STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
South Carolina Department of Consumer Affairs,	)	Civil Action No. 2016-CP-40-02859
	)	
Plaintiff,	)	
	)	**PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
v.	)	
	)	
Cash Central of South Carolina, LLC,	)	
	)	
Defendant.	)	
	)	

This matter is before the court on the South Carolina Department of Consumer Affairs' ("Department") Motion for Summary Judgment filed on January 31, 2025, regarding four of the remaining defenses pled by Defendant Cash Central of South Carolina, LLC ("Cash Central"): statute of limitations, voluntary payment doctrine, res judicata related to consumer bankruptcies, and discharge in consumer bankruptcies.[1] Cash Central filed its Memorandum in Opposition with supporting exhibits on February 28, 2025. The Department filed its Reply with supporting exhibits on March 14, 2025. This court held a hearing on the motion April 7, 2025. After consideration of the South Carolina Court of Appeals' decision in this case, pleadings, affidavits, arguments, and other applicable law, the court grants the Department's motion because there is no genuine issue as to any material fact and the Department is entitled to judgment as a matter of law on these four defenses.

[1] The parties expect to reach an agreement as to Cash Central's two other defenses of set-off and right to recoupment and repayment.

BACKGROUND

Cash Central is an internet-based lender that offered short-term and medium-term loans to South Carolina consumers beginning in October 2013. During the time period of October 23, 2013, to April 10, 2015, Cash Central held supervised lender licenses (for its headquarters and its website), which were issued by the South Carolina Board of Financial Institutions ("Board"). The supervised lender licenses authorized Cash Central to contract for and collect loan finance charges up to 18% annual percentage rate ("APR") on consumer loans. In order to charge in excess of 18% APR, S.C. Code Ann. Section 37-3-305 mandates that supervised lenders file a maximum rate schedule with the Department. Cash Central, however, charged triple-digit interest rates even though it failed to file a maximum rate schedule with the Department during this time period, despite notice from the Board of the requirement to do so. After the Board conducted a routine audit, Cash Central finally filed a maximum rate schedule with the Department on April 10, 2015.

Based upon information discovered by the Board during its audit, the Department initiated an inquiry into Cash Central's operations. The Department determined that between October 24, 2013, and April 10, 2015, Cash Central entered into more than 15,000 consumer loans with loan finance charges between 146% APR and 246% APR. After lengthy discussions with Cash Central, the Department brought an action in May 2016 against Cash Central pursuant to S.C. Code Ann. Section 37-6-113(A) to recover excess charges Cash Central collected from South Carolina consumers. Cash Central filed its original Answer in July 2016 and amended its Answer three times prior to trial to add various defenses.

On September 6 and 7, 2017, the parties tried the case before the Honorable Robert Hood. At trial, counsel for Cash Central moved to bifurcate the issue of liability from the amount of damages, which the court did. After the parties gave their closing arguments, the court took the

issue of liability under advisement. On September 28, 2017, Judge Hood issued an Order finding in favor of Cash Central on three of its defenses: (1) bona fide error of S.C. Code Ann. Section 37-3-201(6); (2) bona fide error of S.C. Code Ann. Section 37-5-202(7); and (3) substantial compliance. Judge Hood excused Cash Central from issuing any refunds of excess charges to consumers and ordered Cash Central to pay a $15,000 penalty to the Department.[2]

The Department appealed the circuit court's Order to the Court of Appeals. On September 1, 2021, the South Carolina Court of Appeals reversed the circuit court's Order, holding Cash Central's three defenses were inapplicable and requiring Cash Central to refund affected consumers charges in excess of 18% APR. S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC, 435 S.C. 192, 865 S.E.2d 789 (Ct. App. 2021). On June 27, 2023, the South Carolina Supreme Court issued an Order denying Cash Central's petition for a writ of certiorari, thereby formally ending the liability portion of this case. S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC, 2023 S.C. LEXIS 141. As a result, on July 5, 2023, this case was remitted to the circuit court for the calculation of excess charges to be refunded by Cash Central to South Carolina consumers.

