

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 12-2617

DEBORAH JACKSON, *et al*,

Plaintiffs - Appellants,

v.

PAYDAY FINANCIAL LLC, *et al*,

Defendants - Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division,
Hon. Charles P. Kocoras, presiding.

1 : 11 CV 9288

SUPPLEMENTAL BRIEF OF APPELLANTS

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Per this Court's limited remand order (Doc. 48), and the District Court's submission in response (Doc. 62), plaintiffs-appellants now present a supplemental brief.

I. ARBITRATION

This Court asked the District Court to conduct fact finding on "whether the Cheyenne River Sioux Tribe has an authorized arbitration mechanism available to the parties and whether the arbitrator and method of arbitration required under the contract is actually available." The District Court's answer was "a resounding no... the promise of a meaningful and fairly conducted arbitration is a sham and an illusion." (Supplemental Appendix ("Supp. Appx.") at 1, 5-6.)

The District Court's conclusion was based, first, on the only arbitration conducted by a Tribal elder or a Tribal Council member, regarding claims raised in *Inetianbor v. CashCall Inc.*, No. 0:13CV60066 (S.D.Fla.). (Supp. Appx. at 2, 8.) Robert Chasing Hawk, a Tribal Elder, "was personally selected [as the arbitrator] by Martin Webb, the man who owns and operates the Webb Entities¹ which are run as a common enterprise." (*Id.* at 3, 8-9.) Mr. Chasing Hawk's daughter, Shannon Chasing Hawk, works for a Webb Entity. Regarding this relationship,

although denying any preexisting relationship with either party in the case... Robert Chasing Hawk has acknowledged that his daughter worked for one of the companies run by Martin Webb. [*Id.* at 3.]

In addition, "Mr. Chasing Hawk is not an attorney.... He has not had any training as an arbitrator and the sole basis of his selection was because he was a Tribal Elder." (*Id.*)

The District Court found that "no arbitration award could ever stand in the instant case if an arbitrator was similarly selected, nor could it satisfy the concept of a 'method of arbitration' available to both parties. The selection of Chasing Hawk in the *Inetianbor* case was a purely subjective selection by only one of the parties to the arbitration.... Webb and Chasing Hawk are members of the same tribe. The plaintiffs are not. The employment by Webb of the arbitrator's daughter cannot be ignored." (Supp. Appx. at 4.) In particular,

¹ The "Webb Entities" are defendants Payday Financial LLC, Western Sky Financial LLC, Great Sky Financial LLC ("Western Sky"), Red Stone Financial LLC, Management Systems LLC, 24-7 Cash Direct LLC, Red River Ventures LLC, High Country Ventures LLC, and Financial Solutions LLC – all of which are companies organized under South Dakota law, and located on the reservation of the Cheyenne River Sioux Tribe ("the Tribe"). Mr. Webb is also a defendant, as is CashCall Inc. ("CashCall").

Freedom from bias and prejudice is a stated criteria of the American Arbitration Association's Criteria to serve as an arbitrator. Similar is [JAMS's] Arbitrators Ethics Guidelines which requires freedom from any appearance of a conflict of interest. Illinois Supreme Court Rule 62 states, in part, that "a judge should respect and comply with the law and should conduct himself or herself at all [times] in a manner that promotes public confidence in the integrity and impartiality of the judiciary. **A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment.**" *Id.* (emphasis added).]

Although it was not cited by the District Court, the order compelling arbitration in *Inetianbor* claims was recently vacated. *Inetianbor v. CashCall Inc.*, ___ F.Supp.2d ___, 2013 WL 4494125 (S.D.Fla. Aug. 19, 2013). (See Appeal Doc. 60-2 (prior submission of opinion).) *Inetianbor*, 2013 WL 4494125 at *5, held that "Mr. Chasing Hawk is not, and does not purport to be, conducting arbitration as an authorized representative of the Tribe.... CashCall has further failed – despite numerous opportunities – to show that the Tribe is available through an authorized representative to conduct arbitrations." *Inetianbor*, *id.* at *6, based on a concession by CashCall, held that "the Tribe... does not have any consumer dispute rules. Without such rules, it is obvious that arbitration cannot be conducted 'in accordance with [Tribal] consumer dispute rules' as required by the arbitration agreement."

Second, the District Court considered facts established by an investigation by the New Hampshire Banking Department, which led to a cease and desist order in *In re CashCall Inc. et al*, No. 12-308, 2013 WL 3465250 (N.H. Banking Dept. June 4, 2013). (Supp. Appx. at 5-6. See *id.* at 17-26 (New Hampshire order).) The New Hampshire Banking Department found that defendants "were engaged in a business scheme and took substantial steps to conceal the business scheme from consumers and state and federal regulators," and that the Webb Entities were "nothing more than a front to enable CashCall to evade licensure by state agencies and to exploit Indian tribal sovereign immunity to shield its deceptive practices from prosecution by state and federal regulators." (Supp. Appx. at 5.) It also found "a reasonable basis to believe the business scheme described constituted an unfair or deceptive act or practice used as a shield to evade licensure from the Department by exploiting Indian tribal sovereign immunity." (*Id.*)

The District Court found, as a result, that “the intrusion of the Cheyenne River Sioux Tribal Nation into the contractual arbitration provision appears to be merely an attempt to escape otherwise applicable limits on interest charges.” (*Id.* at 6.) This is consistent with

- (A) the order in *In re Western Sky Financial LLC*, No. 13 CC 265 (Ill. Dept. Fin. & Prof. Reg. March 8, 2013), which forced Western Sky to stop lending to Illinois consumers (Supp. Appx. at 27-30),
- (B) the complaint in *New York v. Western Sky Financial LLC et al*, No. 451370/2013 (N.Y. Co. S. Ct. Aug. 12, 2013) (Supp. Appx. at 31-53), which alleged on a full record that Western Sky and CashCall (and their principals, Martin Webb and J. Paul Reddam) made loans that are civilly and criminally usurious under New York law, did not carry necessary lending licenses, and generally engaged in deceptive and fraudulent practices (Supp. Appx. at 31-53);² and
- (C) further actions taken by 13 other states, which have led to numerous rulings against defendants as to tribal sovereignty, orders to cease and desist, and the imposition of fines which total at least \$3.67 million to date.³

Defendants have cited no decisions where any of them have prevailed on tribal jurisdiction arguments that they have made. Plaintiffs know of no decision giving any defendant the right to claim any benefit enjoyed by a Native American tribe, relating to the loans at issue.⁴

² The entire record is available, for free, through a guest search of the New York State Unified Court System’s electronic filing system (<https://iapps.courts.state.ny.us/nyscef/Login>).

³ A brief summary of the actions taken by state authorities (including attorneys general, banking departments and similar agencies) in Colorado, Georgia, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, Oregon, Pennsylvania, Washington, and West Virginia – sixteen states in all – can be found at the end of the supplemental appendix. (Supp. Appx. at 55-57.) It should be noted that actions in some states are pending final rulings on the merits, or a formal finding of liability against defendants.

⁴ In apparent recognition of this, Western Sky ceased lending activities earlier this month, while keeping “a limited staff to support the company’s efforts as it seeks to resolve the issues it faces in court.” (Supp. Appx. at 54.)

Nor do plaintiffs know of any case law where tribal jurisdiction applied where the party claiming it did so fraudulently, as a part of a broader pattern of illegal conduct. Any case defendants might rely on would be distinguishable on this ground alone.⁵

II. AVAILABILITY OF TRIBAL LAW

The District Court also found that the law of the Tribe “can be acquired by reasonable means.” (Supp. Appx. at 2.) However, the Court found that while both parties were able to secure Tribal law, plaintiffs “did so less readily,” and at a cost of \$125 which defendants were not charged. (*Id.*) Further, the parties’ attempts to obtain the law led to different results. Plaintiffs received the Tribal Code of 1978. Defendants obtained not only the Code, but also the Tribe’s later enactment of the Uniform Commercial Code, and several other ordinances. (*Id.*)

At oral argument on January 22, 2013, defendants claimed that (A) an anti-usury provision is found within the 1978 Code,⁶ and (B) the ban on usury was “superceded.” To this day, defendants have not cited the law or regulation by which the ban on usury was lifted. There was no provision repealing the ban on usury in the Tribe’s enactment of the Uniform Commercial Code; none was identified by defendants. Further, there was no production by defendants of any ordinance or resolution repealing that ban. (See Appeal Docs. 40 and 41.)

Indeed, *Inetianbor*, 2013 WL 4494125 at *6, notes that “at [an] August 16, 2013 hearing, CashCall conceded that, while the Tribe has rules concerning consumer relations – *e.g.*, usury statutes – it does not have any consumer dispute rules.” As such, CashCall has (A) claimed in this case that usury laws no longer exist (without showing how they were repealed), and (B) claimed in *Inetianbor* that such laws do in fact exist. Thus, the law defendants would rely on either does not exist or is so inscrutable that a lawyer – much less a consumer – could not find it. Defendants’ representations as to what law applies in this case simply do not add up.

⁵ This would include *Dish Network Service LLC v. Laducer*, No. 12-2871, 2013 WL 3970245 (8th Cir. Aug. 5, 2013), which was cited in defendants’ Fed.R.App.P. 28(j) letter of August 28, 2013. In *Laducer*, the party claiming tribal sovereignty was a consumer, complaining that an action against him in federal court was an abuse of process, given his status as a Chippewa from the Turtle Mountain Band of North Dakota.

⁶ See Cheyenne River Sioux Tribal Code §3-4-52 (Doc. 39, Appendix 1 at 128.)

III. *GREEN V. U.S. CASH ADVANCE* GIVES NO SUPPORT TO DEFENDANTS

The District Court's findings on whether arbitration is available are dispositive of this appeal. Given the fact that the selection of a Tribal Elder was part and parcel of defendants' overall scheme, this Court cannot enforce a substitute method of selecting an arbitrator; to do so would reward defendants' fraudulent conduct.

Per a Fed.R.App.P. 28(j) letter dated August 20, 2013, defendants attempt to rely upon *Green v. U.S. Cash Advance of Illinois LLC*, No. 13-1262, 724 F.3d 787, ___; 2013 WL 3880219 (7th Cir. July 30, 2013).⁷ *Green* is distinguishable. The Court did not deal with an arbitration provision which was part of an overall "scheme... devised for the purpose of evading federal and state regulation of defendants' activities. The intrusion of the Cheyenne River Sioux Tribal Nation into the contractual arbitration provision appears to be merely an attempt to escape otherwise applicable limits on interest charges." (Supp. Appx. at 6.)

Green, 2013 WL 3880219 at *4, relying upon *Marmet Health Care Center Inc. v. Brown*, 132 S.Ct. 1201, 1204 (2012), correctly found that "general principles of state law" can be used to find arbitration agreements invalid – as with any contract. Fraud is one of them; the District Court found "the promise of a meaningful and fairly conducted arbitration is a sham and an illusion." (Supp. Appx. at 6.) Unconscionability is another principle. Specifically, "substantive unconscionability refers to those terms which are inordinately one-sided in one party's favor." *Razor v. Hyundai Motor America*, 222 Ill.2d 75, 100; 854 N.E.2d 607, 622 (2006). The arbitration clause at issue qualifies. Further, the contract is "clearly contrary to what the Constitution, the statutes, or the decisions of the courts have declared to be the public policy of Illinois... [and] is manifestly injurious to the public welfare." *Phoenix Insurance Co. v. Rosen*, 242 Ill.2d 48, 55; 949 N.E.2d 639, 645 (2011) (citation omitted). Thus, the arbitration clause is void on public policy grounds – particularly because the contract requires a racially discriminatory process of selecting an arbitrator.

⁷ This decision is subject to a pending petition for rehearing *en banc*. (*Green* Appeal Docs. 28, 29, 32.)

