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Hennepin County Civil, MN

STATE OF MINNESOTA

DISTRICT COURT
Hon. Marilyn Brown Rosenbaum

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

In re Bradstreet & Associated Debt Collection Litigation.

State of Minnesota by its Attorney General, Lori Swanson,

Plaintiff,

vs.

ORDER
Court File No. 27-CV-14-302

Bradstreet & Associates, LLC,

Defendant.

The above-entitled matter came on for hearing before the Honorable Marilyn Brown Rosenbaum on July 28, 2014 upon the motion of Plaintiff State of Minnesota for default judgment.

David Cullen, Assistant Minnesota Attorney General, appeared and made submissions on behalf of Plaintiff State of Minnesota.

Steven Little, Esq. appeared on behalf of Defendant Bradstreet & Associates, LLC and failed to make any submissions.

Based upon the records, files, and proceedings herein, and being fully informed in the premises, the Court makes the following:

FINDINGS OF FACT

1. The State filed and served its Summons and Complaint on January 8, 2014, alleging that Defendant Bradstreet & Associates, LLC ("Bradstreet") charged Minnesota residents for interest that they did not owe in connection with alleged debt purchased by Bradstreet or its predecessor Bridgestone & Associates, LLC ("Bridgestone"). (*See* Complaint, filed Jan. 8, 2014.) The Complaint further alleges that Bradstreet is the successor in interest to and assignee of judgments obtained by Bridgestone.[1] (*Id.* at ¶¶ 4, 10, 11, and 15; *see also* Stipulation and Injunction, filed Jan. 10, 2014, confirming the same.)

[1] Bradstreet was formed in 2010 as 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 55441. (*See* Complaint at ¶ 3; *see also* Minnesota Secretary of State records, attached as Ex. A to July 18, 2014 Affidavit of David Cullen ("Cullen Aff.").) Bridgestone's registered office and principal

2. The Complaint asserts claims against Bradstreet for violations of state usury laws under Minn. Stat. § 334.01 (2012), and for unjust enrichment. (*See* Complaint at ¶¶ 30-39.) The Complaint seeks a judgment against Bradstreet as follows: (1) declaring that Bradstreet's actions, as set forth in the Complaint, constitute multiple and separate violations of Minn. Stat. §334.01, subd. 1; (2) enjoining Bradstreet 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 the Court, Minn. Stat. § 8.31 (2012), and other authority, for all persons injured by Bradstreet's acts described in the 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. (*Id.* at Requested Relief ¶¶ 1-7.)

3. The State served the Summons and Complaint on Bradstreet on January 8, 2014 by U.S. Mail. (*See* Cullen Aff. at ¶ 5; *see also* Affidavit of Service with Notice and Acknowledgment, filed Jan. 9, 2014.) Bradstreet acknowledged receipt of the Summons and Complaint by returning to the State a signed Notice and Acknowledgement of Service on January 9, 2014. (*Id.*) The deadline for Bradstreet to answer the State's Complaint was January 29, 2014. (*See* Summons and Notice and Acknowledgment, indicating that a default judgment would be entered for the relief requested in the Complaint if Bradstreet did not serve an Answer within 20 days.) Bradstreet has failed to plead or otherwise defend. (*See* Cullen Aff. at ¶ 6.) Moreover, Bradstreet has represented to the State that it has closed its doors, has ceased collections operations, and has no intention of defending against this action. (*Id.*; *see also* Stipulation and Injunction, filed Jan. 10, 2014.) Bradstreet did not file or serve a response to the motion of the State for default judgment.

4. Bradstreet, on its own behalf and as assignee of accounts and judgments obtained by Bridgestone, stipulated to entry of an order issued by this Court on January 10, 2014, requiring that (1) all judgments entered in favor of Bradstreet or Bridgestone, in any case in which Bradstreet or Bridgestone was the plaintiff in any Minnesota state court be vacated; (2) Bradstreet correct any negative credit reporting that Bradstreet or Bridgestone submitted to any credit reporting agencies or any consumer reporting agencies related to any alleged debt, or judgment on such debt, allegedly owed by a Minnesota consumer; (3) Bradstreet permanently close all accounts involving any alleged debt of any Minnesota consumer; (4) Bradstreet cease all collection efforts on all alleged debt of any Minnesota consumer; and (5) Bradstreet refrain