In October 2023, the Department filed a Motion to Resume Discovery and Scheduling Order to move forward with the calculation of refunds. On January 9, 2024, Cash Central filed a Motion to Amend its Answer requesting leave to amend to add three new affirmative defenses related to liability: voluntary payment doctrine; res judicata relating to consumer bankruptcies; and discharge in consumer bankruptcies. In August 2024, the parties argued the motion and submitted memoranda in support of each of their positions. On September 10, 2024, Judge Daniel Coble issued an Order Granting Cash Central's Motion to Amend, allowing Cash Central to add

[2] The Department denies ever receiving or negotiating a check from Cash Central for $15,000.

the three new affirmative defenses related to liability. On October 4, 2024, Judge Coble denied the Department's Motion to Alter or Amend. On December 6, 2024, Judge Coble designated this case as a complex case and assigned it to the undersigned judge to hear and dispose of all remaining matters.

LEGAL ANALYSIS

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." Gecy v. S.C Bank & Trust, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (Ct. App. 2018) (quoting M&M Grp., Inc. v. Holmes, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008)).

I. Statute of Limitations

There is no dispute among the parties that Cash Central timely and properly pled the affirmative defense of statute of limitations prior to the 2017 trial. The dispute rather is which statute of limitations applies to the transactions in this case. The Department contends the applicable statute of limitations is three years pursuant to S.C. Code Ann. Section 15-3-530(1). Thus, because the Department filed this action on May 6, 2016—which was well within three years of every contract entered into during the relevant time period (i.e., October 24, 2013, to April 10, 2015)—the statute of limitations does not preclude recovery of excess charges for any contracts in

this case. Cash Central, however, contends the Department's claims pertaining to any loans with a scheduled or accelerated maturity of May 5, 2015, or earlier are barred by the one-year statute of limitations contained in S.C. Code Section 37-5-202(1).

The cardinal rule of statutory construction is to ascertain and effectuate the legislature's intent from the plain language of the statute. Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Svs. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). According to the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

"A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly." Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004) (citing Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956)). "The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005). "Moreover, limitations periods discourage plaintiffs from sitting on their rights." Id.

The Department filed this action pursuant to S.C. Code Ann. Section 37-6-113(A) based on a consumer's right to refund of excess charges as established by Section 37-5-202(2). The Court of Appeals acknowledged and reiterated this in its decision. S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC, 435 S.C. 192, 199, 865 S.E.2d 789, 793 (Ct. App. 2021) (court stated the Department brought this action based on Section 37-6-113(A) and in a footnote provided the language contained in Sections 37-6-113(A) and 37-5-202(2)).

The only party that has ever raised a consumer's right to recover under Section 37-5-202(1) in this case is Cash Central. In addition, the Court of Appeals only discussed Section 37-5-202(1) when rejecting Cash Central's arguments regarding the bona fide error defense contained in subsection (7). In that discussion, the Court of Appeals concluded Section 37-5-202(2), which the Department's action was based on, "is a distinct remedy, independent of a consumer's right to bring an action for damages or penalties for the violation of a failure to file" as provided in Section 37-5-202(1). Id. at 212, 865 S.E.2d at 799. Cash Central's attempt to conflate the two subsections again at this stage of the proceedings is contrary to the Court of Appeals' decision.

While there is no mention of a particular statute of limitations in either Section 37-6-113(A) or Section 37-5-202(2), which were the basis for the Department's action, both subsections have a neighboring subsection that does include a specific statute of limitations. See S.C. Code Ann. §§ 37-6-113(B) and 37-5-202(1). The canon of statutory construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* holds that to express or include one thing implies the exclusion of another or of the alternative. Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). It is evident the General Assembly intended to establish a specific limitation on actions brought by the Department for civil penalties in Section 37-6-113(B)—and on actions brought by a debtor pursuant to Section 37-5-202(1)—but not to actions to recover excess charges for consumers in Section 37-6-113(A). Cf. Crocker v. S.C. Dep't of Health & Envtl. Control, 428 S.C. 1, 831 S.E.2d 924 (Ct. App. 2019) (when plaintiff asserted action was brought pursuant to § 1-13-90(c), which did not reference statute of limitations, court held only -90(d) provided a private cause of action, which meant the statute of limitations specifically provided in -90(d) applied).