Beyond that, plaintiffs respectfully submit that the analysis in *Green*, regarding the failure of an arbitration clause that was integral to the parties' agreement, was incorrect. The appellees in *Green* raised *Carr v. Gateway Inc.*, 241 Ill.2d 15; 944 N.E.2d 327 (2011). (*Green* Appeal Doc. 15 at 10, 13.) Plaintiffs raised *Carr*, as well as *QuickClick Loans LLC v. Russell*, 407 Ill.App.3d 46; 943 N.E.2d 166 (1st Dist. 2011), when briefing this appeal (Appeal Doc. 21 at 22; Appeal Doc. 28 at 15). The decision in *Green*, however, did not address *Carr*, *QuickClick*, or any Illinois case law at all. "Arbitration is at bottom a matter of contract." *Green*, 2013 WL 3880219 at *6 (Hamilton, J., dissenting) (citing *American Express Co. v. Italian Colors Restaurant*, 133 S.Ct. 2304, 2309 (2013) and *Rent-A-Center West Inc. v. Jackson*, 130 S.Ct. 2772, 2776 (2010)). Under Illinois law, if the arbitration agreement permits only one method of selecting an arbitrator (or one set of rules), to the exclusion of all others, then the impossibility of performance would prevent arbitration, as it would require terms that were not a part of the original bargain, and require a brand new contract to which the parties had not agreed.

IV. CONCLUSION

For the reasons stated herein, the District Court's findings of fact on limited remand, and prior briefing, reversal is proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas E. Soule, certify that on September 12, 2013, the preceding brief and the appendix were submitted for filing with the Clerk of the Court, and was served by the Court's electronic filing system upon counsel for defendant (claudia.callaway@kattenlaw.com). Upon acceptance of that brief by the Court, three copies of the same will be sent by mail to counsel for defendants, as follows:

Claudia Callaway
Katten Muchin Rosenman LLP
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Washington DC 20007

/s/ Thomas E. Soule
Thomas E. Soule

TYPE VOLUME CERTIFICATION

In accordance with Fed.R.App.P. 32(a)(7)(C), I, Thomas E. Soule, certify that this brief meets the type-volume limitation of Seventh Circuit Rule 32(a) in that it contains 2,221 words according the word-counting feature of Corel WordPerfect 12, the program used to produce it.

/s/ Thomas E. Soule
Thomas E. Soule

CERTIFICATION OF SUPPLEMENTAL APPENDIX

In accordance with Fed.R.App.P 30, an appendix was filed on September 21, 2012. (Appeal Doc. 18.) Proceedings held on limited remand included a new ruling from the U.S. District Court for the Northern District of Illinois. That order is attached to this brief in a supplemental appendix, together with other documents, in line with Seventh Circuit Rule 30.

/s/ Thomas E. Soule
Thomas E. Soule

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 12-2617

DEBORAH JACKSON, *et al*,

Plaintiffs - Appellants,

v.

PAYDAY FINANCIAL LLC, *et al*,

Defendants - Appellees.

Appeal from the United States District Court for the
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1 : 11 CV 9288

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEBORAH JACKSON, et al.,)
)
Plaintiff-Appellants,)
)
vs.) 11 C 9288
)
PAYDAY FINANCIAL, LLC, et al.,)
)
Defendant-Appellees.)

DISTRICT COURT’S RESPONSE TO COURT OF APPEALS REMAND FOR FINDINGS OF FACT

The United States Court of Appeals has remanded two questions to this Court while still retaining jurisdiction of the case. This Court has been asked to make findings of fact as to the following:

1. Whether the Cheyenne River Sioux Tribe has applicable tribal law readily available to the public and, if so, under what conditions; and
2. Whether the Cheyenne River Sioux Tribe has an authorized arbitration mechanism available to the parties and whether the arbitrator and method of arbitration required under the contract is actually available.

The parties were asked to submit their own responses to these questions with any documentary exhibits or attachments they desired to accompany their responsive legal briefs. Each party was content to rely on its submissions without the conduct of additional discovery or presentation of testimony. It is on that record that this Court

has prepared the requested findings of fact. The parties' submissions shall accompany the Court's findings of fact.

As to the question of whether there is applicable tribal law readily available to the public, the parties' submissions differ. After a number of failed attempts, the Plaintiffs acknowledged having obtained a copy of the tribe's 1978 Law and Order Code at a cost of \$125 from the National Indian Law Library. Defense counsel avers that a copy of the Cheyenne River Sioux Tribal Code was requested by telephone from the National Indian Law Library and received without any payment required, along with PDF copies of Tribal Resolutions and Ordinances enacted between 1981 and 2000, including the Tribe's Commercial Code.

It is this Court's finding that the answer to the first of the remanded questions is in the affirmative. Each party was able to secure a copy of the Tribal Law, although the Plaintiff's did so less readily. Nevertheless, we believe the law can be acquired by reasonable means.

The second of the remanded questions requires consideration of multifaceted aspects of the concept of arbitration and its mechanisms, and its actual availability to the parties before the Court.

Claims relating to Defendants' loans have been the subject of only one arbitration proceeding which is currently pending. That arbitration is the subject of the case entitled *Inetianbor v. Cash Call, Inc.* No. 13 CV 60066 (S.D. Fla. 2013). The

procedural history of that case and relevant associated materials are included in the Plaintiff's submissions. That lawsuit involved a loan of \$2,525 for three years with the total payments due under the contract of \$11,024.82. As the contract states, the cost of the credit at a yearly rate was 139.31%. By anybody's definition, this is a usurious rate of interest.

The arbitrator selected in the *Inetianbor* case was Robert Chasing Hawk, a Tribal Elder. He was personally selected by Martin Webb, the man who owns and operates the Webb entities which are run as a common enterprise. Mr. Webb is himself a member of the Tribe. Although denying any preexisting relationship with either party in the case, Robert Chasing Hawk is the father of Shannon Chasing Hawk. Robert Chasing Hawk has acknowledged that his daughter worked for one of the companies run by Martin Webb.

Mr. Chasing Hawk is not an attorney and has not been admitted to the practice of law either in South Dakota or the court of the Cheyenne River Sioux Tribal Nation. He has not had any training as an arbitrator and the sole basis of his selection was because he was a Tribal Elder.

Black's Law Dictionary, DeLuxe Fourth Edition, defines "arbitrator" as "a private, disinterested person, chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them; to whose decision (award) the litigants submit themselves either voluntarily, or, in some cases,

compulsorily by order of a court.” Freedom from bias and prejudice is a stated criteria of the American Arbitration Association’s Criteria to serve as an arbitrator. Similar is JAM’s Arbitrators Ethics Guidelines which requires freedom from any appearance of a conflict of interest. Illinois Supreme Court Rule 62 states, in part, that “a judge should respect and comply with the law and should conduct himself or herself at all time in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow the judge’s family, social or other relationships to influence the judge’s judicial conduct or judgment.” It should be no less for an arbitrator.

The selection of Robert Chasing Hawk as the arbitrator in the only comparable case is instructive. No arbitration award could ever stand in the instant case if an arbitrator was similarly selected, nor could it satisfy the concept of a “method of arbitration” available to both parties. The selection of Chasing Hawk in the *Inetianbor* case was a purely subjective selection by only one of the parties to the arbitration. The process was not “methodized” in any reasonable sense of the word. Webb and Chasing Hawk are members of the same tribe. The Plaintiffs are not. The employment by Webb of the arbitrator’s daughter cannot be ignored. The conduct permitted by the arbitration provisions in this case could never satisfy the straightforward definition in Black’s Law Dictionary.

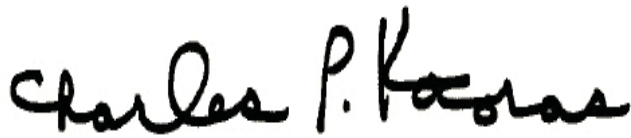
Equally telling about Payday Financial LLC, Cash Call, Inc., and the Webb Entities operations is the State of New Hampshire Banking Department's Cease and Desist Order. The Department first conducted a routine examination of Cash Call. This was followed by the issuance of an administrative subpoena duces tecum to Cash Call seeking a variety of documents related to Cash Call's relationship with Western Sky. Cash Call complied and produced the requested documents.

Among other findings made by the Department, it determined that the respondents were engaged in a business scheme and took substantial steps to conceal the business scheme from consumers and state and federal regulators. The findings included the fact that Western Sky was nothing more than a front to enable Cash Call to evade licensure by state agencies and to exploit Indian Tribal Sovereign Immunity to shield its deceptive practices from prosecution by state and federal regulators. The Department found a reasonable basis to believe the business scheme described constituted an unfair or deceptive act or practice used as a shield to evade licensure from the Department by exploiting Indian Tribal Sovereign Immunity.

While this Court recognizes that no trial has been held to permit a full exposition of all relevant facts, each party was afforded the opportunity to present whatever evidence it wished. It is abundantly clear that, on the present record, the answer to the

second question is a resounding no. Other than this Court's disagreement with Plaintiffs' position as to the availability of tribal law, pages 8 through 10 of "Plaintiffs' Statement of Relevant Facts, and On Further Discovery Required on Limited Remand by Court of Appeals" fairly describe what the facts show. The scheme described in the New Hampshire Banking Department's Cease and Desist Order has been apparently devised for the purpose of evading federal and state regulation of Defendants' activities. The intrusion of the Cheyenne River Sioux Tribal Nation into the contractual arbitration provision appears to be merely an attempt to escape otherwise applicable limits on interest charges. As such, the promise of a meaningful and fairly conducted arbitration is a sham and an illusion.

We respectfully submit our responses to the questions posed.



Charles P. Kocoras
Charles P. Kocoras
United States District Judge

Dated: August 28, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DEBORAH JACKSON, <i>et al</i> ,)	1:11CV9288
Plaintiffs-appellants,)	Judge Kocoras
)	
vs.)	<i>On limited remand from the</i>
)	<i>U.S. Court of Appeals for the</i>
PAYDAY FINANCIAL LLC, <i>et al</i> ,)	<i>Seventh Circuit, No. 12-2617,</i>
Defendants-appellees.)	<i>Ripple, Rovner & Barker, JJ.</i>

**PLAINTIFFS’ STATEMENT OF RELEVANT FACTS, AND ON FURTHER
DISCOVERY REQUIRED ON LIMITED REMAND BY COURT OF APPEALS**

This Court ordered the parties to submit their views on the discovery necessary to satisfy the limited remand order issued by the U.S. Court of Appeals for the Seventh Circuit. Plaintiffs-appellants submit that the facts described herein, as to the two questions posed by the Court of Appeals, require no further discovery unless defendants-appellees dispute them. Those facts show that arbitration has not been used with respect to defendants’ loans, except in one pending case. Based on a hearing held on June 21, 2013 in that matter, the arbitrator handing a consumer’s claims was hand-picked by one of the defendants, has no legal training, has no qualifications as an arbitrator, and has a glaring conflict of interest. Further, the laws and rules of the Cheyenne River Sioux Tribe are extremely difficult and expensive to obtain – particularly for those who, like defendants’ customers, require loans carrying abusive interest rates to make ends meet.

Further, plaintiffs advise the Court that on June 4, 2013, the New Hampshire Banking Department issued a “Cease and Desist Order” to CashCall Inc. and WS Funding LLC – both of whom are defendants here. This order discusses the practices of CashCall, WS Funding, and defendant Western Sky Financial LLC. The New Hampshire Banking Department found that CashCall is the true lender of loans made by Western Sky Financial, that the involvement of Western Sky Financial in the lending process is virtually non-existent, and that Western Sky Financial is involved solely as a means to claim “a shield to evade licensure from the Department by exploiting Indian tribal sovereign immunity.” (Exhibit 17 at 7.) Facts relevant to these findings are also described herein. Plaintiffs respectfully submit that discovery should

proceed as to information relevant to the New Hampshire action, beginning with the production of documents CashCall produced to the New Hampshire Banking Department.