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executive office were at 12500 18th Avenue North, Plymouth, Minnesota 55441. (*See* Complaint at ¶ 4; *see also* Minnesota Secretary of State records, attached as Ex. B to Cullen Aff.) Bridgestone was formed in 2009. Bridgestone was closed and reopened as Bradstreet in 2010. (*Id.*; *see also* Deposition Transcript of Nov. 13, 2012 testimony of Bradstreet's principal, Mark Roering, at 16:14-16, attached as Ex. C to Cullen Aff.)

from assigning, reselling, or otherwise transferring any existing debts or accounts of any Minnesota consumer to any other natural person or business entity. (*See* Stipulation and Injunction, filed Jan. 10, 2014.)

5. On February 4, 2014, the Minnesota Supreme Court issued an order, on the joint motion of the parties, appointing the Honorable Marilyn Brown Rosenbaum to preside over, hear, and decide all matters related to the January 10, 2014 Stipulation and Injunction. (*See* Feb. 4, 2014 Order, attached as Ex. D to Cullen Aff.) The Supreme Court noted that assignment of open and closed Bradstreet and Bridgestone cases in Minnesota state courts to a single judge would "further the interests of the parties and the judiciary by preventing inconsistent rulings, conserving the resources of the parties, their counsel, and the judiciary, and facilitating the vacating of judgments, dismissal, or other resolution of cases filed by Bradstreet [or Bridgestone] in Minnesota." (*Id.* at 2.) The Supreme Court directed the parties to submit to Judge Rosenbaum a complete and verified list of all cases in Minnesota state courts that were subject to the parties' stipulation to vacate judgments or their agreement to dismiss or otherwise resolve cases filed by Bradstreet or Bridgestone. (*Id.*) The Supreme Court also directed the State Court Administrator to provide Judge Rosenbaum the information needed by the district and conciliation courts to process directions and orders for vacating judgments, dismissing cases, or otherwise resolving the cases filed by Bradstreet or Bridgestone. (*Id.*)

6. The Court held a telephone conference on February 5, 2014 with counsel for the State and counsel for Bradstreet concerning implementation of the January 10, 2014 Stipulation and Injunction, pursuant to the Supreme Court's February 4, 2014 Order. (*See* Feb. 5, 2014 Order; and Cullen Aff. at ¶ 8.) During the conference, counsel for Bradstreet indicated that while Bradstreet would compile a verified list of cases for purposes of vacating judgments and dismissing lawsuits with prejudice, Bradstreet did not intend to answer the Complaint or defend against the State's enforcement action. (*Id.*) A status conference was scheduled with the Court and the parties on February 26, 2014. (*Id.*)

7. The February 26, 2014 conference was attended by counsel for the State, counsel for Bradstreet and Bridgestone, Bradstreet's Vice President, and counsel from the State Court Administrator's Office. (*See* Cullen Aff. at ¶ 9.) Bradstreet submitted to the Court and the State its verified lists of Bradstreet and Bridgestone cases with judgments to be vacated and/or complaints to be dismissed in Minnesota state courts, pursuant to the January 10, 2014 Stipulation and Injunction and the Supreme Court's February 4, 2014 Order. (*Id.*)

8. The Court issued an order on March 10, 2014, on the joint motion of the parties, vacating judgments and dismissing complaints with prejudice pursuant to the verified lists of cases prepared and submitted by Bradstreet. (*See* Mar. 10, 2014 Findings of Fact and Order to Vacate Judgments and Dismiss Complaints with Prejudice.) On April 1 and 22, and June 11,

2014, the Court issued orders to vacate additional judgments and dismiss additional complaints in Bradstreet and Bridgestone cases that should have been included in Bradstreet's verified lists of cases but were not, and correcting clerical or typographical errors in certain cases that were included in Bradstreet's verified lists of cases. (*See* Orders filed Apr. 1 and 22, and June 11, 2014.)