Moreover, the General Assembly clearly established two distinct methods of recovery when enacting Section 37-6-113 (entitled "Civil actions by administrator" and found in Part 1 of

Chapter 6) and Section 37-5-202 (found in Part 2 of Chapter 5 entitled "Debtors' Remedies"). The General Assembly also distinguished the two types of actions clearly in Section 37-6-115, entitled "Debtor's Remedies not affected," which provides: "The grant of powers to the administrator in this chapter *does not affect remedies available to debtors under this title* or under other principles of law or equity." S.C. Code Ann. § 37-6-115 (emphasis added). Further, there are multiple references throughout Title 37 to excess charges where the General Assembly clearly recognizes the distinction between the administrator's authority and the consumer's right to recover. See S.C. Code Ann. §§ 37-2-402, 2-416(3), 3-408(3), 3-409, 3-509, 4-104(2).

Because there is no reference to a specific statute of limitations in Section 37-6-113(A), the court will refer to the generally applicable statutes of limitations. Section 15-3-530(1) provides a limitations period of three years for "an action upon a contract, obligation, or liability, express or implied, excepting [actions involving mortgages or sealed instruments]." The installment loans issued by Cash Central in this case are in the form of a promissory note, which has been held to be within this contract limitation category. Wolfe v. Brannon, 211 S.C. 282, 44 S.E.2d 833 (1947) (action on promissory note is barred unless brought within (at that time) six years of maturity). The Department's case, therefore, is an action upon a contract, obligation, or liability. Further, "[a]s a general rule, a three-year statute of limitations applies to [most] contract actions in South Carolina." Carolina Marine Handling, 363 S.C. at 172, 175, 609 S.E.2d at 550, 552. As such, the general three-year statute of limitations provided in Section 15-3-530(1) applies to the contracts in this case for purposes of calculating refunds of excess charges.

II. Three New Affirmative Defenses

The Order Granting Cash Central's Motion to Amend, issued September 10, 2024, allowed Cash Central to add three new affirmative defenses related to liability: voluntary payment doctrine, res judicata related to consumer bankruptcies, and discharge in consumer bankruptcies. The Department asserts this court lacks jurisdiction to hear new arguments or evidence pertaining to any new defenses on the issue of liability. Cash Central asserts that the court's Order granting the motion to amend precludes consideration of legal arguments regarding the merits of those defenses prior to trial. Cash Central also asserts Rule 43(l), SCRCP, precludes this court from considering any arguments the Department made during the most recent motion to amend phase of this case.

The Order Granting Cash Central's Motion to Amend recognized, "[t]he bar for obtaining leave to amend pleadings is one of the lowest in state civil procedure." The Order further referenced that "[a] court's decision to deny a motion to amend should not be based on the court's perception of the merits of [the proposed amendment]." Thus, the court's legal basis for granting the motion to amend was the low threshold that applies to such motion. The Order granting Cash Central's motion to amend is an interlocutory order. Collins v. Sigmon, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989). It is a procedural order to decide an issue necessary to the progress of this case, i.e., whether or not to allow Cash Central to plead the defenses. The Supreme Court has held, "an interlocutory order [that] merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered . . . by the court before entering a final order on the merits." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (quoting Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)).

Once the new defenses were added, the Department still had the right to challenge the merits of the defenses by filing a Rule 12(b)(6) motion to dismiss or a Rule 56 motion for summary

judgment. Collins, 299 S.C. at 466, 385 S.E.2d at 836. After this case was assigned to the undersigned judge to hear all remaining matters, the Department filed the instant Motion for Summary Judgment, asking this court to consider the legal merits of the defenses. Id. ("Arguments going to the legal merits of a proposed defense or counterclaim are better taken up in the context of a Rule 12(b) motion to dismiss or a Rule 56 motion for summary judgment."). When considering a motion for summary judgment, the court must apply a different standard of review and may consider the merits of legal arguments that are based on undisputed facts. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. This court, therefore, will consider the legal merits of the three defenses based on everything that has been submitted and in light of the Court of Appeals' decision.

III. Voluntary Payment Doctrine

Cash Central asserts the common law defense of voluntary payment doctrine should preclude recovery of excess charges paid by consumers in this case. At common law, if a fully informed party pays money, he or she cannot afterwards recover those funds even if it later turns out the party was not legally obligated to make the payment. Robinson v. City Council of Charleston, 31 S.C.L. (2 Rich.) 317 (1845). Cash Central cites the reason for the rule is that by making a payment, the person "gives it to whom he pays it, and makes it his, and closes the transaction between them." Id. (quoting Brisbane v. Dacres, 128 Eng. Rep. 641 (1813)). The Department, however, argues the non-statutory common law defense of voluntary payment doctrine does not apply to transactions under a comprehensive consumer protection statute such

as the South Carolina Consumer Protection Code, S.C. Code Ann. §§ 37-1-101 to 37-30-175. This court agrees.

