

Fintech Borrowers Get Class Cert. In Tribe-Linked Usury Suit

By **Elise Hansen**

Law360 (April 26, 2021, 8:56 PM EDT) -- Golden State residents who received loans from defunct online lender Think Finance can pursue class claims that they were charged illegally high interest rates by lenders leveraging tribal immunity, a California federal judge has found.

U.S. District Judge William H. Orrick on Friday approved borrower Kimetra Brice's request to certify a class of California residents who were allegedly charged interest rates that surpassed the state's legal limits. According to Brice, the borrowers were victims of a scheme to use tribal entities — and therefore tribal sovereign immunity — to market and collect high-interest loans.

The proposed class met the requirements for certification, including that the borrowers brought a common, predominant claim, the opinion said.

"The claims asserted are all based on the theory that a usurious or otherwise illegal rate of interest was charged," the opinion said.

The class of borrowers will include California residents who received loans from Great Plains Lending LLC, an entity owned by the Otoe-Missouria tribe in Oklahoma, and California residents who obtained loans from Plain Green LLC prior to June 2016, the filing said. Plain Green LLC is owned by Chippewa Cree Tribe in Montana, according to court filings.

Great Plains and Plain Green have been dismissed from the case, court filings show. The plaintiffs reached settlement agreements with Plain Green in Virginia federal court and in Think Finance's bankruptcy case, according to court filings. But some individuals and entities said to be Think Finance LLC's founders, shareholders and owners are still facing claims, court filings show.

Judge Orrick nixed the defendants' arguments that the borrowers had signed class action waivers, finding the agreements unenforceable. The judge had previously found Great Plains' and Plain Green's arbitration agreements to be unenforceable, and the same applies here, the opinion said.

"The text of the class action waiver is located wholly within the 'Waiver of Jury Trial and Arbitration Agreement' that I found to be unenforceable," Judge Orrick said. "The section containing the class action waiver ... has been nullified."

The judge also found that the data used to identify the potential class members and the potential size of the damages was reliable enough to proceed. The data, Think Finance's consumer-level account information, became available thanks to Think Finance's bankruptcy case in Texas and a class action in Virginia, the filing noted.

The data "has been used in at least three proceedings to effectuate class action settlements," Judge Orrick said.

While the defendants had pointed to one error in the data regarding a plaintiff's residency, the error wasn't enough to undermine the entire data set, the order said.

"Despite the error ... [the] consumer-level data for each transaction provides a fair basis for identifying the scope of the class and aggregate damages for the California class," Judge Orrick said.

Anna Haac of Tycko & Zavareei LLP, counsel to Brice and the borrowers, praised the court's decision on Monday.

"We are pleased with the judge's ruling," Haac said in an email to Law360. "The unenforceable class action waiver is just one of many ways defendants' alleged lending scheme sought to evade the law and shield itself from liability."

Borrowers have filed similar claims involving Think Finance in Virginia federal court, nabbing a recent **class action settlement** worth \$50 million. Think Finance has also **faced probes** from Pennsylvania's attorney

general and from the **Consumer Financial Protection Bureau**.

Counsel for the defendants did not immediately respond to requests for comment on Monday.

Brice and the borrowers are represented by Anna C. Haac, Mark A. Clifford and Sabita Soneji of Tycko & Zavareei LLP, Craig C. Marchiando, Leonard A. Bennett and Amy Leigh Austin of Consumer Litigation Associates PC and Kristi C. Kelly and Andrew Guzzo of Kelly & Guzzo PLC.

The defendants are represented by Anna S. McLean and Michael A. Lundholm of Sheppard Mullin Richter & Hampton LLP and Richard L. Scheff, Jonathan Boughrum, Michael C. Witsch and David F. Herman of Armstrong Teasdale LLP.

The cases are Kimetra Brice et al. v. Haynes Investments LLC et al., case number 3:18-cv-01200, and Kimetra Brice et al. v. Mike Stinson et al., case number 3:19-cv-01481, in the U.S. District Court for the Northern District of California, San Francisco Division.

--Additional reporting by Diamond Naga Siu and Matthew Santoni. Editing by Janice Carter Brown.