9. As set out in the Complaint, Bradstreet and its predecessor Bridgestone purchased demand deposit account overdraft debt ("DDA overdraft debt") that originated with several large national banks. (*See* Complaint at ¶¶ 1, 10, and 11; *see also* exemplar copies of Bradstreet and Bridgestone Purchase Agreements, attached as Exs. E and F to Cullen Aff.) "DDA overdraft debt" consists of charged-off fees and principal that bank customers allegedly owe on overdrawn checking or savings accounts. (*See* Complaint at ¶¶ 1 and 8; *see also* Deposition Transcript of Sept. 12, 2013 testimony of US Bank's Senior Vice President, Jacob vanBrandwijk, ("vanBrandwijk Dep.") at 79:17-82:10, attached as Ex. G to Cullen Aff.; and Deposition Transcript of Oct. 2, 2013 testimony of Wells Fargo's Collection Manager, Marcus O'Sullivan, ("O'Sullivan Dep.") at 9:23-13:8, attached as Ex. H to Cullen Aff.) Bradstreet and Bridgestone purchased the DDA overdraft debt from a Florida debt buyer, which bought the debt from Wells Fargo and US Bank. (*See* Complaint at ¶ 1; *see also* exemplar copies of Bradstreet and Bridgestone Purchase Agreements, attached as Exs. E and F to Cullen Aff.)

10. 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. (*See* Complaint at ¶ 1; *see also* vanBrandwijk Dep. at 16:19-18:4 and 81:22-82:10, attached as Ex. G to Cullen Aff.; and O'Sullivan Dep. at 12:15-24 and 17:9-15, attached as Ex. H to Cullen Aff.) 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. (*Id.*) 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. (*See* Complaint at ¶ 1; *see also* Minn. Stat. §§ 334.01 to 334.21 (2012).)

11. 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. (*See* Complaint at ¶ 1; *see also* exemplar copy of Bradstreet collection letter, attached as Ex. I to Cullen Aff.) 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. (*Id.*)

12. As noted in the Complaint, "demand deposit account," or "DDA," overdraft debt arises from fees and overdrawn balances on accounts in which a consumer may withdraw money without notice. (*See* Complaint at ¶ 8; *see also* The Pew Health Group's publication entitled *Hidden Risks: The Case for Safe and Transparent Checking Accounts* at 11-14, attached as Ex. J to Cullen Aff.) 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." (*Id.*) In 2010, the average fee for a covered overdraft (e.g., so-called "overdraft fees") was $35. (*See* Complaint at ¶ 8; *see also Hidden Risks* at 20, attached as Ex. J to Cullen Aff.) Banks also often impose a smaller daily or periodic fee for each period in which the checking or savings account remains in arrears. (*See* Complaint at ¶ 8; *see also Hidden Risks* at 12, attached as Ex. J to Cullen Aff.) Because these fees typically continue to accrue while the account is in arrears, the amount of the fees can quickly balloon. (*Id.*)

13. 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. (*See* Complaint at ¶ 9; *see also* vanBrandwijk Dep. at 80:8-81:10, attached as Ex. G to Cullen Aff.; and O'Sullivan Dep. at 13:14-17, attached as Ex. H to Cullen Aff.) 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. (*See* Complaint at ¶ 9; *see also, e.g.,* Aug. 22, 2008 purchase agreement between US Bank and UCR, selling overdraft debt for 3.5 cents on the dollar, attached as Ex. K to Cullen Aff.; and Jan. 6, 2010 purchase agreement between Wells Fargo and UCR, selling overdraft debt for 2.67 cents on the dollar, attached as Ex. L to Cullen Aff.) The electronic portfolios contain limited information about customers who supposedly owe these overdraft debts. (*See* Complaint at ¶ 9; *see also, e.g.,* electronic datafile provided by US Bank to UCR with the sale of overdraft debt, attached as Ex. M to Cullen Aff.)

14. 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. (*See* Complaint at ¶ 9; *see also* excerpts from purchase agreements between US Bank and UCR, dated Dec. 7, 2007 to July 25, 2011, attached as Ex. N to Cullen Aff.; and Tab 1 to Affidavit of Wells Fargo's Collection Manager, Marcus O'Sullivan, filed in *UCR v. Wells Fargo*, filed on May 3, 2012 in Case No. 1:12-CV-21692-JAL (S.D. Fla. 2012), attached as Ex. O to Cullen Aff.) 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. (*See* Complaint at ¶ 9; *see also* vanBrandwijk Dep. at 79:17-81:10, attached as Ex. G to Cullen Aff.; and O'Sullivan Dep. at 9:23-12:24, attached as Ex. H to Cullen Aff.) In many cases, the fees may comprise the majority or a significant portion of the amount allegedly owed. (*See* Complaint at ¶ 9; *see also, e.g.,* Oct. 5, 2011 US Bank letter to consumer at 2-3, summarizing overdraft fees of more than

$700 assessed to an overdraft of $7.09 on account ending in 2622, attached as Ex. P to Cullen Aff.)