The South Carolina Consumer Protection Code is a comprehensive regulatory scheme to regulate all types of consumer credit in South Carolina. Kathleen Goodpasture Smith, South Carolina Consumer Credit Code: Text With Comments 1 (4th Ed. S.C. Bar 2001). As recognized by the Court of Appeals, the Consumer Protection Code is required to be liberally construed to promote its underlying purposes and policies, including:

> (. . . "protect[ing] consumer[s] . . . against unfair practices by some suppliers of consumer credit" as well as "provid[ing] rate ceilings to assure an adequate supply of credit to consumers," "further[ing] consumer understanding of the terms of credit transactions," and "foster[ing] competition among suppliers of consumer credit so that consumers may obtain credit at [a] reasonable cost").

Cash Central, 435 S.C. at 203, 866 S.E.2d at 794–95. The Consumer Protection Code limits the fees, charges, and practices of consumer creditors.

South Carolina does not have a traditional usury statute for consumer loans in the sense that there is no absolute cap on the amount of interest a lender can contract for and receive. The Consumer Protection Code, however, establishes maximum rate schedule requirements that lenders must comply with **before** charging more than 18% APR. See S.C. Code Ann. §§ 37-3-201(2) and 37-3-305 (2015); see also S.C. Code Ann. § 37-1-102(2)(a) (one purpose of the Consumer Protection Code is to "to simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury"). As the Court of Appeals held in this case, unless and until a supervised lender complies with the maximum rate schedule requirements, "such lender is not authorized to contract for or receive finance charges in excess of 18% APR." Cash Cent. at 205, 865 S.E.2d at 796. The word "usury" is defined as "an illegally high rate of interest" and is also termed "illegal interest; unlawful interest." Black's Law Dictionary 1778 (10th ed. 2014). The

finance charges Cash Central contracted for in excess of 18% APR were illegal interest, i.e., usurious, that consumers were not obligated to pay.

The Consumer Protection Code provides, "A consumer **is not obligated to pay** a charge in excess of that allowed by this title and **has a right of refund** of any excess charge paid." S.C. Code Ann. § 37-5-202(2) (2015) (emphasis added). This subsection explicitly establishes a consumer's right to recover excess charges, i.e., illegally paid interest. Under the Consumer Protection Code, the consumer cannot waive his or her right to recover excess charges. S.C. Code Ann. § 37-1-107(1) (2015).

The voluntary payment doctrine is based on waiver and consent. See Eisel v. Midwest BankCentre, 230 S.W.3d 335, 339 (Mo. 2007) (mortgage lender not allowed to retain document preparation fee because it was deemed illegal due to unauthorized practice of law). When a statute specifically prohibits the charging of a fee or illegal interest, consumers cannot waive their rights or consent to paying the fee or illegal interest. Id. Moreover, when a state statute explicitly establishes a consumer's right to bring a cause of action to recover illegally paid fees or interest, the statute implicitly rejects the doctrine of voluntary payment.

In support of this defense, Cash Central asserts that the information provided on its website was far superior to the disclosures required by the maximum rate schedule statutes. This argument, however, ignores the Court of Appeals' holding that Cash Central had not complied with the requirements to be able to charge more than 18% APR because it had not properly filed and posted its rates for the period involved and, as a result, had contracted for and collected illegal excess charges. Cash Cent., 435 S.C. at 203–205, 865 S.E.2d at 794–796. The argument also ignores the Court of Appeals' holding that the maximum rate schedule statutes, particularly the filing and posting requirements, have a regulatory purpose and what Cash Central posted on its website did

not accomplish that purpose. Cash Cent., 435 S.C. at 206–207, 865 S.E.2d at 796–797. As the Court of Appeals held, consumers were not obligated to pay charges in excess of 18% APR due to Cash Central's failure to properly file and post, representing all finance charges contracted for in excess of 18% APR until April 10, 2015. Id. at 211–213, 866 S.E.2d at 799–800. Despite everything that was available on Cash Central's website, the Court of Appeals still held the content was not sufficient to allow Cash Central to charge more than 18% APR on the consumer loans in this case. Based on the Consumer Protection Code and the Court of Appeals' decision, this court finds the voluntary payment doctrine does not apply in this case.