I. FACTS

(A) “Whether the arbitrator and method of arbitration required under the contract is actually available.”

- (1) Claims relating to defendants’ loans have been the subject of only one arbitration proceeding which is now pending, and no other proceedings, that were conducted either by Elders of the Cheyenne River Sioux Tribe (“the Tribe”) or by members of its Tribal Council. (Statement in open court, by defendants, through counsel, on June 11, 2013.)
- (2) The pending arbitration relates to claims raised in *Inetianbor v. CashCall Inc.*, No. 0:13CV60066 (S.D.Fla.), in which CashCall demanded arbitration, arbitration was compelled on May 17, 2013, and a motion to reconsider compulsion of arbitration was denied on June 20, 2013. (*Inetianbor* Doc 53-1 (Demand for Arbitration, attached as Exhibit 1); *Inetianbor* Docs. 59 & 70 (orders of the Court, attached as Exhibit 2.)
- (3) The dispute in *Inetianbor* relates to a loan from Western Sky Financial LLC to Mr. Inetianbor, which was purchased by a subsidiary of CashCall Inc. (Exhibit 1.)
- (4) The arbitrator selected in *Inetianbor* was Robert Chasing Hawk, a Tribal Elder who said, in a letter to the *Inetianbor* parties, that “I will apply Cheyenne River Sioux Tribal law and I have no preexisting relationship with either party in this case.” (Exhibit 3.)
- (5) Mr. Chasing Hawk was personally selected to handle the arbitration by Martin A. (“Butch”) Webb, who owns and operates Western Sky Financial LLC and the other lenders who are named in the matter before this Court – *i.e.*, Payday Financial LLC, Great Sky Financial LLC, Red Stone Financial LLC, Management Systems LLC, 24-7 Cash Direct LLC,

- Red River Ventures LLC, High Country Ventures LLC, and Financial Solutions LLC. (Exhibit 4 (Recording of June 21, 2013 Arbitration Preliminary Hearing in *Inetianbor*, before Mr. Chasing Hawk) at 23:40 – 27:37 and 37:53 – 39:03). See Exhibit 4A (affidavit by Abraham Inetianbor as to recording).¹
- (6) Mr. Chasing Hawk is the father of Shannon Chasing Hawk. (Exhibit 5; see Exhibit 4 at 23:40 -27:37.)
- (7) Ms. Chasing Hawk works for Western Sky Financial LLC. (Exhibit 6; see Exhibit 4 at 23:40 -27:37.)
- (8) During the course of the arbitration hearing, Mr. Chasing Hawk made the following statement:
- “I don’t know you. I don’t know the CashCalls [sic]. I don’t even know the owner of this business, until before months ago [sic] he asked me to be the arbitrator. I never met this guy, and I guess the only way I know is that my daughter works for him, and that’s about it.”*** (Exhibit 4 at 24:17 – 24:34.)
- (9) When Mr. Inetianbor asked why Mr. Chasing Hawk did not disclose his daughter’s employment by Western Sky Financial LLC in his letter (Exhibit 3), counsel for CashCall Inc. (represented by Christopher S. Carver of Akerman Seterfitt LLP) said the following:
- “I disagree with your characterization of his obligations of disclosure – very strongly. He said that he doesn’t have a relationship. The fact that his daughter might have worked there does not mean that he has a relationship.”*** (Exhibit 4 at 24:34 – 25:22.)

¹ Exhibit 4 is an audio recording that is being presented to the Court for *in camera* review, together with a motion for the entry of a protective order, as sensitive personal information which is not disclosed in this filing was discussed.

- (10) Mr. Carver also said the following, regarding the same disclosure issue:
“Mr. Inetianbor, you have your opinion about what should be required in the letter and I disagree with you. And that is also not an issue for the arbitration.” (Exhibit 4 at 26:26 – 26:34.)
- (11) Under the American Arbitration Association’s *Qualification Criteria for Admittance to the AAA National Roster of Arbitrators*, “freedom from bias and prejudice” is a prerequisite for an individual’s addition to that roster. (Exhibit 7.)
- (12) Under JAMS’s *Arbitrators Ethics Guidelines*, “an arbitrator should ensure that he or she has no known conflict of interest regarding the case, and should endeavor to avoid any appearance of a conflict of interest.” In particular, under these guidelines, an arbitrator “should promptly disclose.... matters required by applicable law and any actual or potential conflict of interest or relationship or other information, of which the arbitrator is aware, that reasonably could lead a party to question the arbitrator's impartiality.... If the conflict of interest casts serious doubt on the integrity of the process, an arbitrator should withdraw....” (Exhibit 8.)
- (13) Ill.Sup.Ct.R. 62 states, in part, that “a judge should respect and comply with the law and should conduct himself or herself at all time in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow the judge’s *family*, social or other relationships to influence the judge’s judicial conduct or judgment.” (Emphasis added.)
- (14) Mr. Chasing Hawk is not an attorney. He has not been admitted to the practice of law either in South Dakota or by the courts of the Cheyenne River Sioux Tribal Nation. (Exhibit 9.)
- (15) Mr. Chasing Hawk has not had any training as an arbitrator by the AAA; the sole basis for his being selected as an arbitrator was because he is a

- Tribal Elder. (Exhibit 4 at 32:25 – 33:15.)
- (16) Further inquiry from Mr. Inetianbor as to Mr. Chasing Hawk’s qualifications as an arbitrator drew this response from Mr. Carver: ***“Those answers are irrelevant, because the arbitration provision requires that the arbitrator be a Tribal Elder, and nothing more than that, and Mr. Chasing Hawk is a Tribal Elder. So these other issues are entirely irrelevant to both the arbitration and his qualifications as an arbitrator as long as he is a Tribal Elder, and on several occasions he has said that, yes, he is a Tribal Elder.”*** (Exhibit 4 at 36:43 – 37:11.)
- (17) The *Qualification Criteria for Admittance to the AAA National Roster of Arbitrators* sets, as prerequisites, among other things, a “minimum of 10 years of senior-level business or professional experience or legal practice,” “educational degrees and/or professional licenses appropriate to your field of expertise,” “honors, awards and citations indicating leadership in your field,” “training or experience in arbitration and/or other forms of dispute resolution,” the “ability to evaluate and apply legal, business or trade principles,” the “ability to manage the hearing process,” and the ability to conduct a “thorough and impartial evaluation of testimony and other evidence.” (Exhibit 7.)
- (18) The *JAMS Arbitrator Ethics Guidelines* require that “an arbitrator should be competent to arbitrate the particular matter” before him. In particular, “an arbitrator should accept an appointment only if the arbitrator meets the parties’ stated requirements in the agreement to arbitrate regarding professional qualifications. An arbitrator should prepare before the arbitration by reviewing any statements or documents submitted by the parties. An arbitrator should refuse to serve or should withdraw from the arbitration if the arbitrator becomes physically or mentally unable to meet the reasonable expectations of the parties.” Further, “an arbitrator should

withdraw from the process if the arbitration is being used to further criminal conduct, or for any of the reasons set forth above – insufficient knowledge of relevant procedural or substantive issues, a conflict of interest that has not been or cannot be waived, the arbitrator's inability to maintain impartiality, or the arbitrator's physical or mental disability. In addition, an arbitrator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have irrevocably undermined the integrity of the arbitration process.” (Exhibit 8.)

(19) Ill.Sup.Ct.R. 64 states, in part, that “a judge should be faithful to the law and maintain professional competence in it.”

(B) “Whether the applicable tribal law is readily available to the public and, if so, under what conditions.”

(20) Efforts made in April 2012 by counsel for plaintiffs to obtain the applicable law of the Cheyenne River Sioux Tribe, from libraries in Chicago, failed. (Doc. 51-2 (attached as Exhibit 10).)²

(21) Applicable Tribal statutes were not available through online legal research sources, such as Westlaw, Lexis or others. (*Id.*)

(22) Westlaw only provides access to Tribal case law, from 2001 forward, consisting of eight decisions. Tribal statutes are unavailable. (Exhibit 11.)

(23) Plaintiffs requested the production of the applicable Tribal law from defendants in April 2012. No production was made. (Exhibit 10; Appellate Doc. 39-1 (attached as Exhibit 12).)

(24) Attempts to obtain the applicable Tribal statutes directly from the tribe, in August 2012 and January 2013, were unsuccessful. (Appellate Docs. 39-19 and 39-20 (attached as Exhibit 13).)

² This was marked as an exhibit to a prior filing in this case. The exhibit tab at the bottom of the document has been electronically crossed out; the document is otherwise unaltered.

- (25) The Tribe maintains a website, at www.sioux.org. (Exhibit 14.)
- (26) The Tribe's website contains no case law or statute relevant to the transactions at issue in this case. Nor is any mention made of arbitration rules and procedures. (*Id.*)
- (27) The page on the website entitled "Laws Affecting Our Tribe" lists a document entitled "SD Tribal Court Handbook," which is not linked to a document or a page where such material can be found. (*Id.*)
- (28) The page on the website for the Tribal court contains no information. (*Id.*)
- (29) The National Indian Law Library ("NILL") is a depository of various Native American laws based in Boulder, Colorado, operated by the Native American Rights Fund ("the NARF"). (Exhibit 15.)
- (30) Counsel for plaintiff obtained from the NILL a copy of the Tribe's 1978 Law and Order Code, at a cost of \$125. (Exhibit 15, Appellate Doc. 39-18 (attached as Exhibit 16). See also Appellate Doc. 39 (full submission of tribal code to Court of Appeals).

(C) *In re CashCall Inc. et al*, No. 12-308 (N.H. Banking Dept.)

- (31) CashCall Inc., WS Funding LLC, and John Paul Reddam (CashCall's president and chief executive officer) were ordered to
 - (a) cease and desist from violations of N.H. Rev. Stat. §399-A:1 *et seq.*, dealing with "small loans;"
 - (b) disgorge finance charges and other fees paid by New Hampshire borrowers;
 - (c) notify New Hampshire borrowers of the disgorgement order;
 - (d) make restitution to New Hampshire borrowers; and
 - (d) pay a fine of \$1,967,500. (Exhibit 17 at 8.)
- (32) WS Funding LLC is a wholly-owned subsidiary of CashCall. (*Id.* at 2.)
- (33) Western Sky Financial and WS Funding entered into an agreement whereby CashCall provides to Western Sky Financial

- (a) website hosting and support services,
 - (b) reimbursement for computer server maintenance,
 - (c) reimbursement for office expenses (such as phone service and postage),
 - (d) reimbursement for employees, and
 - (e) marketing services (including creation and distribution of advertising on radio, on television, on the internet, and in print), and
 - (f) indemnification from any claims made against Western Sky Financial, in any civil, criminal or administrative action brought against it. (*Id.* at 3-4.)
- (34) CashCall reviews loan applications for underwriting requirements. (*Id.* at 3.)
- (35) CashCall funds each loan through a “Reserve Account” which it creates, funds and maintains, and from which Western Sky Financial draws money, in exchange for a promissory note executed by Western Sky Financial. (*Id.* at 3.)
- (36) After a loan is funded, CashCall is obligated to purchase the promissory notes Western Sky Financial wrote in this lending process. (*Id.* at 4.)
- (37) CashCall typically takes over servicing of the loan within a day of the transaction; Western Sky Financial receives no payments on the loans it nominally makes to consumers. (*Id.* at 4.)

