlawful interest from Minnesota consumers:

J.W.

19. J.W. is a 33 year-old resident of Rosemount. She works as an account supervisor for an advertising agency.

20. Bradstreet placed collection calls to J.W. seeking payment of an alleged DDA overdraft debt that originated with Wells Fargo and was purportedly purchased by UCR and

resold to Bradstreet. According to Bradstreet's records, Wells Fargo charged off the account in the amount of \$952.19. Bradstreet ultimately filed a lawsuit against J.W. in Dakota County Conciliation Court and obtained a judgment against J.W. of \$1,575.92, which amount included the principal balance of \$952.19, a filing fee of \$75, and interest of \$548.73 at the illegal rate of over 20%. Bradstreet had no contractual basis to seek interest on this alleged debt, and no right to charge interest above Minnesota's statutory rate of interest of six percent. Bradstreet collected the entire amount of the default judgment, including the unlawful interest, through garnishment of J.W.'s wages.

J.B.

21. J.B. is a 26 year-old resident of Willmar. She works as an in-home care service provider.

22. Bradstreet sent a letter to J.B., seeking payment of an alleged DDA overdraft debt that originated with US Bank and was purportedly purchased by UCR and resold to Bradstreet. In its letter to J.B., Bradstreet indicated that US Bank charged off the account in the amount of \$1,886.20. Bradstreet claimed that interest had been accruing on the charged-off balance for nearly five years at 21.75 percent and that J.B. owed Bradstreet \$3,882.37. Bradstreet ultimately filed a lawsuit in Kandiyohi County Conciliation Court and obtained a judgment against J.B. in the amount of \$4,108.72, which amount includes the principal balance of \$1,886.20, a \$75 filing fee, and interest of \$2,147.52 at the illegal rate of 21.75 percent. Bradstreet had no contractual basis to seek interest on this alleged debt, and no right to charge interest above Minnesota's statutory rate of interest of six percent.

J.D.

23. J.D. is a 42 year-old resident of Minneapolis. She works as a mental health professional, providing mental health support services for veterans. She is also taking classes to obtain a master's degree in social work.

24. Bradstreet sent a letter to J.D., seeking payment of an alleged DDA overdraft debt that originated with US Bank and was purportedly purchased by UCR and resold to Bradstreet. In its letter, Bradstreet indicated that the account was charged off in the amount of \$2,073.11, and that although J.D. paid Bradstreet \$1,500, she still owed Bradstreet \$2,608.41, with interest continuing to accrue at 21.75 percent. Bradstreet ultimately filed a lawsuit against J.D. in Hennepin County Conciliation Court and obtained a judgment against J.D. in the amount of \$2,811.74, which amount includes the principal balance of \$2,608.41, a \$70 filing fee, and interest of \$133.33 at the illegal rate of over 19%. The judgment amount, plus the \$1,500 J.D. already paid to Bradstreet, brought the total balance of the alleged debt to \$4,311.74, on a charge-off amount of \$2,073.11. Bradstreet had no contractual basis to seek interest on this alleged debt, and no right to charge interest above Minnesota's statutory rate of interest of six percent.

D.S.

25. D.S. is a 36 year-old resident of Columbia Heights. He served for six years in the armed forces and is currently looking for full time employment.

26. According to Bradstreet's records, Wells Fargo charged off an alleged DDA overdraft debt in the amount of \$1,349.80. D.S. called Bradstreet to inquire about the account and was told that he owed Bradstreet approximately \$2,400, which amount included more than \$1,000 of interest accruing on the charged-off balance for over four years, an amount far above

the statutory rate. Bradstreet entered into an agreement requiring D.S. to make monthly payments until the alleged debt was paid in full, even though Bradstreet had no contractual basis to seek interest on this alleged debt, and no right to charge interest above Minnesota's statutory rate of interest of six percent.

27. Bradstreet later sent a letter to D.S. indicating that Wells Fargo charged off the alleged debt in the amount of \$1,349.80, acknowledging that Bradstreet had received \$900 in payments from D.S., and claiming that D.S. still owed \$1,520.95, which amount included interest of \$1,071.15. Bradstreet's letter incorrectly stated that interest was accruing at six percent, when a much higher rate was applied.

R.T.

28. R.T. is a 38 year-old resident of South St. Paul. She works as a customer service representative for a chain of grocery stores.

29. Bradstreet called R.T. and told her that she owed Bradstreet more than \$800 dollars on an alleged DDA overdraft debt that originated with US Bank that was purportedly purchased by UCR and resold to Bradstreet. According to Bradstreet's records, US Bank charged off the alleged debt in the amount of \$499.20. Bradstreet ultimately filed a lawsuit in Dakota County Conciliation Court and obtained a judgment against R.T. in the amount of \$800.87, which amount includes the principal balance of \$499.20, a \$75 filing fee, and interest of \$226.67 at the illegal rate of over 21 percent. Bradstreet had no contractual basis to seek interest on this alleged debt, and no right to charge interest above Minnesota's statutory rate of interest of six percent. R.T. was intimidated by Bradstreet's representative and agreed to a payment plan secured by an order for judgment in favor of Bradstreet for \$800.87.

COUNT I
MINN. STAT. §§ 8.31 AND 334.01

30. The State re-alleges all prior paragraphs of this Complaint.

31. The general usury rate caps under Minnesota law are set forth in Minn. Stat. §§ 334.01 to 334.21.

32. Minn. Stat. § 334.01, subd. 1 provides, in relevant part, that the “interest for any legal indebtedness shall be at the rate of \$6 upon \$100 per year, unless a different rate is contracted for in writing,” and that “[n]o person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than \$8 on \$100 for one year.”

33. These interest rate caps apply to DDA overdraft debts that Bradstreet collected from, or for which it obtained judgments against, Minnesota consumers, as set forth in this Complaint.

34. Bradstreet charged and collected interest at a rate of up to 21.75 percent from Minnesota consumers. This rate of interest is usurious under Minnesota law and violates Minn. Stat. § 334.01, subd. 1.

COUNT II
UNJUST ENRICHMENT

35. The State re-alleges all prior paragraphs of this Complaint.

36. By paying Bradstreet interest rates that far exceed those allowed by Minnesota law, Minnesota consumers conferred a benefit on Bradstreet.

37. Bradstreet knowingly accepted such benefit, to which it was not entitled.

38. Bradstreet’s acceptance and retention of such benefit under these circumstances would be unjust and inequitable.

39. As a matter of equity and Minnesota common law, Minnesota consumers should be made whole by application of the doctrine of unjust enrichment.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Bradstreet as follows:

1. Declaring that Bradstreet's actions, as set forth above, constitute multiple violations of Minn. Stat. § 334.01, subd. 1;

2. Enjoining Bradstreet and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in conduct in violation of Minn. Stat. § 334.01, subd. 1;

3. Awarding judgment against Bradstreet for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. § 8.31, and other authority, for all persons injured by Bradstreet's acts described in this Complaint;

4. Awarding judgment against Bradstreet for civil penalties pursuant to Minn. Stat. § 8.31, subd. 3, for each separate violation of Minnesota law;

5. Disgorging Bradstreet's ill-gotten gains pursuant to the doctrine of unjust enrichment;

6. Awarding the State its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

7. Granting such further relief as provided by law or as the Court deems appropriate and just.

Dated: January 8, 2014

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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2012).

/s/ David Cullen
DAVID CULLEN