IV. *Res judicata* Related to Consumer Bankruptcies

Cash Central argues the doctrine of *res judicata* should preclude previous or current bankrupt consumers from recovering a refund of excess charges that were not disclosed on the consumers' bankruptcy schedules or challenged during the course of the consumers' bankruptcy case. Cash Central asserts bankruptcy law requires debtors to list all claims that may generate income for the debtor or affect their liabilities and assets. Thus, the failure of a consumer to list claims against Cash Central for loans involved in this case bars that consumer from asserting those claims now and recovering money that could or should have been part of the bankruptcy estate. The Department argues the bankruptcy law allows for reconsideration for cause, which is a matter for the bankruptcy court to decide.

The Bankruptcy Code does "impose upon the bankruptcy debtors an express, affirmative duty to disclose all assets, including contingent and unliquidated claims." Cricket Commc'ns, Inc. v. Trillium Indus., Inc., 235 S.W.3d 298, 304 (Tex. App. 2007) (internal citations omitted). However, 11 U.S.C. § 502(j) clearly states, "A claim that has been allowed or disallowed may be

reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case." Furthermore, bankruptcy case law makes it clear that reconsideration of disallowed claims includes claims such as the consumers' refunds at issue in this case. See Covert v. LVNV Funding, LLC, 779 F.3d 242, 248 n. 3 (4th Cir. 2015); Martineau v. Wier, 934 F.3d 385 (4th Cir. 2019).

Here, the consumers were and likely still are unaware they had any claims against Cash Central related to the loans at issue in this case, which were contracted for between October 2013 and April 2015. The Court of Appeals' decision in September 2021 is the first time a court held that Cash Central contracted for and collected excess charges in violation of the Consumer Protection Code. That decision did not become final until June 2023 when the Supreme Court denied Cash Central's petition for writ of certiorari. Today, it is unlikely that consumers who filed bankruptcy are even aware they might be owed refunds of excess charges as a result of the contracts with Cash Central as it appears neither party, for their own respective reasons, ever informed the consumers of the current case.

A consumer could make a number of arguments and present evidence of why his failure to include a refund on his bankruptcy schedules should not be a bar to recovering the refund. Additionally, Cash Central could make a number of arguments and present evidence of why the consumer's failure to include a refund on his bankruptcy schedules should be a bar to recovering the refund. Nevertheless, it is not appropriate for this court to make such a determination. 28 U.S.C. § 1334(a) states, "Except as provided in subsection (b) of this section, the district courts shall have original and **exclusive** jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a) (emphasis added). Furthermore, 11 U.S.C. § 350(b) provides, "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for some other cause."

Accordingly, there is a mechanism available to Cash Central to go to the bankruptcy court to make its bankruptcy-related arguments. If Cash Central wants to make these bankruptcy-related arguments, then it should make them to the bankruptcy court.

Regarding the impact of a bankruptcy on an individual consumer in this case, the parties have identified one example. Cash Central attached the Affidavit of Mary Caskey, which includes the bankruptcy filing of one of the consumers involved in this case, referred to by the parties as "Debtor A." On page 29 of 58 of that Exhibit, Debtor A listed Cash Central as a creditor holding an unsecured claim of $950.00 for a personal loan. Debtor A actually had two loans with Cash Central, both of which were entered in 2014 when Cash Central was not authorized to contract for and receive more than 18% APR.

The Department offered the Affidavit of Dennis Adam Birr along with the Exhibit attached thereto. As explained in the Affidavit and demonstrated in the Exhibit, Debtor A is not entitled to a refund of any excess charges, so he is not one of the consumers that is part of the Department's action seeking a recovery of excess charges pursuant to Section 37-6-113(A). Debtor A's loans can be summarized as follows:

Date Loan Made	Total Debtor A Paid to Cash Central	Total Allowed Amount at 18% APR	Excess Charge Paid or (Amount Owed)	Account Status in Spreadsheet
1/2/2014	$1,598.33	$1,144.99	$453.34	Paid Off
6/9/2014	$685.12	$1,199.70	($514.58)	Charged Off
TOTALS	**$2,283.45**	**$2,344.69**	**($61.24)**	

Debtor A filed for bankruptcy in 2014, and his bankruptcy was resolved in 2017. Cash Central's spreadsheet reflects the June loan as charged off on October 1, 2014, with a charge off amount of $943.15. This loan is likely the loan Debtor A listed on his September 2014 bankruptcy filing as a $950.00 personal loan owed to Cash Central. However, due to Cash Central's illegal

charging of interest in excess of 18% APR, Debtor A only owed Cash Central $514.58 for the June loan. In reality, however, because he had paid excess charges on the January loan, his only legal outstanding amount owed to Cash Central at the time he filed bankruptcy was $61.24. Debtor A's situation is only one example of what, if any, impact the debtor's bankruptcy could or should have in this case.