II. WHAT THESE FACTS SHOW

The facts described above show that

- (A) Tribal leadership (*i.e.*, Tribal Elders and members of the Tribal Council) have virtually no experience in handling claims made against defendants through private arbitration;

- (B) the one case defendants are currently arbitrating before a private arbitrator who is a part of Tribal leadership is being handled by a man who
- (1) was hand-selected by one of the defendants in this case,
 - (2) is the father of an employee of one of the defendants in this case,
 - (3) refuses to accept that this relationship creates a conflict-of-interest,
 - (3) is not an attorney, and,
 - (4) would not be a proper person to arbitrate this matter for these reasons, and based upon standards established by the State of Illinois (for judges), or by the AAA or JAMS (for arbitrators);
- (C) CashCall Inc. (through its counsel), during the June 21, 2013 arbitration hearing in *Inetianbor*, sought to suppress a *pro se* litigant's legitimate attempts to rectify (or at least make a record as to) obvious conflict-of-interest issues, and as to the arbitrator's qualifications;
- (D) the laws of the Tribe, and rules for arbitration proceedings, are virtually inaccessible by persons of limited financial means and little legal sophistication, as
- (1) the laws are not available in libraries,
 - (2) the laws are not available through online legal research websites,
 - (3) the laws are not available through the Tribal Government's website, and
 - (4) the Tribal Code can be accessed through an independent library if the consumer (a) can find the library online, (b) knows what he or she is looking for, and (c) is able to pay \$125 for a copy of the laws; and
- (E) the lending program at issue in this litigation is essentially run by one company (CashCall Inc.), using several front businesses (including WS Funding LLC and Western Sky Financial LLC) which it ultimately funds and controls, for the sole purpose of using the special status given to sovereign Native American tribes and their reservations, in a cynical, shameless attempt to evade state and federal consumer protections.

III. FURTHER DISCOVERY

(A) As to the questions raised by Court of Appeals

Plaintiffs submit that no further discovery is needed on the two questions raised by the Court of Appeals. However, if defendants dispute the truth of any of these facts or otherwise object, further discovery (including, as necessary, depositions of Mr. Chasing Hawk, Mr. Inetianbor, Mr. Webb or representatives of the National Indian Law Library) may be required.

(B) As to the New Hampshire order

The New Hampshire Banking Department's order (Exhibit 17) referred to several contracts and agreements relating to the relationship between CashCall Inc. and lenders operated by Martin A. ("Butch") Webb. Documents produced by CashCall Inc. to the New Hampshire Banking Department would go directly to the legitimacy of any claim that arbitration must proceed in a Tribal forum, before a Tribal Elder, in an arbitration proceeding must be used, based upon a contract. Plaintiffs therefore respectfully submit that the documents produced to the New Hampshire Banking Department should be produced in this action. Further discovery may be needed, based on the information found in them.

Respectfully submitted,

/s/ Thomas E. Soule
Thomas E. Soule

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Cathleen M. Combs
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CERTIFICATE OF SERVICE

I certify that the preceding motion was served upon counsel for appellees, Claudia Callaway (claudia.callaway@kattenlaw.com) on June 25, 2013, by operation of the Court's electronic filing system.

/s/ Thomas E. Soule
Thomas E. Soule

Exhibit 17

STATE OF NEW HAMPSHIRE

BANKING DEPARTMENT

In re CashCall, Inc.,
John Paul Reddam, President and CEO of CashCall, Inc.,
and WS Funding, LLC.

Case No. 12-308

ORDER TO CEASE AND DESIST

Now comes the State of New Hampshire Banking Department (the "Department"), commencing an adjudicative proceeding under the provisions of RSA Chapter 399-A and RSA Chapter 541-A against the respondents, CashCall, Inc. ("CashCall"), John Paul Reddam, President and CEO of CashCall, and WS Funding, LLC ("WS Funding").

JURISDICTION

Under RSA Chapter 399-A, the Department licenses and regulates persons "engage[d] in the business of making small loans, title loans, or payday loans in this state or with consumers located in this state" RSA 399-A:2, I. The Department "may issue a cease and desist order against any licensee or person who it has reasonable cause to believe has violated . . . the provisions of [RSA Chapter 399-A] or any rule or order under [RSA Chapter 399-A]." RSA 399-A:8, I. Additionally, the Bank Commissioner has exclusive jurisdiction to investigate charges and fees associated with payday and small loans that may constitute an unfair or deceptive act under RSA Chapter 358-A. RSA 399-A:12, VIII. The Bank Commissioner may also "by order, upon due notice and opportunity for a hearing, assess penalties [for violating RSA Chapter 399-A] . . . if it is in the public interest." RSA 399-A:7, I(i).

RESPONDENTS

1. CashCall is located at 1600 South Douglass Road, Anaheim, CA 92806. CashCall is licensed by the Department as a mortgage banker under RSA Chapter 397-A. CashCall does not hold any other license from the Department.
2. John Paul Reddam is the President and CEO of CashCall. Mr. Reddam owns 100% of CashCall's corporate stock. Mr. Reddam has a mailing address of 1600 S. Douglass Road, Anaheim, CA 92806. Mr. Reddam is not licensed as a small loan lender with the Department.
3. WS Funding is a wholly-owned subsidiary of CashCall according to documents obtained from CashCall. It is unclear where WS Funding is located or incorporated. The Department does not have a mailing address for WS Funding. WS Funding is not licensed with the Department.

FACTS

On or about February 21, 2012, the Department commenced a routine examination of CashCall pursuant to RSA 397-A:12. During the course of the examination, the examiner discovered that CashCall appeared to be engaged in the business of purchasing and servicing small loans and/or payday loans in association with Western Sky Financial, LLC ("Western Sky"). Western Sky is wholly owned by an individual tribal member of the Cheyenne River Sioux Tribe and operates within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation, located in South Dakota. See Western Sky Home page, <http://www.westernsky.com>.

The Department sent a letter to CashCall outlining the Department's findings from the examination and issued an administrative subpoena *duces tecum* to CashCall seeking a variety of

documents related to CashCall's relationship with Western Sky. CashCall complied with the administrative subpoena and produced the requested documents.

Upon review of those documents, the Department concluded that CashCall and Western Sky operate as follows. Consumers apply for small loans or payday loans through a call center, CashCall's website, or www.westernsky.com.¹ Pursuant to an agreement between Western Sky and WS Funding, CashCall provides website hosting and support services for Western Sky. Additionally, CashCall reimburses Western Sky for all costs of maintenance, repair and/or update costs associated with Western Sky's server. CashCall also reimburses Western Sky for its office, personnel, and postage and provides Western Sky with a toll free telephone and fax number. CashCall also provides an array of marketing services to Western Sky, including but not limited to creating and distributing print, internet, television, and radio advertisements and other promotional materials.

Once a consumer application for a small or payday loan is received via the call center, CashCall's website, or www.westernsky.com, CashCall reviews the application for underwriting requirements. When an application is approved, Western Sky executes a promissory note and debits a so-called "Reserve Account" to fund the promissory note. The Reserve Account is a demand-deposit bank account set up in the name of Western Sky which carries a balance equal to the full value of two days promissory notes calculated on the previous month's daily average. Under an agreement between Western Sky and WS Funding, CashCall is required to set up, fund, and maintain the balance in the Reserve Account. The initial balance in the Reserve Account must be \$100,000.

¹ A "WHOIS" search on www.godaddy.com demonstrates that www.westernsky.com is registered to Butch Webb, Payday Financial, LLC, Timber Lake, South Dakota. Butch Webb is the signatory for Western Sky Financial on the Agreement for the Assignment and Purchase of Promissory Notes" between WS Funding, LLC, a subsidiary of CashCall, and Western Sky Financial, LLC.

After a loan is funded, CashCall is obligated by agreement to purchase the promissory note from Western Sky. The agreement between WS Funding and Western Sky provides that Western Sky can debit the Reserve Account in payment for these purchased promissory notes at the end of every business day. The timeframe for when the purchase occurs is not specified in any agreement between WS Funding and Western Sky. However, consumer complaints indicate that CashCall generally makes contact with the consumer within one business day of the consumer filing an application for the small loan or payday loan. Western Sky does not accept any payment from consumers on notes made under this business scheme.

As compensation for services provided, Western Sky pays CashCall 2.02% of the face value of each approved and executed loan transaction plus any additional charges with a net minimum payment of \$100,000 per month. Conversely, in consideration for the terms of the agreement setting up the Reserve Account, CashCall agrees to pay Western Sky 5.145% of the face value of each approved and executed loan credit extension and/or renewal. Additionally, CashCall pays Western Sky a minimum monthly administration fee of \$10,000.

Under the terms of the agreement between WS Funding and Western Sky, CashCall agrees to indemnify Western Sky for all costs arising or resulting from any and all civil, criminal, or administrative claims or actions, including but not limited to fines, costs, assessments, and/or penalties which may arise in any jurisdiction. Additionally, CashCall is responsible for tracking all consumer complaints regarding these payday and small loans and notifying Western Sky of these complaints.

The Department has received five consumer complaints from New Hampshire residents against Western Sky and CashCall. Additionally, CashCall provided the Department with a list

of 787 New Hampshire consumers who received small loans or payday loans under the business scheme outlined above, including the five consumers who filed complaints with the Department.

The respondents have taken substantial steps to conceal this business scheme from consumers and state and federal regulators. Western Sky does not identify its relationship with CashCall or WS Funding on its website or in any marketing materials. The promissory notes identify the “lender” as Western Sky with an address of Timber Lake, South Dakota. The promissory notes state that the loan agreement is “subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation.” Additionally, the Department has taken enforcement action against Western Sky in the past. E.g., In re Impact Cash, Case No. 10-011 (Order to Show Cause and Cease and Desist, Sept. 23, 2011). Western Sky sought dismissal of the action for lack of jurisdiction, citing the sovereign status of individual members of Indian Tribes under United States Supreme Court case law.

After detailed review of the respondents’ business scheme, it appears that Western Sky is nothing more than a front to enable CashCall to evade licensure by state agencies and to exploit Indian Tribal Sovereign Immunity to shield its deceptive business practices from prosecution by state and federal regulators. Western Sky holds itself out to the public as a stand alone tribal entity which provides small loans and payday loans to consumers. In reality, however, CashCall creates all advertising and marketing materials for Western Sky and reimburses Western Sky for administrative costs. CashCall reviews consumer applications for underwriting requirements. CashCall funds the loans. CashCall services the loans. Western Sky does not receive any payment from consumers for the loans.

GOVERNING LAW

Under RSA 399-A:2, I, “[n]o person shall engage in the business of making small loans, title loans, or payday loans . . . with consumers located in [New Hampshire] without first obtaining a license from the [Bank Commissioner].” “If in the making or collection of a loan[,] the person [fails to obtain a license from the Department], the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest or charges whatsoever.” RSA 399-A:2, IV. The provisions of RSA Chapter 399-A “apply to any person who seeks to evade its application by any device, subterfuge, or pretense, including without limitation . . . [u]sing any agents, affiliates, or subsidiaries in an attempt to avoid the application of the provisions of [RSA Chapter 399-A].” RSA 399-A:2, VI(b).

Courts look to the substance of a transaction, rather than the formal loan documents, to identify the actual or de facto lender who makes the loan. Ubaldi v. SLM Corp., 852 F. Supp. 2d 1190, 1196 (N.D. Cal. 2012); State of West Virginia, et al. v. CashCall, Inc., et al., No. 08-C-1964, slip op. at 10-11 (Sept. 10, 2012). Specifically, courts consider, among other things, which party: (1) supplies the funds for the loans; (2) bears the risk of loss on the loans; (3) makes the underwriting decisions, i.e., the decisions to lend or not to lend to a particular applicant; (4) develops and uses forms, brands, and platforms; (5) collects the vast majority of fees and interest on loans. Ubaldi, 852 F. Supp. 2d at 1195; see RSA 399-A:2, VI(c)(indicating that New Hampshire courts should look to which entity maintains a “preponderance economic interest” in the revenues generated by the loan).