15. 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. (*See* Complaint at ¶ 10; *see also* excerpts from purchase agreements between UCR and Bradstreet or Bridgestone, attached as Ex. Q to Cullen Aff.) 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. (*See* Complaint at ¶ 10; *see also* vanBrandwijk Dep. at 16:19-18:4 and 81:22-82:10, attached as Ex. G to Cullen Aff.) 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. (*See* Complaint at ¶ 10; *see also* excerpts from purchase agreements between UCR and Bradstreet or Bridgestone, attached as Ex. Q to Cullen Aff.) 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. (*Id.*)

16. 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. (*See* Complaint at ¶ 11; *see also* excerpts from purchase agreements between UCR and Bradstreet or Bridgestone, attached as Ex. R to Cullen Aff.) 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. (*See* Complaint at ¶ 11; *see also* O'Sullivan Dep. at 12:15-24 and 17:9-15, attached as Ex. H to Cullen Aff.) Bradstreet and Bridgestone paid UCR approximately $390,000 to purchase Wells Fargo DDA overdraft debt with an estimated face value of more than $8 million, or approximately three to four cents on the dollar. (*See* Complaint at ¶ 11; *see also* excerpts from purchase agreements between UCR and Bradstreet or Bridgestone, attached as Ex. R to Cullen Aff.) Bradstreet and Bridgestone purchased at least eight different Wells Fargo portfolios from UCR, with the first purchase on or about August 19, 2011 and the last purchase on or about April 11, 2012. (*Id.*)

17. 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. (*See* Complaint at ¶ 12; *see also* vanBrandwijk Dep. at 79:17-82:10, attached as Ex. G to Cullen Aff.; and O'Sullivan Dep. at 9:23-13:8 and 17:9-15, attached as Ex. H to Cullen Aff.) Neither US Bank nor Wells Fargo had any contractual right to charge interest on DDA overdraft debts for Minnesota consumers. (*Id.*)

18. The Minnesota Attorney General's Office took the deposition of US Bank in September of 2013. (*See* Complaint at ¶ 13.) 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. (*Id.*; *see also* vanBrandwijk Dep. at 16:19-18:4 and 81:22-82:10, attached as Ex. G to Cullen Aff.)

19. The Minnesota Attorney General's Office took the deposition of Wells Fargo in October of 2013. (*See* Complaint at ¶ 14.) 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. (*Id.*; *see also* O'Sullivan Dep. at 12:15-24, 17:9-15, and 27:7-12, attached as Ex. H to Cullen Aff.)

20. 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. (*See* Complaint at ¶15; *see also* exemplar copy of Bradstreet collection letter, attached as Ex. I to Cullen Aff.)

21. As set forth in the Complaint, 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. (*See* Complaint at ¶ 16; *see also* exemplar copy of Bradstreet collection letter, attached as Ex. I to Cullen Aff.) 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. (*Id.*) 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. (*Id.*)

22. 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. (*See* Complaint at ¶ 17; *see also* exemplar copies of Bradstreet lawsuits, attached as Exs. S, T, U, and W to Cullen Aff.) 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. (*Id.*) Through its lawsuits, Bradstreet obtained judgments against Minnesota consumers with interest to which it was not lawfully entitled. (*Id.*) Bradstreet's practice of charging illegal interest appears to have been lucrative, as it generated $1,430,613.46 in collection revenue in 2013 alone. (*See* gross profits listed in Bradstreet's Profit and Loss Statements for 2013 at 1, attached as Ex. X to Cullen Aff.)

23. The State submitted a nonexclusive list of representative examples of Bradstreet's practice of demanding unlawful interest from Minnesota consumers, with supporting documents regarding the same. (*See* Complaint at ¶¶ 19-29; *see* also Bradstreet's collection records, attached as Exs. S to W to Cullen Aff.)

