

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO City and County Building 1437 Bannock, Denver, CO 80202	DATE FILED: May 23, 2013 ▲ COURT USE ONLY ▲
Plaintiffs: STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO, AND LAURA UDIS, ADMINISTER UNIFORM CONSUMER CREDIT CODE v. Defendants: WESTERN SKY FINANCIAL, LLC, AND MARTIN A. WEBB	Case Number: 11 CV 638 Courtroom: 259
AMENDED ORDER	

This Order serves to amend and supersede the Court’s Order of May 22, 2013, insofar as the May 22, 2013 Order was inconsistent with the Court’s April 15, 2013 Order.

THIS MATTER is before the Court on Plaintiffs the State of Colorado ex rel. John W. Suthers, Attorney General for the State of Colorado, and Laura Udis, Administer, Uniform Consumer Credit Code’s (the “State”) Motion for Partial Summary Judgment – Second Claim for Relief, filed December 27, 2012. On April 15, 2013, this Court entered its Order granting Summary judgment in favor of the State. However, the Court held its ruling in abeyance pending the filing and consideration of Defendants Western Sky Financial, LLC (“Western Sky”) and Martin Webb’s (“Webb”) (collectively “Defendants”) Sur-reply. Defendants filed their Sur-reply on April 18, 2013. Now, being fully advised, the Court finds and Orders as follows:

In its April 15, 2013 Order, this Court concluded that based on relevant Colorado case law, Defendants were not entitled to tribal immunity or federal preemption, as their lending

activities constituted “off-reservation activity.” This Court based its ruling on *State ex rel. Suthers v. Cash Advance & Preferred Cash Loans*, 205 P.3d 389, 400 (Colo. App. 2008) (“*Cash Advance I*”), where, in a nearly identical factual scenario to this action, the Colorado Court of Appeals determined that business conducted via the internet was sufficient to confer jurisdiction to the State and demonstrated that the business activity constituted off-reservation activity. This Court also took guidance from *State ex rel. Suthers v. Western Sky, LLC*, 845 F.Supp.2d 1178, 1182 (D. Colo. 2011), where the U.S. District Court for the State of Colorado concluded that “[b]usiness conducted over the Internet that would confer jurisdiction on a state court also demonstrates that the business activity constitutes off-reservation activity.” (citing *Cash Advance I*). This Court further concluded that Webb, as an enrolled member of the Tribe, is not individually entitled to immunity, nor does his membership in the Tribe confer such immunity upon Western Sky, citing *Puyallup Tribe, Inc. v. Dep’t of Game*, 433 U.S. 165, 171, 72 (1977) (holding that the “doctrine of sovereign immunity . . . does not immunize individual members of [a] tribe.”). This Court made identical findings in its April 17, 2012 Order, denying Defendants’ Motion to Dismiss.

Because Defendants were not entitled to tribal immunity or federal preemption, and because Defendants offered no other evidence or legal authority to refute the State’s contention that Defendants were in violation of Colorado’s Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.*, summary judgment entered on April 15, 2013 in favor of Plaintiff on its second claim for relief – “Refunds to Consumers - Code Unlicensed Lender.”

Additionally, this Court granted the State’s request for attorney’s fees expended in replying to Defendants Response to the State’s Motion pursuant to C.R.S. § 13-17-102(2).

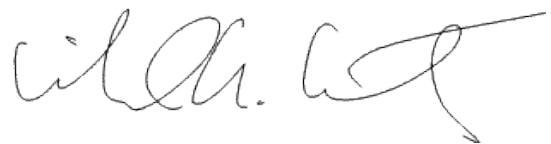
Specifically, the Court found that Defendants contentions lacked “substantial justification,” in light of the holdings in *Cash Advance I*, and *Suthers*, 845 F.Supp.2d at 1182.

Here, the cases provided by Defendants in their Sur-reply, are unpersuasive, inapposite, and/or nonbinding on this Court, as such they are distinguishable from the facts presented here. Further, to accept Defendants’ contentions, as raised in their Response and Sur-reply, would run afoul to established Colorado law, as set forth in *Cash Advance I*. Nothing in Defendants’ Sur-reply alters the Court’s previous analysis or compels a different conclusion than that already reached by this Court. Accordingly, in the absence of any additional legal authority or factual support refuting that contained in the State’s Motion for Summary Judgment, summary judgment in favor of the State is appropriate here.

WHEREFORE, based on the foregoing, the Court’s April 15, 2013 Order, granting summary judgment in favor of the State and awarding the State its attorney’s fees expended in replying to Defendants Response, is hereby reinstated in its entirety. This Order shall constitute a final judgment pursuant to CRCP 58(a).

DONE this 23rd day of May, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael A. Martinez", written over a horizontal line.

MICHAEL A. MARTINEZ
District Court Judge