FINDINGS

The Department has reasonable cause to believe that the substance of the transactions with New Hampshire consumers shows that CashCall, or its wholly-owned subsidiary, WS

Funding, is the actual or de facto lender for the payday or small loans. CashCall supplies funds for the loans through the Reserve Account. CashCall bears the risk of loss on the loans in that it is obligated to purchase the promissory notes from Western Sky and CashCall has agreed to indemnify Western Sky for any liability associated with the business scheme. CashCall reviews all consumer applications for underwriting requirements. CashCall provides website site hosting, server maintenance, marketing services, and administrative support services to Western Sky. Finally, CashCall receives all payments from consumers for the loans. For these reasons, the Department has reasonable cause to believe that the respondents knowingly or negligently violated RSA 399-A:2, I when they engaged in the business of making payday loans or small loans without obtaining a license from the Department.

Additionally, the Department has reasonable cause to believe that the respondents' business scheme constitutes an unfair or deceptive act or practice. See RSA 399-A:12, VIII. The respondents appear to have enacted the business scheme to cause a likelihood of confusion or misunderstanding as to the affiliation, connection, or association between CashCall, WS Funding, and Western Sky. See RSA 358-A:2, III. This business scheme prevents consumers from understanding which entity is making the loans. Moreover, the respondents apparently have used the business scheme as a shield to evade licensure from the Department by exploiting Indian Tribal Sovereign Immunity.

Pursuant to RSA 399-A:7, I, this Order is necessary and appropriate to the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of RSA Chapter 399-A.

ORDER

Accordingly, the Commissioner orders as follows:

1. The respondents shall cease and desist from violating RSA Chapter 399-A and any rules or order under RSA Chapter 399-A;
2. The respondents shall disgorge any finance charges, delinquency charges, or collection charges associated with the loans made to New Hampshire consumers under the business scheme outlined above;
3. The respondents shall notify all New Hampshire consumers with loans made under the above-referenced business scheme of the disgorgement of any finance charges, delinquency charges, or collection charges associated with those loans via letter;
4. The respondents shall pay restitution to all New Hampshire consumers who received loans under the business scheme outlined above; and
5. The respondents shall be assessed an administrative fine of \$1,967,500 for 787 knowing or negligent violations of RSA 399-A:2, I. RSA 399-A:7, I(i); RSA 399-A:8, I; RSA 399-A:18, II; RSA 399-A:18, V.

NOTICE OF RIGHT TO A HEARING

The respondents have a right to request a hearing in writing on this Order to Cease and Desist. If requested, “[a] hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner” RSA 399-A:8, I.

If the respondent “fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.” Id.

RECOMMENDED by:

June 4, 2013
Date

_____/s/
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire Banking Department

ORDERED by:

June 4, 2013
Date

_____/s/
Glenn A. Perlow
Bank Commissioner
State of New Hampshire Banking Department

CERTIFICATE OF SERVICE

I, Emelia A.S. Galdieri, hereby certify that on June 5, 2013, a copy of this Order to Cease and Desist was sent to the following parties via U.S. Certified Mail First Class:

Claudia Callaway, Esq.
Katten Muchin Rosenman, LLP
2900 K Street NW, North Tower – Suite 200
Washington, DC 20007-5118

J. Paul Reddam
CashCall, Inc.
1600 S. Douglass Road
Anaheim, CA 92806

_____/s/
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire
Banking Department

Exhibit A

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL & PROFESSIONAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS**

In the Matter of)
Western Sky Financial, LLC) No. 13 CC 265
)

To: Western Sky Funding Group, Ltd.
612 E Street
Timber Lake, SD 57656

CEASE AND DESIST ORDER

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, DIVISION OF FINANCIAL INSTITUTIONS (“Department”), having conducted an examination of facts related to activities performed by Western Sky Financial, LLC (“Western Sky”), pursuant to the Payday Loan Reform Act, 815 ILCS 122/1 et seq., and the Consumer Installment Loan Act, 205 ILCS 670/1 et seq., hereby issues this order:

STATUTORY PROVISIONS

A. Payday Loan Reform Act (“PLRA”)

1. Section 1-15(a) of PLRA states, in pertinent part:

[T]his Act applies to any lender that offers or makes a payday loan to a consumer in Illinois. 815 ILCS 122/§1-15(a).

2. Section 1-10 of PLRA states, in pertinent part:

“Lender” and “licensee” mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act. 815 ILCS 122/§1-10.

3. Section 3-3(a) of PLRA states, in pertinent part:

[A] person or entity acting as a payday lender must be licensed by the Department as provided in this Article. 815 ILCS 122/§3-3(a).

4. Section 4-10(e) of PLRA states, in pertinent part:

The Secretary [of the Department] may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. 815 ILCS 122/§4-10(e).

B. Consumer Installment Loan Act (“CILA”)

5. Section 1 of CILA states, in pertinent part:

License required to engage in business. No person, partnership, association, limited liability company, or corporation shall engage in the business of making loans of money in a principal amount not exceeding \$40,000, and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act after first obtaining a license from the Director of Financial Institutions (hereinafter called the Director). 205 ILCS 670/§1.

6. Section 20.5(a) of CILA states, in pertinent part:

The Director may issue a cease and desist order to any licensee, or other person doing business without the required license, when in the opinion of the Director, the licensee, or other person, is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. 205 ILCS 670/§20.5(a).

7. Section 20.5(b) of CILA states, in pertinent part:

The Director may issue a cease and desist order prior to a hearing. 205 ILCS 670/§20.5(b).

8. Section 20.5(h) of CILA states, in pertinent part:

The powers vested in the Director by this Section are additional to any and all other powers and remedies vested in the Director by law, and nothing in this Section shall be construed as requiring that the Director shall employ the power conferred in this Section instead of or as a condition precedent to the exercise of any other power or remedy vested in the Director. 205 ILCS 670/§20.5(h).

FACTUAL FINDINGS

9. On or about March 6, 2013, Western Sky sent an email communication to an Illinois consumer soliciting an application for a PLRA or CILA loan.
10. On or before March 2013, Western Sky solicited applications for PLRA and CILA loans from Illinois consumers through its website, www.westernsky.com.

11. On or before March 2013, Western Sky advertised PLRA and CILA loans to Illinois consumers on multiple television networks.
12. On or before March 2013, Western Sky was engaged in the business of offering, making, or arranging PLRA loans to Illinois consumers.
13. On or before March 2013, Western Sky was engaged in the business of offering, making, or arranging CILA loans to Illinois consumers.
14. Western Sky has never been licensed by the Department to offer, make, or arrange PLRA loans to Illinois consumers.
15. Western Sky has never been licensed by the Department to offer, make, or arrange CILA loans to Illinois consumers.

LEGAL FINDINGS

16. Western Sky violated Section 3.3 of the Payday Loan Reform Act by offering, making, or arranging PLRA loans to Illinois consumers without first applying for, and obtaining the required license from the Department.
17. Western Sky violated Section 1 of the Consumer Installment Loan Act by offering, making, or arranging CILA loans to Illinois consumers without first applying for, and obtaining the required license from the Department.

NOW IT IS HEREBY ORDERED:

- I. Pursuant to Section 4-10(e) of the Payday Loan Reform Act, Western Sky shall immediately **CEASE AND DESIST** offering, making, or arranging PLRA loans to consumers in Illinois.
- II. Pursuant to Section 20.5 of the Consumer Installment Loan Act, Western Sky shall immediately **CEASE AND DESIST** offering, making, or arranging CILA loans to consumers in Illinois.
- III. Western Sky is ordered to **PRODUCE DOCUMENTS** to the Department consisting of any and all records, files, account statements, communications, and documents containing information relevant to the accounts of all active and inactive Illinois consumers. Western Sky shall provide copies of all print and electronic advertising, mailings, fliers, email communications, website pages, and any other type of solicitation or advertisement that Western Sky is using or has used to solicit consumers in Illinois. All documents requested pursuant to this paragraph shall be produced by **March 29, 2013**, and delivered to the Consumer Credit Supervisor at the Illinois Department of Financial and Professional

Regulation, Division of Financial Institutions, 100 W. Randolph Street, 9th Floor,
Chicago, IL 60601.

Pursuant to Section 4-10(e) of PLRA and Section 20.5(c) of CILA, notice shall be made either personally or by certified mail. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. mail. Western Sky may request, in writing, a hearing on the Order within 15 days after the date of service.

Dated this 8th day of March 2013

Roxanne Nava, Director
Division of Financial Institutions

a different portion of this scheme. Western Sky offers and makes the usurious loans. WS Funding, which is CashCall's subsidiary, buys the loans from Western Sky. And CashCall, acting as the servicer of the loans, collects the usurious interest, fees, and principal from consumers.

3. Despite Respondents' scheme, each company has engaged in conduct that is illegal in New York. New York State's licensed lender law and civil and criminal usury laws prohibit both making and collecting interest on usurious loans in New York. See Banking Law §§ 340-361; General Obligations Law § 5-501; Penal Law § 190.40. By originating and collecting on high-interest loans without a license, Western Sky, CashCall, and WS Funding have each repeatedly and persistently violated the licensed lender law. WS Funding and CashCall have also each repeatedly and persistently engaged in illegal conduct by collecting interest at rates above the civil and criminal usury caps of 16% and 25%.

4. Moreover, the Respondent companies originate loans in the name of Western Sky while concealing that Western Sky is the lender of these loans in name only. CashCall and WS Funding offer and arrange for the loans in Western Sky's name, provide the capital for the loans, and bear all of the risk of lending. As the true parties in interest behind these loans, CashCall and WS Funding are also liable for their origination.

5. Respondents Webb and Reddam, the principals and sole owners of the Respondent companies, orchestrated the companies' scheme to originate and collect on usurious loans, including executing the agreements that established the scheme. Webb and Reddam are therefore individually liable for their companies' illegal conduct.

6. Since early 2010, Respondents have made at least 17,970 high interest loans to New York consumers, lending more than \$38 million in principal. The interest and fees owed on

these loans is nearly \$185 million.

7. Respondents' business preys upon vulnerable New York consumers facing financial hardships with limited options. Substantial origination fees make early repayment of the loans difficult. Consumers end up indebted for between one and seven years, repaying finance charges that are in some cases several times the principal of the loan. Although Respondents recently stopped offering loans to New York consumers, unless enjoined, Respondents will continue to collect on outstanding usurious loans and can resume their illegal lending practice, causing substantial injury to New York consumers.

8. This action is brought pursuant to New York Executive Law ("Exec. Law") § 63(12) and General Business Law ("GBL") § 349 to enjoin Respondents from contracting for, charging, taking, or receiving illegal rates of interest on high-interest consumer loans and related fraudulent and deceptive business practices, to provide restitution to New York consumers victimized by the Respondents' illegal conduct, to void the illegal loan contracts, disgorge profits resulting from these practices, and recover penalties and costs as authorized by statute.

PARTIES AND JURISDICTION

9. Petitioner is the People of the State of New York by their attorney, Eric T. Schneiderman, Attorney General of the State of New York. This Court has jurisdiction pursuant to New York Exec. Law § 63(12), under which the Attorney General is empowered to seek injunctive relief, restitution, disgorgement, damages and costs when any person or entity has engaged in repeated fraudulent or illegal acts or has otherwise engaged in persistent fraud or illegality in the conduct of its business. This Court also has jurisdiction pursuant to GBL Article 22-A, § 349, which empowers the Attorney General to seek injunctive relief, restitution, disgorgement, damages, costs and civil penalties when a person or entity has engaged in

misleading and deceptive business practices.

10. Respondent Western Sky is a for-profit South Dakota limited liability corporation with its principal place of business located at 612 E Street, Timber Lake, South Dakota 57656.

11. Respondent CashCall is a for-profit California corporation with its principal place of business located at 1600 S. Douglass Road, Anaheim, California 92806.

12. Respondent WS Funding is a for-profit limited liability corporation incorporated in Delaware. WS Funding is a subsidiary of CashCall.

13. CashCall has contracted with Western Sky to provide loan origination services to consumers in Western Sky's name. WS Funding, CashCall's subsidiary, has contracted with Western Sky to purchase all loans made by Western Sky.