The effect of a consumer's bankruptcy on his or her right to a refund from Cash Central will involve a case-by-case analysis of each consumer, all of the consumer's loans with Cash Central during the time period at issue, and whether or not the consumer has filed for bankruptcy. Cash Central will be responsible for identifying any consumers who filed bankruptcy. Each consumer's loans will be combined to determine whether the consumer paid charges in excess of 18% APR to Cash Central on the loans involved in this case. If the consumer is owed a refund of excess charges from Cash Central, the Department will communicate to that consumer the refund amount and inform the consumer to contact the bankruptcy court and/or trustee that handled his or her case. It will then be up to the bankruptcy court and/or trustee to determine whether to reopen the consumer's case. Cash Central would be able to challenge any refund in the bankruptcy court at that time. The Department will hold the consumer's refund amount in a trust account to be released to the consumer or Cash Central after Cash Central and the consumer resolve any outstanding issues in the bankruptcy court.

V. Discharge in Consumer Bankruptcies

Cash Central argues that if a consumer's debt owed to Cash Central was discharged, then the consumer is only entitled to recover interest above 18% actually paid by the consumer to Cash Central. The Department agrees. In fact, it has been the Department's position that all consumers,

regardless of bankruptcy status, are only entitled to a refund of interest above 18% APR actually paid by the consumer. Whether a portion of the consumer's debt was discharged in bankruptcy is irrelevant to whether Cash Central owes the consumer a refund of excess charges, i.e., all finance charges over 18% APR that South Carolina consumers *actually paid* to Cash Central for loans made prior to April 10, 2015.

As discussed above, for consumers identified as having filed bankruptcy, the determination of a whether a refund is owed by Cash Central will be based on whether the consumer actually paid more than 18% APR on his or her combined Cash Central loans at issue in this case. If the consumer did not pay more than 18% APR on his or her combined Cash Central loans at issue in this case, then no refund will be owed by Cash Central. Whether any portion of the debt owed to Cash Central was discharged in bankruptcy is irrelevant to this calculation.

ORDER

The court grants summary judgment to the Department on four of the remaining defenses as follows:

1. The statute of limitations for refunds is three years pursuant to S.C. Code Ann. § 15-3-530, which means all contracts entered into from October 24, 2013, to April 10, 2015, shall be included in the calculation.
2. This court has jurisdiction to consider the legal merits of the three new defenses based on the South Carolina Court of Appeals' decision in this case, pleadings, affidavits, arguments, and other applicable law pursuant to the Department's Motion for Summary Judgment.

3. The voluntary payment doctrine does not preclude refunds of excess charges because it is not applicable to transactions subject to the South Carolina Consumer Protection Code.

4. The bankruptcy related defenses (*res judicata* and discharge) do not preclude refunds in this case because (a) consumers are only entitled to a refund of excess charges (i.e., interest exceeding 18% APR) actually paid to Cash Central, regardless of discharge of any debt discharged in bankruptcy and (b) the decision whether the consumer receives the refund from Cash Central will be up to the bankruptcy court and/or trustee to decide. The Department will identify consumers owed a refund. Cash Central will have sixty (60) days to determine which consumers filed for bankruptcy. If the consumer is owed a refund of excess charges from Cash Central, the Department will communicate to that consumer the refund amount and inform the consumer to contact the bankruptcy court and/or trustee that handled his or her case. It will then be up to the bankruptcy court and/or trustee to determine whether to reopen the consumer's case. Cash Central would be able to challenge any refund in the bankruptcy court at that time.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

Richland Common Pleas

Case Caption: South Carolina Department Of Consumer Affairs vs Cash Central Of South Carolina LLC

Case Number: 2016CP4002859

Type: Order/Summary Judgment

So Ordered

s/ Thomas W. McGee III, Judge Code 2786