CONCLUSIONS OF LAW

1. Rule 55.01 of the Minnesota Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against the party . . . ." *See also* Minn. Gen. R. Pract. 117.02 (stating that a "party entitled to judgment by default shall move the court for judgment in that party's favor, setting forth by affidavit the facts which entitle that party to relief").[2] Default judgment is appropriate in this case because the record supports the State's claims against Bradstreet, the relief requested in the Complaint is appropriate, and Bradstreet has failed to defend against this action.

2. The allegations set forth in the Complaint, and the affidavits and exhibits submitted by the State in support of its motion for default judgment evidence Bradstreet's repeated violations of Minnesota's Usury Statute (Minn. Stat. § 334.01) and Bradstreet's unjust enrichment at the expense of Minnesota consumers. The general usury rate caps under Minnesota law are set forth in Minn. Stat. § 334.01 to 334.21. 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." These interest rate caps apply to DDA overdraft debt that Bradstreet and Bridgestone collected from, or for which they obtained judgments against, Minnesota consumers, as set forth above and in the Complaint. 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.

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[2] The broad language of Rule 55 provides "the court with the discretion to ascertain facts or fashion relief in any reasonable way it deems appropriate to effectuate the proper judgment," and "to accept proof by way of affidavits, by documentary evidence, by oral testimony of witnesses, by a summary of facts recited by counsel on the record, or by other means." 2 David F. Herr & Roger S. Haydock, Minn. Pract. § 55.11 (5th ed. 2012). An affidavit setting forth the facts entitling a party to entry of default judgment may be submitted by a party or their attorney, and may include reliable hearsay. *See* Minn. R. Gen. Pract. 117.02.

3. In this case, the State requests in its Complaint that the Court award judgment against Bradstreet for restitution for Minnesota consumers victimized by Bradstreet's illegal collection practices, civil penalties, injunctive relief, costs and attorneys' fees, and such further relief as the Court deems just and appropriate. The relief the State seeks through its motion for default judgment is limited to the kind and degree of relief demanded in its Complaint.

4. Pursuant to Minn. Stat. § 8.31, the State is entitled to obtain a civil penalty of up to $25,000 for each violation of Minnesota's consumer protection laws. *See* Minn. Stat. § 8.31, subd. 3(b) (stating that the Attorney General is entitled "to sue for and recover for the state . . . a civil penalty, in an amount to be determined by the court, not in excess of $25,000"); Minn. Stat. § 645.24 (2012) (stating that "[w]hen a penalty or forfeiture is provided for the violation of a law, such penalty or forfeiture shall be construed to be for each such violation"); *State by Humphrey v. Alpine Air Prods.*, 490 N.W.2d 888, 896 (Minn. App. 1992) (recognizing that the State is entitled to civil penalties of up to $25,000 for each violation of law); Minn. Stat. § 8.31, subd. 1.

5. In this case, the State seeks a civil penalty of $500,000. Bradstreet engaged in a pattern and practice of charging and collecting 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. As evidenced by the purchase agreements Bradstreet and Bridgestone entered into with UCR, Bradstreet acquired (directly or as Bridgestone's assignee) more than 24,000 accounts involving debts allegedly owed by Minnesota consumers. The high volume of Bradstreet's collection activity is further evidenced by the more than $1.4 million in collection revenue generated by Bradstreet in 2013 alone, and this Court's orders vacating judgments and dismissing complaints in lawsuits filed in Minnesota state courts by Bradstreet and Bridgestone against more than 2,800 Minnesota consumers. The State is entitled to civil penalties of up to $25,000 for *each* attempt by Bradstreet to collect unlawful interest on *each* of these accounts. The imposition of a civil penalty against Bradstreet in the amount of $500,000 is amply supported by the record, and appropriate given the extent of Bradstreet's illegal collection practices balanced against the injunctive relief agreed to by Bradstreet and ordered by the Court to date.

6. The Attorney General is empowered to obtain the equitable remedy of restitution for Minnesota consumers. *See Alpine Air Products*, 490 N.W.2d at 896, n. 4. The granting of equitable relief is within a court's sound discretion, and will not be reversed absent a clear abuse of that discretion. *Id.*; *see also State of Minnesota v. Am. Family Prepaid Legal Corp.*, 2012 WL 2505843, *4 (Minn. App. July 2, 2012).