14. Respondents Western Sky, CashCall, and WS Funding have transacted business in the State of New York by soliciting loans in New York and offering, arranging for, and originating loans to New York consumers. In addition, CashCall and WS Funding have transacted business in New York by systematically purchasing the loans of New York consumers days after their issuance, servicing those loans, including debiting the bank accounts of New York consumers within New York and otherwise attempting to collect money from New York consumers, and establishing continuing commercial relationships with New York consumers.

15. Western Sky, CashCall, and WS Funding are not licensed by the New York State Department of Financial Services as licensed lenders.

16. Respondent Webb is, directly or indirectly, the sole officer, director, manager, owner, and principal of Western Sky.

17. Respondent Reddam is the president of CashCall, the sole member of that company's Board of Directors, and that company's only owner. Reddam is also the president of

WS Funding.

18. The Attorney General has provided Respondents with pre-litigation notice pursuant to GBL § 349(c).

FACTUAL ALLEGATIONS

Respondents Have Originated Usurious Loans to New York Consumers

19. Western Sky, CashCall, and WS Funding are in the business of making and collecting on high-interest loans to consumers. Since at least early 2010, the companies have solicited high-interest loans in New York.

20. Respondents, using the “Western Sky” name, have offered several loan products to consumers, with principal amounts ranging from \$400 to \$9,925.

21. The repayment period and interest rates for the Western Sky loan products vary based on the size of the loan, but all of the loans carry exorbitant rates of interest, with APRs of between 89.26% and 355.27%.

22. For example, a loan of \$500 carries an APR of 342.86% and must be repaid within 12 months. A loan of \$9,925 carries an APR of 89.68% and must be repaid within 84 months. The following table from the Western Sky website lists the five loans most recently offered in New York.

Loan Product	Borrower Proceeds	Loan Fee	APR	Number of Payments	Payment Amount
\$10,000	\$9,925	\$75	89.68%	84	\$743.49
\$5,075	\$5,000	\$75	116.73%	84	\$486.58
\$2,600	\$2,525	\$75	139.22%	47	\$294.46
\$1,500	\$1,000	\$500	234.25%	24	\$198.19
\$850	\$500	\$350	342.86%	12	\$150.72

23. Consumers are also assessed a fee, alternately referred to as a “loan fee,” a “prepaid finance charge” and an “origination fee,” which is added on to the principal of the loan. In many cases the fee is significant, adding 70% to the principal of \$500 loans and 50% to the principal of \$1,000 loans.

24. The loans are offered using Western Sky’s name through Western Sky television advertisements and through the Western Sky website, available at <www.westernsky.com>. Consumers apply for the loans by completing an electronic application form on the Western Sky website or by calling a toll free number. Every page of the online application form contains the following misleading message

Western Sky Financial, LLC, is a Native American-owned business operating within the boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America. By using our website, you are conducting business on the Cheyenne River Indian Reservation and are subjecting yourself exclusively to the laws and jurisdiction of the Cheyenne River Sioux Tribe, a Sovereign Native American Nation.

25. In many cases, in addition to the information provided in the loan application, consumers must submit documentation to obtain approval for the loan, including bank statements, a pay stub, and picture identification.

26. Following the submission of the loan application and attendant documents, consumers typically receive notice that they have been approved for a loan and are directed to the Western Sky website to “sign the loan document electronically.” On the website, consumers are asked to agree to the loan terms by electronically checking two boxes.

27. The terms of the loan are contained in a standard form loan agreement, captioned “Western Sky Consumer Loan Agreement” (the “Loan Agreement”). The Loan Agreement authorizes the creditor to electronically debit the amount due on the loan, including the monthly

installment and fees and charges accrued, from the borrower's checking account on the monthly payment date.

28. After the loan is executed, the principal of the loan is electronically transferred into the consumer's (now "borrower's") bank account. In connection with loans made to New York consumers, the funds are deposited into bank accounts in the state of New York.

29. Since early 2010, Respondents have made at least 17,970 loans to New York consumers.

Respondents Collect Usurious Rates of Interest

30. All of the loans made by Western Sky are purchased by, and assigned to, CashCall's subsidiary, WS Funding. The assignments are made shortly after the loans are approved, typically within three days.

31. Following the assignment of a loan to WS Funding, CashCall contacts the borrower by e-mail or letter to notify the borrower that the loan has been assigned. Although WS Funding is the assignee of all loans, the mailed notices state that "CashCall recently purchased your loan from Western Sky Financial" or "CashCall was recently assigned your loan for servicing."

32. Pursuant to the borrower's Loan Agreement, beginning on the first payment date, CashCall electronically debits an installment payment from the borrower's bank account each month through an automated clearing house ("ACH") transaction. These debits continue until the loan is repaid in its entirety, up to seven years, or until the borrower successfully forecloses access to the account, for instance by revoking the ACH authorization or by closing the account entirely.

33. Since early 2010, CashCall has serviced at least 17,970 loans of New York consumers. In connection with these loans, CashCall repeatedly debited money as interest from bank accounts in the state of New York.

34. These loans are very burdensome for consumers. For example, a borrower that receives \$1,000 in principal can owe as much as \$4,942 in finance charges, fees, and principal over two years. A borrower that receives \$2,525 can owe as much as \$14,132 over four years.

35. The bulk of the money CashCall collects is treated as interest. Moreover, the borrower's initial payments are applied to interest and fees *only*. For several loan products, particularly those carrying high origination fees, consumers can therefore make payments for months and still owe more on the loan than they received in principal.

36. At some point during the life of their loans, many New York consumers have had difficulty making a payment. Where a consumer misses a monthly payment, CashCall attempts to collect on the debt through a barrage of phone calls, e-mails, and letters.

37. CashCall's collection calls are frequent, often every day. If the consumer does not answer the phone, the consumer may be called several times per day, at home and at work. Consumers have also been told that they would be visited in person and "served" with papers, that their references would be called, and that an arrest warrant would be issued.

38. CashCall also reports delinquent payments to credit bureaus Experian and Equifax. Although WS Funding holds the loans, CashCall represents to the credit bureaus that it is the creditor. The reported information negatively impacts borrowers' credit.

39. Borrowers that have contacted CashCall in an attempt to arrange a payment plan have found CashCall unwilling to offer relief. When a borrower does receive a loan modification agreement, the agreement is offered and entered into by CashCall, not WS Funding.

40. Borrowers that contact CashCall to inquire about the interest rates they have been charged receive a form letter that falsely represents that New York laws do not apply to their loans:

Western Sky is a wholly Cheyenne River Sioux Tribal Member owned business and is located and operates within the exterior boundaries of the Cheyenne River Indian Reservation. Western Sky loans are initiated, approved, issued and disbursed within the confines of the Cheyenne River Indian Reservation. Western Sky is licensed with the Cheyenne River Sioux Tribe. Western Sky does not have any physical presence in your state or any other State of the Union. The laws of the Cheyenne River Sioux Tribe apply exclusively to the terms and conditions of your loan, and you further accepted this choice of law and jurisdiction by executing your loan document.

41. In fact, Western Sky is a limited liability company organized and registered under South Dakota law. It is not owned or operated by the Cheyenne River Sioux Tribe, and several courts have already rejected claims of tribal immunity made by Western Sky and its owner, Martin Webb.

42. CashCall concludes these letters with the following advice: "If you are unhappy with Western Sky, WS Funding, or your loan in any respect, we would advise you to pay it off now without penalty."

Respondents Have Engaged in a Deceptive Scheme in an Attempt to Circumvent Usury and Licensing Laws

43. Respondents' lending arrangement described above – including the origination of loans by Western Sky and assignment to WS Funding – is designed to disguise Respondents' true interests in the loans.

44. In fact, Western Sky is the lender of these loans in name only. WS Funding, which is CashCall's subsidiary, funds the Western Sky loans and bears the risk of Western Sky's

lending. CashCall provides loan origination services in Western Sky's name, enabling CashCall to offer Western Sky loans and handle Western Sky loan applications.

45. This arrangement is captured in contracts between Western Sky, CashCall, and WS Funding. Among the relevant provisions:

- a. WS Funding is obligated to purchase all loans made through the Western Sky website;
- b. WS Funding agreed to open a "Reserve Account" in Western Sky's name and to maintain a balance in the account "to fund any unpurchased or unfunded" loans and "for payment of purchased notes";
- c. WS Funding agreed to fully indemnify Western Sky;
- d. CashCall agreed to host and support the Western Sky website;
- e. CashCall agreed to provide a toll free phone and fax number in Western Sky's name; and
- f. CashCall agreed to provide customer service support to handle incoming applications through both the Western Sky website and phone line.

46. Respondents CashCall and WS Funding have engaged Western Sky in this elaborate scheme in an attempt to evade state usury and licensing laws.

47. Respondent Reddam mistakenly believes that his companies, CashCall and WS Funding, can escape liability by outsourcing the origination of usurious loans to Western Sky. Bloomberg News, describing an interview of Reddam, reported that Reddam believes that "[t]here's nothing wrong with CashCall's business because it doesn't arrange or fund the Western Sky loans but merely buys them after the fact."

48. In response to consumer complaints received by the New York State Attorney General's Office, the Attorney General's Office has repeatedly contacted Western Sky and CashCall. The Attorney General's Office notified the companies that "lenders that are not

licensed by the State of New York cannot charge interest greater than 16% per annum” and that “[l]enders that are licensed by New York cannot charge more than 25% interest per annum.” The Office of the Attorney General also sought the cancellation of any consumer obligations exceeding the legal rate of interest.

49. Despite the Attorney General’s requests, Western Sky and CashCall have repeatedly refused to cancel usurious loan obligations. The companies mistakenly assert that the loans are “valid and enforceable” and that “the loan documents clearly indicate that the laws of the Cheyenne River Sioux Tribe apply exclusively to the terms and conditions of” the loans. The companies continue to collect on usurious loans to New York consumers.

***Respondents Webb and Reddam Have Knowledge Of and Have Participated In
Respondents’ Illegal and Fraudulent Activities***

50. Respondent Webb, as the sole officer, director, manager, owner, and principal of Western Sky, has had knowledge of the activities of Western Sky and has exercised control over the company.

51. Respondent Reddam, as president of CashCall and WS Funding, and the sole member of CashCall’s Board of Directors, has had knowledge of the activities of CashCall and WS Funding and exercised control over both companies.

52. Webb and Reddam have played a central role in Respondents’ lending scheme, having executed agreements on behalf of their respective companies establishing the relationship between Western Sky, CashCall and WS Funding that is described above.

53. In an interview with Bloomberg News, Reddam reportedly acknowledged his companies’ arrangement with Western Sky, as well as having become “friendly” with Western Sky’s owner, Respondent Webb.

54. Respondent Western Sky has acted for the benefit of Webb, the sole owner of the company. Respondents CashCall and WS Funding have acted for the benefit of Reddam, the sole owner of CashCall.

CashCall's Prior Rent-A-Bank Scheme

55. Respondents' scheme is similar to another arrangement that was the basis of an action brought by the Attorney General of West Virginia against CashCall and Reddam in 2008.

56. In the 2008 action, the Attorney General of West Virginia alleged that CashCall had partnered with a state-chartered bank, First Bank & Trust, Milbank, South Dakota, to make high-interest loans with interest rates between 59% and 96%. West Virginia v. CashCall, Inc., No. 08-C-1964, at 3, 6 (Cir. Ct. Kanawha Co., W. Va. Sept. 10, 2012) (Final Order on Phase II of Trial: The State's Usury and Lending Claims). The state further alleged that the partnership had been formed in an attempt to evade the state's lender licensing and usury laws through the improper use of federal preemption. Id. at 2. CashCall claimed in response that it was merely a "marketing agent" for the state chartered bank. Id.

57. In its September 10, 2012 decision regarding the state's usury and lending claims, the West Virginia court held that CashCall was the de facto lender and therefore subject to the state's consumer protection laws. Id. at 17, 25.

58. The court found that agreements between CashCall and the bank confirmed that the financial burden and risk from the loans fell on CashCall. The agreements between CashCall and the bank included provisions similar to those at issue here. Id. at 17-19.

59. The West Virginia court also held that "the arrangement between CashCall and the Bank was designed to enable a non-bank entity, CashCall to make improper use of the Bank's federal preemption status to evade states' usury laws." Id. at 24.

Numerous Other States Have Taken Action Against Respondents Over The Internet Lending Scheme At Issue Here

60. Attorneys General and regulatory agencies from at least twelve states have taken action against one or more of the Respondents over the usurious loans at issue here.

61. For example, in January 2011 the Colorado Attorney General sued Western Sky and Webb, alleging that Western Sky had violated the state's lending and consumer protection laws by making usurious and unlicensed loans over the Internet to Colorado consumers. In April 2013, the Colorado court granted the state's motion for partial summary judgment, holding that Western Sky had made supervised loans to Colorado citizens without a license in violation of Colorado law, and that the defendants were therefore liable to Colorado consumers for restitution of all finance charges that had been collected. Colorado v. Western Sky Fin., LLC, No. 11-cv-638 (Dist. Ct. Denver Co., Colo. April 15, 2013).

62. The Attorneys General of Missouri, Minnesota, and Georgia have also initiated enforcement actions against the Respondents. In April 2011, the Missouri Attorney General sued Western Sky and Webb, alleging that the defendants had engaged in unlawful lending over the Internet. Missouri v. Martin A. Webb, No. 11SL-CC01680-1 (Cir. Ct. St. Louis Co., Mo.). On July 11, 2013, the Minnesota Attorney General initiated an enforcement action against CashCall and WS Funding, alleging that the companies had "used Western Sky as a front" to mislead borrowers and regulators about Western Sky loans in "an illegitimate attempt to circumvent state law." And on July 26, 2013, the Georgia Attorney General sued Western Sky, CashCall, and Webb, alleging that the defendants had "collaborated in a common enterprise to make high-interest payday loans to Georgia consumers over the Internet." These litigations are pending.

63. In August 2010, the West Virginia Attorney General filed a petition against Webb and a lending company owned by Webb, Payday Financial, to enforce an investigative subpoena issued by the state. The state's petition was granted as to Payday Financial in 2011. West Virginia v. Payday Loan Resource Center, LLC, No. 10-MISC-372 (Cir. Ct. Kanawha Co., W.Va. Oct. 24, 2011). In 2012, facing a hearing for contempt for failing to comply with the order, Webb agreed to cease all lending in the state and to make full refunds of excess interest.

64. In addition, regulators in Maryland, New Hampshire, Oregon, Massachusetts, Illinois, Washington and Kansas have moved to prohibit Western Sky or CashCall from engaging in unlawful lending activities in their respective states.

65. For example, the Maryland Commissioner of Financial Regulation issued an Opinion and Final Order on May 22, 2013 to Western Sky and Webb following a lengthy proceeding and separate hearings before an administrative law judge and the Commissioner. The Commissioner found that Western Sky and Webb had violated Maryland licensing, usury, and consumer protection laws and directed the respondents to cease unlicensed lending activities, refund all amounts collected from Maryland consumers, and pay civil penalties. Western Sky Fin., LLC, No. CFR-FY2011-182 (Md. Comm'r of Fin. Reg. May 22, 2013) (Opinion and Final Order).

66. Similarly, the New Hampshire Banking Department issued an Order to Cease and Desist to CashCall and WS Funding on June 4, 2013. The Department stated that “[a]fter detailed review of the respondents’ business scheme, it appears that Western Sky is nothing more than a front to enable CashCall to evade licensure by state agencies.” On this basis, the Department found that there was reasonable cause to believe that the respondents were the de facto lenders of the Western Sky loans, and that they had therefore violated the state’s licensing

statute. The Banking Department directed the respondents to disgorge all finance charges and pay restitution to New Hampshire consumers, and assessed respondents a fine of more than \$1.9 million for the 787 loans issued in the state. In re CashCall, Inc., Case No. 12-308 (N.H. Banking Dep't June 4, 2013) (Order to Cease and Desist).

67. Since mid-2012, the Kansas Office of the State Bank Commissioner, Massachusetts Commissioner of Banks, Illinois Department of Financial & Professional Regulation, and Oregon Director of the Department of Consumer and Business Services have all also issued orders directing Western Sky, CashCall, or both to cease and desist from engaging in unlawful lending activities. Western Sky Fin., LLC, No. 2011-312 (Kan. Office of State Bank Comm'r May 22, 2012) (Summary Order to Cease and Desist); CashCall, Inc., No. 2013-10 (Mass. Comm'r of Banks Apr. 4, 2013) (Cease Order); Western Sky Fin., LLC, No. 2013-11 (Mass. Comm'r of Banks Apr 4, 2013) (Cease Order); Western Sky Fin., LLC, No. 13 CC 265 (Ill. Dep't of Fin. & Prof'l Regulation Mar. 8, 2013) (Cease and Desist Order); Western Sky Fin., LLC, No. I-12-0039 (Or. Dep't of Consumer and Bus. Servs. Dec. 13, 2012) (Final Order to Cease and Desist).

68. The Washington Department of Financial Institutions also is or has been engaged in enforcement proceedings against both Western Sky and CashCall. In January 2013, an administrative law judge granted the Department's motion for partial summary judgment against CashCall, holding that the company had collected interest at rates exceeding those permitted by Washington law. The judge revoked CashCall's license and directed that CashCall cease and desist from collecting interest above the usury rate cap of 12%. CashCall, Inc., No. C-11-0701-12-SC03 (Wash. Dep't of Fin. Insts. Jan. 30, 2013) (Order Granting Department's Motion for Summary Judgment).

**FIRST CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
VIOLATION OF BANKING LAW § 340 - DOING BUSINESS WITHOUT LICENSE**

69. New York Banking Law § 340 makes it unlawful for a person or entity to “engage in the business of making loans in the principal amount of twenty-five thousand dollars or less for any loan to an individual for personal, family, household, or investment purposes and in a principal amount of fifty thousand dollars or less for business and commercial loans, and charge, contract for, or receive a greater rate of interest than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this article and without first obtaining a license from the superintendent.” Pursuant to General Obligations Law § 5-501 and Banking Law § 14-a, the maximum interest rate a lender is permitted by law to charge without a license is sixteen percent per annum (16%).

70. At all times relevant to this Petition, Respondents Western Sky, CashCall, and WS Funding were not licensed by the New York State Department of Financial Services or the New York State Superintendent of Banking as licensed lenders.

71. In the course of making and collecting on high-interest loans to consumers in New York, Respondents repeatedly or persistently engaged in the business of making loans in amounts less than twenty-five thousand dollars at interest rates that exceeded the rate of interest they would be permitted by law to charge if they were licensed by New York State. Further, Respondents solicited loans within New York State in the principal amount of twenty-five thousand dollars or less and in connection with these solicitations made loans to individuals resident in New York State.

72. By engaging in repeated or persistent illegal conduct in the carrying on, conducting, or transaction of business in violation of Banking Law § 340, each of the

Respondents has violated Exec. Law § 63(12).

**SECOND CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
VIOLATION OF BANKING LAW § 356 - LOANS BY NON-LICENSEES**

73. New York Banking Law § 356 makes it unlawful for a person or entity that is not licensed by the State of New York “to charge, contract for, or receive any interest, discount, or consideration greater than the person or entity would be permitted by law to charge if it were not a licensee hereunder upon a loan not exceeding the maximum amounts prescribed in section three hundred forty of [the Banking Law].” New York Banking Law § 340 makes it unlawful for a person or entity not licensed by the State of New York to “engage in the business of making loans in the principal amount of twenty-five thousand dollars or less for any loan to an individual for personal, family, household, or investment purposes.” Pursuant to General Obligations Law § 5-501 and Banking Law § 14-a, the maximum interest rate a lender is permitted by law to charge without a license is sixteen percent per annum (16%).

74. At all times relevant to this Petition, Respondents Western Sky, CashCall, and WS Funding were not licensed by the New York State Department of Financial Services or the New York State Superintendent of Banking as licensed lenders.

75. In the course of making and collecting on loans made to consumers in New York, Respondents repeatedly or persistently charged, contracted for, or received interest at rates that exceeded the rate of interest they would be permitted by law to charge if they were licensed by New York State.

76. By engaging in repeated or persistent illegal conduct in the carrying on, conducting, or transaction of business in violation of Banking Law § 356, each of the Respondents has violated Exec. Law § 63(12).

**THIRD CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
VIOLATION OF GENERAL OBLIGATIONS LAW § 5-501 - CIVIL USURY**

77. New York General Obligations Law (“GOL”) § 5-501 makes it unlawful for a person or corporation not licensed by the State of New York to charge, take, or receive interest upon the loan or forbearance of any money, goods, or things in action, except as otherwise provided by law, at a rate exceeding that prescribed in section fourteen-a of the New York Banking Law. New York Banking Law § 14-a states that the maximum rate of interest is sixteen percent per annum (16%).

78. In the course of enforcing loans made to consumers in New York, Respondents WS Funding, CashCall, and Reddam repeatedly or persistently charged, took, and received interest in excess of 16%, in violation of GOL § 5-501 and New York Banking Law § 14-a.

79. By engaging in repeated or persistent illegal conduct in the carrying on, conducting, or transaction of business in violation of GOL § 5-501, Respondents WS Funding, CashCall, and Reddam have violated Exec. Law § 63(12).

**FOURTH CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
VIOLATION OF PENAL LAW § 190.40 - SECOND DEGREE CRIMINAL USURY**

80. New York Penal Law § 190.40 makes it unlawful to charge, take, or receive any money or other property as interest on the loan or forbearance of any money or other property at a rate exceeding twenty-five per cent per annum (25%) or the equivalent rate for a longer or shorter period.

81. In the course of enforcing loans made to consumers in New York, Respondents WS Funding, CashCall, and Reddam repeatedly or persistently charged, took, and received

interest in excess of 25% in violation of § 190.40 of the Penal Law.

82. By engaging in repeated or persistent illegal conduct in the carrying on, conducting, or transaction of business in violation of Penal Law § 190.40, Respondents WS Funding, CashCall, and Reddam have violated Exec. Law § 63(12).

**FIFTH CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
VIOLATION OF GBL § 349 - DECEPTIVE BUSINESS PRACTICES**

83. GBL § 349 makes it unlawful to engage in any deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state.

84. In the course of making and collecting on loans made to consumers in New York, Respondents engaged in deceptive business practices in violation of GBL § 349.

85. Respondents' deceptive acts and practices include, but are not limited to, the following:

- (a) repeatedly or persistently making and collecting on loans without a license;
- (b) repeatedly or persistently charging and receiving illegal, usurious, and unconscionable fees;
- (c) repeatedly misrepresenting to consumers, expressly and by implication, that the rates of interest consumers were charged on their loans were legal;
- (d) repeatedly misrepresenting to consumers that New York law does not apply to their loans; and
- (e) threatening to take action to enforce the loan contracts that Respondents do not take or intend to take.

86. By engaging in repeated or persistent deceptive practices in violation of GBL §

349, each of the Respondents has violated Exec. Law § 63(12).

**SIXTH CAUSE OF ACTION
PURSUANT TO EXEC. LAW § 63(12)
FRAUDULENT BUSINESS CONDUCT**

87. Exec. Law § 63(12) makes it illegal for a business to engage in repeated fraudulent business conduct.

88. In the course of making and collecting on loans made to consumers in New York, Respondents engaged in repeated or persistent fraudulent conduct in violation of Exec. Law § 63(12).