7. In this case, the State seeks an order requiring Bradstreet to pay restitution to the State for all persons injured by Bradstreet's acts described in the Complaint. As noted above,

Bradstreet generated $1,430,613.46 in collection revenue in 2013, presumably on debts purchased directly by Bradstreet and debts purchased by Bridgestone that were assigned to Bradstreet. For purposes of restitution, the State assumes that 21.75 percent of each dollar collected by Bradstreet, and its predecessor Bridgestone, was for interest. Allowing for collection of interest at the statutory rate of six percent, Bradstreet charged and collected unlawful interest of 15.75 percent on each dollar collected from Minnesota consumers. As such, restitution in the amount of $225,322 ($1,430,613 x 15.75%) is an appropriate amount for 2013. Given that Bradstreet was in business since 2010, and that its predecessor Bridgestone was in business in 2009, the State requests that the Court enter judgment against Bradstreet in the amount of $1,126,608 ($225,322 x 5 years) for restitution for Bradstreet's victims.

8. Minnesota Statutes Section 8.31 specifically provides that the Attorney General may request, and that courts have the power to grant, injunctive relief to prevent and restrain violations of the laws of this state regarding unfair, discriminatory, and other unlawful practices in business, commerce, and trade:

> **Injunctive Relief.** In addition to the penalties provided by law for violation of the laws referred to in subdivision 1, specifically and generally, whether or not injunctive relief is otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of those laws . . . .
>
> Minn. Stat. §8.31, subd. 3.

9. The Attorney General's power to obtain injunctions under Minn. Stat. § 8.31 is broad. *Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000); *State by Hatch v. Cross Country Bank*, 703 N.W.2d 562, 571-72 (Minn. App. 2005). The Attorney General need only demonstrate that the injunction "would fulfill the legislative purposes behind the statute's enactment," instead of the more rigorous four-pronged test applicable in the private litigation context. *Cross Country Bank*, 703 N.W.2d at 571-72.

10. Minnesota's consumer protection laws have consistently been interpreted broadly by Minnesota courts in favor of consumers because of their remedial purpose. *See State by Humphrey v. Phillip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996) (stating that "[t]hese statutes are generally very broadly construed to enhance consumer protection"). This broad construction "reflect[s] a clear legislative policy encouraging aggressive prosecution of statutory violations." *Id.* at 495. Indeed, Minnesota's consumer protection laws were designed to "maximize the tools available to stop the prohibited conduct" and encourage consumers to take action to stop fraudulent activity. *Group Health Plan, Inc. v. Philip Morris, Inc.*, 621 N.W.2d 2, 9 (Minn. 2001); *see also Yost v. Millhouse*, 373 N.W.2d 826, 832 (Minn. App. 1985).

11. As set forth in the Complaint, the State seeks injunctive relief permanently barring 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 with it, from engaging in conduct in violation of Minn. Stat. § 334.01, subd. 1. The permanent injunctive relief sought by the State is appropriate, supported by the record, and will prevent Bradstreet from engaging in the unlawful activity Minn. Stat. § 334.01 was designed to prevent and deter.

12. This Order does not settle, release, or resolve any claim against Bradstreet, Bridgestone, or any other person or entity involving any private causes of action, claims, and remedies including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31.

13. The Court shall retain jurisdiction of this matter for purposes of enforcing this Order, and to hear and decide any matters related to the Stipulation and Injunction filed with the Court on January 10, 2014. The Court's Order in the January 10, 2014 Stipulation and Injunction shall become permanent and shall remain in effect.

ORDER

1. The State's motion for default judgment is granted.

2. Judgment is hereby awarded to the State of Minnesota and against Bradstreet & Associates, LLC in the amount of $1,626,608 (inclusive of $500,000 for civil penalties and $1,126,608 for restitution).

3. Bradstreet & Associates, LLC 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 with it, are permanently enjoined from engaging in conduct in violation of Minn. Stat. § 334.01, subd. 1.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

SigPlus1
Marilyn B Rosenbaum
07/29/2014 09:12:45 am

Dated: July 29, 2014

The Honorable Marilyn Brown Rosenbaum
Judge of District Court