89. Respondents' repeated or persistent fraudulent business conduct includes, but is not limited to, the following:

- (a) repeatedly or persistently contracting for and enforcing unconscionable contractual provisions, including usurious rates of interest;
- (b) repeatedly or persistently charging and receiving illegal, usurious, and unconscionable fees;
- (c) repeatedly misrepresenting to consumers, expressly and by implication, that the rates of interest consumers were charged on their loans were legal;
- (d) repeatedly misrepresenting to consumers that New York law does not apply to their loans; and
- (e) threatening to take action to enforce the loan contracts that Respondents do not take or intend to take.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court grant relief pursuant to Exec. Law §

63(12), GBL §§ 349(b) and 350-d by issuing an order and judgment as follows:

A. permanently enjoining Respondents from conducting business within the State of New York, unless the businesses and/or individuals involved are properly licensed;

B. permanently enjoining Respondents from enforcing loans with New York consumers that violate the lending and consumer protection laws in this State;

C. declaring null and void any loan or forbearance offered, arranged, made, or enforced by Respondents that charged an interest rate exceeding the maximum rate permitted under New York State law;

D. directing Respondents to provide an accounting to the Attorney General identifying Respondents' New York consumers and the amounts paid by each, and directing Respondents to make restitution to each New York consumer of all fees charged and all monies paid in excess of the interest rate permitted under New York State law;

E. directing Respondents to disgorge all profits derived from any loan with a New York consumer bearing a rate of interest in excess of the amount permitted under New York State law;

F. directing Respondents to pay damages to consumers injured as a result of Respondents' unlawful and fraudulent business practices;

G. directing each Respondent to pay a civil penalty in the sum of \$5,000.00 to the State of New York for each violation of GBL § 349, pursuant to GBL § 350-d;

H. directing Respondents to notify all credit agencies to which they have reported that all loans made to New York consumers are invalid, and that all reports or scores that reflect these loans should be corrected;

I. awarding Petitioner the costs and disbursements of this action, including additional costs in the amount of \$2,000.00 against each Respondent pursuant to CPLR § 8303(a)(6); and

J. granting Petitioner such other and further relief as this Court deems just and proper.

Dated: August 12, 2013
New York, NY

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

By: 

JORDAN S. ADLER
Assistant Attorney General
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OF COUNSEL:
Karla G. Sanchez
Executive Deputy Attorney General
Economic Justice Division

Jane M. Azia
Bureau Chief
Consumer Frauds and Protection Bureau

Clark Russell
Assistant Attorney General
Internet Bureau

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JORDAN S. ADLER, being duly sworn, deposes and says:

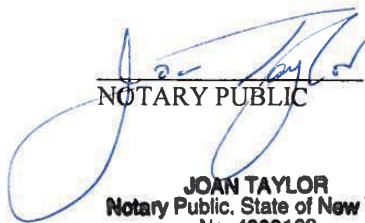
I am an Assistant Attorney General in the office of Eric T. Schneiderman, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which is to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the New York State Office of the Attorney General.

The reason this verification is not made by petitioners is that petitioners are a body politic and the Attorney General is their duly authorized representative.


JORDAN S. ADLER

Sworn to before me this
12th day of August, 2013.


NOTARY PUBLIC
JOAN TAYLOR
Notary Public, State of New York
No. 4999162
Qualified in Bronx County
Commission Expires July 20, 2014



Western Sky Financial Suspends Operations

Company Forced to Lay Off Nearly 100 Workers Due to Unwarranted Regulator Overreach

September 3, 2013 – EAGLE BUTTE, SD - Western Sky Financial officially will be suspending its operations today as a result of unwarranted overreach by state regulators. As a result, 94 people in the impoverished Eagle Butte community have lost their jobs, undermining the economic security of their families and this entire community.

“Regulators from the State of New York and other states lack the authority to regulate legal commerce engaged by members of the Cheyenne River Sioux Tribe on the Cheyenne River Indian Reservation,” said Steve Emery, founder of the Emery Law Firm in Eagle Butte and a spokesman for Western Sky Financial. “The consequence of this groundless overreach is the loss of 94 quality jobs in this economically disadvantaged community.”

The immediate cause of Western Sky’s suspension of operations was the effort by state regulators to pressure and intimidate banks, other financial institutions and payment processing services into choking off business with online lenders like Western Sky. Many of these lenders are based on Indian reservations and therefore subject to tribal, not state, laws and regulations.

“I’m deeply saddened that so many members of the Cheyenne River Sioux tribe have had their lives turned upside down because of regulators and bureaucrats thousands of miles away,” said Butch Webb, founder of Western Sky Financial. “Creating jobs here on the Cheyenne River Indian Reservation has been my proudest accomplishment, and its painful to know that my former employees face the prospect of long-term unemployment given the few job opportunities available to them.”

Western Sky Financial will maintain a limited staff to support the company’s efforts as it seeks to resolve the issues it faces in court.

Contact: media@westernsky.com



WESTERN SKY FINANCIAL is owned wholly by an individual Tribal Member of the Cheyenne River Sioux Tribe and is not owned or operated by the Cheyenne River Sioux Tribe or any of its political subdivisions. WESTERN SKY FINANCIAL is a Native American business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.

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[Western Sky Privacy Policy](#) , [Terms Of Use](#), [Responsible Lending](#)

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SUMMARY OF ACTIONS AGAINST DEFENDANTS BY STATE AUTHORITIES

Note: the following list is not a comprehensive listing of all orders, findings or holdings entered in each action. Unless noted, the docket numbers and (where available) citations to orders that are available electronically are provided.

COLORADO
(OFFICE OF THE ATTORNEY GENERAL)

Colorado ex rel Suthers v. Western Sky Financial LLC et al,
845 F.Supp.2d 1178 (D.Colo. 2011)
– tribal jurisdiction arguments rejected

Colorado ex rel Suthers v. Western Sky Financial LLC et al,
No. 11-CV-638 (Denver Co. Dist. Ct. April 15, 2013)
– summary judgment entered against defendants
– special master on damages appointed
– attorney’s fees for vexatious argument on tribal jurisdiction imposed

GEORGIA
(OFFICE OF THE ATTORNEY GENERAL)

Georgia v. Western Sky Financial LLC et al,
No. 2013-CV-234310 (Fulton Co. Super. Ct. July 26, 2013)
– initial complaint filed

ILLINOIS
(DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION)

In re Western Sky Financial LLC,
No. 13 CC 265 (Ill. Dept. Fin. & Prof. Reg. March 8, 2013)
– cease and desist order entered

KANSAS
(STATE BANK COMMISSIONER, CONSUMER AND MORTGAGE LENDING DIVISION)

In re Western Sky Financial LLC et al,
No. 2011-312 (Kan. Bank Comm’r May 22, 2012)
– cease and desist order entered
– defendants barred from applying for lending licenses in future
– restitution in excess of \$1,500,000 ordered
– fine of \$1,557,000 imposed (in addition to restitution)

MARYLAND
(COMMISSIONER OF FINANCIAL REGULATION)

Western Sky Financial LLC et al v. Maryland Commissioner of Financial Regulation
No. 1:11CV1256, 2011 WL 4894075 (D. Md. Oct. 12, 2011)
No. 1:11CV1256, 2012 WL 312 6863 (D.Md. July 31, 2012)
– tribal jurisdiction arguments rejected

Maryland Commissioner of Financial Regulation v. Western Sky Financial LLC et al,
No. CFR-FY2011-182, 2013 WL 3188996 (Md. Comm’r Fin. Reg. May 22, 2013)
– tribal jurisdiction arguments rejected
– final cease and desist order entered
– restitution ordered
– fine of \$137,000 imposed

MASSACHUSETTS

(OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION, COMMISSIONER OF BANKS)

In re CashCall Inc. et al,

No. 2013-010, 2013 WL 1737075 (Mass. Cons. Aff. & Bus. Reg. Off. April 4, 2013)

- cease and desist order entered
- refunds ordered

In re Western Sky Financial LLC et al,

No. 2013-011, 2013 WL 1737086 (Mass. Cons. Aff. & Bus. Reg. Off. April 4, 2013)

- cease and desist order entered
- refunds ordered

MICHIGAN

(DEPARTMENT OF INSURANCE & FINANCIAL SERVICES)

Michigan Department of Insurance and Financial Services v. Western Sky Financial LLC

- notice of intent to issue cease and desist order given August 1, 2013, pending hearing¹

MINNESOTA

(OFFICE OF THE ATTORNEY GENERAL)

Minnesota v. CashCall et al,

No. 27-CV-13-12740 (Hennepin Co. Dist. Ct., July 11, 2013)

- initial complaint filed

MISSOURI

(OFFICE OF THE ATTORNEY GENERAL)

Missouri v. Webb et al,

No. 4:11CV1237, 2012 WL 1033414 (E.D.Mo. March 27, 2012)

- tribal jurisdiction arguments rejected, case remanded

Missouri ex rel Koster v. Webb,

No. 11SL-CC01680-1 (St. Louis Co. Cir. Ct. Oct. 15, 2012)

- tribal jurisdiction arguments rejected

NEVADA

(DEPARTMENT OF BUSINESS & INDUSTRY, FINANCIAL INSTITUTIONS DIVISION)

*In re Western Sky Financial LLC,*2013 WL 3864655 (Nev. Bus & Indus. Dept. June 28, 2013)²

- cease and desist order entered
- loans declared void
- restitution ordered

¹ See Doc. 59-3 (press release announcing action, no docket number available).

² See http://fid.state.nv.us/Notices/2013/2013-07-01_Order_CDWesternSkyFinancial.pdf (no official docket number issued by department).

NEW HAMPSHIRE
(BANKING DEPARTMENT)

In re CashCall Inc. et al.

No. 12-308, 2013 WL 3465250 (N.H. Banking Dept. June 4, 2013)

- cease and desist order entered
- disgorgement and restitution ordered
- fine of \$1,967,500 imposed

NEW YORK
(OFFICE OF THE ATTORNEY GENERAL)

New York v. Western Sky Financial LLC et al.

No. 451370/2013 (N.Y. Co. S. Ct. Aug. 12, 2013)

- initial complaint filed

OREGON
(CONSUMER & BUSINESS SERVICES DEPARTMENT,
FINANCE & CORPORATE SECURITIES DIVISION)

In re Western Sky Financial LLC,

No. I-12-0039; 2012 WL 6892700 (Ore. Cons. & Bus. Servs. Dept. Dec. 13, 2012)

No. I-12-0039; 2012 WL 6927415 (Ore. Cons. & Bus. Servs. Dept. Dec. 13, 2012)

- cease and desist order entered
- fine of \$17,500 imposed

PENNSYLVANIA
(BANKING & SECURITIES DEPARTMENT, BUREAU OF COMPLIANCE AND LICENSING)

Pennsylvania Dept. of Banking and Securities. v. Webb et al.

No. 130046 (BNK-CAO); 2013 WL 3777469 (Pa. Banking Dept. June 25, 2013)

- cease and desist order entered by consent

WASHINGTON
(DEPARTMENT OF FINANCIAL INSTITUTIONS, AND OFFICE OF ADMINISTRATIVE HEARINGS)

In re Western Sky Financial LLC et al.

Dept. Fin. Insts.No. C-11-0810-12-SC01;

2012 WL 5893038 (Wash. Dept. Fin. Insts. Oct. 18, 2012)

- notice of intent filed, seeking cease and desist order, and penalties exceeding \$667,000

In re CashCall Inc.,

Dept. Fin. Insts. No. C-11-0701-12-SC03;

Off. Admin. Hrgs. No. 2011-DFI-0041 (Wash. Off. Admin. Hrgs. Jan. 30, 2013)

- after hearing, violations of Washington law found
- tribal jurisdiction arguments rejected
- CashCall's consumer lending license revoked
- cease and desist order entered

WEST VIRGINIA
(OFFICE OF THE ATTORNEY GENERAL)

West Virginia ex rel McGraw v. Payday Loan Resource Center LLC et al.

No. 10-MISC-372 (Kanawha Co. Cir. Ct. Oct. 24, 2011)

- tribal jurisdiction arguments rejected